PART 401—[REMOVED]

The Commission, under its authority, section 18 of the Federal Trade Commission Act, as amended (15 U.S.C. 57a) amends chapter one of title 16 of the Code of Federal Regulations by removing part 401.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-13576 Filed 6-12-90; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: Pursuant to sections 2(a)(1), 4(b) and 4c of the Commodity Exchange Act ("Act"), 7 U.S.C. 2, 6(b) and 6c (1982), and part 30 of the Commission's rules and regulations promulgated thereunder, the Commission has entered into a Mutual Recognition Memorandum of Understanding ("MRMOU") with the French Commission des Operations de Bourse ("COB"). This arrangement generally will permit all products of one jurisdiction to be offered to customers located in the other jurisdiction, subject to certain conditions specified in the MRMOU intended to ensure adequate customer protection and the laws applicable to certain equity index and debt security products. Further, the arrangement will also permit brokers licensed in one jurisdiction to sell the products of that jurisdiction to customers located in the other jurisdiction, generally by complying with the rules of the licensing jurisdiction, and with requirements agreed to by the Commission and the COB to eliminate regulatory gaps. As a condition of these arrangements, and to reduce duplication and enhance cooperation, the MRMOU provides for information sharing on a routine and "as needed" basis in connection with monitoring and compliance matters, thus improving the Commission's and COB's ability to address financial or market disruptions that could affect their markets.

EFFECTIVE DATE: July 13, 1990.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. *Telephone*: (202) 254-8955.

SUPPLEMENTARY INFORMATION: On July 23, 1987, the Commodity Futures Trading Commission ("Commission") adopted final rules and regulations pertaining to the offer or sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade.[1] These rules, which became effective on February 1, 1988, establish a regulatory framework for the offer or sale in the United States of futures and option contracts made or to be made on or subject to the rules of a foreign board of trade.[2] The part 30 rules bring foreign futures and option transactions undertaken by persons located in the United States within the Commission's existing framework of customer protections. These rules effect Congress' intent that such transactions be subject to regulatory standards comparable to those applicable to domestic transactions [3] and implement a concept of substituted compliance, such that compliance with a generally comparable foreign regulation will be considered sufficient to warrant exemption from what otherwise may be duplicative Commission regulation.

In this regard, the Commission adopted rule 30.10 which permits persons located outside the United States who solicit or accept orders directly from United States customers for foreign futures or option transactions and who are subject to a generally comparable regulatory scheme in the jurisdiction in which they are located to seek an exemption from the application of certain part 30 rules.[4] In effect, as set forth in appendix A to the part 30 rules, which sets forth the standards the Commission will consider in assessing comparability, the Commission will accept substituted compliance by the foreign firm with rules and regulations in effect in the jurisdiction deemed comparable to those in effect in the United States. The elements the Commission will examine in assessing comparability of regulation include registration or other form of fitness review, minimum capital requirements, protection of customer funds, sales practice requirements, recordkeeping and reporting requirements and compliance procedures.

Unlike foreign futures, which with two exceptions can be offered or sold to customers resident in the United States without prior approval [5] foreign option contracts have been banned since 1978.[6] The part 30 rules establish a mechanism pursuant to which this ban may be lifted on a market by market and product by product basis. Specifically, under Commission rule 30.3(a),[7] the Commission may lift the foreign option ban by the issuance of an authorization order. In assessing whether to grant a foreign option petition, the Commission has reviewed, among other things: The arrangements in place for deterring sales practice abuses, the ability of United States customers to redress grievances with respect to the offer or sale of such option products and the regulatory environment in which the products are traded.

Both the rule 30.10 and rule 30.3(a) orders are premised on the existence of appropriate information sharing arrangements between the Commission and the relevant foreign regulatory authority. In particular, both the rule 30.10 and rule 30.3(a) procedures acknowledge that interjurisdictional cooperation is a necessary prerequisite for an effective regulatory program which is to be applied to a person operating from outside the United States.

Based upon the foregoing, in particular, sections 2(a)(1), 4(b) and 4c of the Act and part 30 of the Commission's rules and regulations promulgated thereunder, the Commission has entered into the MRMOU with the COB. This arrangement generally will permit all products of one jurisdiction to be offered to customers located in the other jurisdiction, subject to certain conditions specified in the MRMOU intended to ensure adequate customer protection. Further, the arrangement will also permit brokers licensed in one jurisdiction to sell the products of that jurisdiction to customers located in the other jurisdiction, generally by complying with the rules of the licensing jurisdiction, and with requirements agreed to by the Commission and COB to eliminate regulatory gaps. As a condition of these arrangements, and to reduce duplication and enhance cooperation, the MRMOU provides for

---

[1] 17 CFR part 30 (1989). 52 FR 28980 (Aug. 5, 1989).

[2] 52 FR 46811 (December 28, 1987).

[3] *See* S. Rep. No. 384, 97th Cong., 2d Sess. 45-46 (1982) and 51 FR 12104, 12107 (April 8, 1986).

[4] *See* Commission rule 30.10, 17 CFR 30.10 (1989).

[5] Specifically, futures or option contracts concerning stock indices and non-exempt foreign government debt instruments may not be offered or sold in the United States without compliance with certain additional procedures. *See* section 2(a)(1) of the Act, 7 U.S.C. 2 and section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12-8 promulgated thereunder.

[6] *See* Commission rule 32.11, 17 CFR 32.11 (1989).

[7] *See* Commission rule 30.3(a), 17 CFR 30.3(a) (1989).

information sharing on a routine and "as needed" basis in connection with monitoring and compliance matters, thus improving the Commission's and COB's ability to address financial or market disruptions that could affect their markets.

Memorandum of Understanding Regarding Mutual Recognition Between the Commodity Futures Trading Commission and the Commission des Operations de Bourse

The Commodity Futures Trading Commission ("CFTC") and the Commission des Opérations de Bourse ("COB"):

Considering the increasing international activity on their respective futures and option markets;

Recognizing the need to enhance client protection through the oversight of the activities of the regulated persons transacting business on their respective markets and through the enforcement of their respective national laws and regulations concerning futures and option contracts and transactions involving such contracts;

Desiring to develop new mechanisms for mutual cooperation and assistance, including the sharing of information, between the Authorities; and

Representing that each Authority has the power to effectuate the provisions of this Mutual Recognition Memorandum of Understanding and the annexed Side Letter (collectively "MRMOU");

Understand the following:

Article 1—Definitions

1. For the purposes of this MRMOU:

(a) *"Authority"* means the CFTC or the COB;

(b) *"Authorized person"* means:

(1) A credit institution as defined by Article 1 of Law N° 84–46 dated January 24, 1984 and published in the Journal Officiel of the Republic of France or an institution regulated by Articles 69 and 99 of such law, that is approved by the Comité des Etablissements de Crédit, controlled by the Commission Bancaire and placed under the supervision of the Bank of France and of the COB, and that is authorized by the Conseil du Marché à Terme to trade Futures or Option Contracts under Article 8 of the Law dated March 28, 1885, as amended by Law N° 85–695 dated July 11, 1985, Law N° 87–1158 dated December 31, 1987, and Law N° 89–531 dated August 2, 1989, each published in the Journal Officiel of the Republic of France;

(2) A brokerage firm that is approved and controlled by the Conseil des Bourses de Valeurs and placed under the supervision of the COB, and that is authorized by the Conseil du Marché à Terme to trade Futures or Option Contracts under Article 8 of the Law dated March 28, 1885, as amended by Law N° 85–695 dated July 11, 1985, Law N° 87–1158 dated December 31, 1987, Law N° 88–70 dated January 22, 1988, and Law N° 89–531 dated August 2, 1989, each published in the Journal Officiel of the Republic of France; or

(3) Any other person that is authorized by the Conseil du Marché à Terme, and that is qualified to solicit or accept Client orders and funds involving Futures or Option Contracts;

(c) *"Client" or "Customer"* means a person who directly or indirectly has, holds, or places an order to obtain a beneficial interest in a Futures or Option Contract;

(d) *"Conseil du Marché à Terme" ("CMT")* means the professional organization under Article 5 of the Law dated March 28, 1885, as amended by Law N° 85–695 dated July 11, 1985, Law N° 87–1158 dated December 31, 1987 and Law N° 89–531 dated August 2, 1989, with the authority to establish the General Regulation of the Futures and/or Option Markets subject to its jurisdiction, to approve Authorized Persons and to improve disciplinary sanctions on such Persons or their employees;

(e) *"Futures Contract"* means an agreement, subject to regulation by the CFTC, or subject to regulation by the CMT and placed under the supervision of the COB, which is, or is held out to be, of the character of a contract for the purchase or sale for future delivery of a commodity, a financial instrument or an index, and which is traded on, or subject to the rules of, a Futures and/or Option Market;

(f) *"Futures and/or Option Market" or "Market"* means:

(1) With respect to France, the markets on Futures or Option Contracts regulated by the CMT and placed under the supervision of the COB under the Law dated March 28, 1885, as amended by Law N° 85–695 dated July 11, 1985, Law N° 87–1158 dated December 31, 1987, and Law N° 89–531 dated August 2, 1989, and which are listed in Annex A of this MRMOU; and

(2) With respect to the United States, the contract markets (as defined in CFTC regulation 1.3(h), 17 CFR 1.3(h)) designated under the Commodity Exchange Act (the "CEA"), 7 U.S.C. 1, and which are listed in Annex B of the MRMOU;

(g) *"Laws and Regulations"* means the provisions of the laws and decrees of France or the United States, a rule or regulation adopted thereunder, or an order issued thereunder, by an Authority, or by the Conseil des Bourses de Valeurs, the CMT, the National Futures Association or by a Futures and/or Option Market subject to the approval of, or in consultation with, an Authority, concerning a Futures or Option Contract, a Futures and/or Option Market, or a Person transacting business on such Market;

(h) *"National Futures Association" ("NFA")* means a self-regulatory organization with the authority, *inter alia*, to regulate certain Registered Persons conducting a business on Futures and/or Option Markets, that is a registered futures association under section 17 of the CEA, 7 U.S.C. 21, and that maintains the records of Registered Persons under the CEA;

(i) *"Option Contract"* means an agreement, subject to regulation by the CFTC, or subject to regulation by the CMT and placed under the supervision of the COB, which is, or is held out to be, of the character of an option, bid, offer, call or put, and which is traded on, or subject to the rules of, a Futures and/or Option Market;

(j) *"Person"* means an individual, association, partnership, corporation, trust, or any other legal entity;

(k) *"Recognized Person"* means:

(1) An Authorizes Person that, pursuant to this MRMOU, is permitted to offer or sell Futures or Option Contracts traded on the Markets subject to the supervision of the COB, or to accept orders and funds related thereto, to Clients residing in the United States, without any additional registration in accordance with the provisions of part 30 of the CFTC's regulations; or

(2) A Registered Person that, pursuant to this MRMOU, is permitted to offer or sell Futures or Option Contracts traded on the Markets subject to the supervision of the CFTC, or to accept orders and funds related thereto, to Clients residing in France, without any additional authorization in accordance with the provisions of Article 32 of Law N° 89–531 dated August 2, 1989;

(l) *"Recognizing Authority"* means:

(1) With respect to the recognition in France of Registered Persons listed in Annex C of this MRMOU, and the recognition of Futures or Option Contracts traded on the Markets subject to the supervision of the CFTC and listed in Annex D of this MRMOU, the COB; or

(2) With respect to the recognition in the United States of Authorized Persons listed in Annex E of this MRMOU, and the recognition of Futures or Option Contracts traded on the Markets subject to the supervision of the COB and listed in Annex F of this MRMOU, the CFTC: and

(m) "*Registered Person*" means a Person who solicits or accepts Client orders and funds related to transactions involving Futures or Option Contracts and who is registered in accordance with the requirements of section 4d of the CEA, 7 U.S.C. 6d, and part 3 of the CFTC regulations thereunder, 17 CFR part 3.

2. Words used in the singular form in this MRMOU are deemed to import the plural, and vice versa.

Article II—Mutual Recognition of Regulatory Systems

1. The Authorities have exchanged correspondence intended to inform each other of the Laws and Regulations and procedures governing the Authorized Persons, Registered Persons, Futures or Option Contracts, and Futures and/or Option Markets in their respective jurisdictions. The Authorities represent that they have informed each other of the Laws and Regulations and procedures governing the confidentiality of information to be shared pursuant to this MRMOU.

2. Based on the representations made by each Authority in the exchange of correspondence referred to in paragraph 1 of this Article, each Authority recognizes that the jurisdiction of the other Authority has Laws and Regulations which address:

(a) Authorization or registration of Persons who offer or sell Futures or Option Contracts, or accept orders and funds related thereto, including, without limitation:

(1) Criteria and procedures for refusing, granting, monitoring, suspending and revoking such authorization or registration; and

(2) Provisions for requiring and obtaining access to fitness information about Authorized or Registered Persons;

(b) Financial requirements for Authorized or Registered Persons including, without limitation, requirements concerning:

(1) The amount and nature of the assets of such Persons who carry Client accounts or handle Client funds;

(2) Accounting for transactions and transaction prices; and

(3) Daily mark-to-market clearance and settlement procedures;

(c) Systems for the protection of Client funds including, without limitation, mechanisms intended to:

(1) Mitigate the loss of Client funds because of defalcation or default;

(2) Ensure appropriate accounting for Client funds and the interests in which such funds are invested; and

(3) Permit the liquidation or transfer of Client positions when a margin call is not met;

(d) Recordkeeping and reporting requirements pertaining to financial and transaction information including, without limitation, information about:

(1) Futures or Option Contract prices;

(2) Settlement prices;

(3) Orders;

(4) Trade confirmations;

(5) Statements of the finanacial position and other accounting records of the Authorized or Registered Persons;

(6) Client account statements; and

(7) Any other Client records;

(e) Requirements which govern sales practices including, without limitation, the handling of Customer complaints, supervision of accounts, solicitation, risk disclosure, discretionary accounts, promotional material, and supervision of employees and disciplinary actions; and

(f) Procedures to audit for compliance with, and to redress violations of, Client protection and sales practice requirements including, without limitation:

(1) Surveillance programs designed to detect abusive activities which take advantage of Clients;

(2) Powers to investigate, audit, and sanction the sales practices of Authorized or Registered Persons; and

(3) Procedures to resolve Client disputes.

3. Each Authority represents that all Futures or Option Contracts and Markets subject to the supervision of such Authority are governed by the Laws and Regulations and procedures referred to in paragraph 2 of this Article and that such Authority will provide the other Authority with prompt notice of all material changes in such Laws and Regulations.

4. Each Authority will accord to Clients residing in the jurisdiction of the other Authority the equal protection of its Laws and Regulations as to Clients residing in its own jurisdiction.

5. Consequently, each Authority recognizes that:

(a) The Futures or Option Contracts and Futures and/or Option Markets subject to the supervision of the other Authority are governed by Laws and Regulations intended to provide Client and Market protections to Persons engaged in trading such Futures or Option Contracts; and

(b) The Recognized Persons subject to the supervision of the other Authority are governed by Laws and Regulations intended to provide Client and Market protections to Persons engaged in trading Futures or Option Contracts.

6. Therefore, subject to the requirements of this MRMOU including, without limitation, the provisions set forth in Articles V and VI herein, each Authority understands that:

(a) Compliance by a Recognized Person with the requirements imposed by, and under the supervision of, one Authority concerning authorization or registration of Persons, is substituted for compliance with the authorization or registration requirements imposed by, and under the supervision of, the other Authority; and

(b) Subject to the provisions of the Side Letter regarding Futures or Option Contracts concerning stock indices and certain debt securities, each Authority will permit the offer or sale, and acceptance of funds related thereto, to Clients residing in its jurisdiction, or Futures or Option Contracts which are properly authorized or designated to be traded on Markets subject to the supervision of the other Authority.

7. The Authorities understand that the recognition of an Authorized or Registered Person or the recognition of a Futures or Option Contract in accordance with paragraph 6 above may be refused by the Recognizing Authority if such recognition would prejudice the public interest in the jurisdiction of such Authority.

8. With respect to Recognized Persons, each Authority acknowledges that this MRMOU is directed to brokerage activities by such Persons in the jurisdiction of the Recognizing Authority, which involve Futures or Option Contracts traded on Markets subject to the supervision of the other Authority, and is not directed to trading activities by these Persons on Markets subject to the supervision of the Recognizing Authority.

9. Each Authority understands that this MRMOU does not exempt a Recognized Person or any other Person from any provision of the Laws and Regulations in France and in the United States which are not specified herein including, without limitation, the antifraud provisions of each of these jurisdictions.

Article III—Mutual Assistance Concerning Information Sharing

1. Each Authority acknowledges that its respective understandings set forth in this MRMOU are based on the existence of mechanisms for sharing information on an "as needed" basis and for cooperating in inquiries, investigations, proceedings and compliance matters with respect to the Laws and Regulations subject to its jurisdiction.

2. Each Authority will:

(a) Assist the other Authority, to the extent permitted by the Laws and Regulations of its jurisdiction, by providing information concerning the oversight and protection of the Markets

which are subject to the supervision of such Authority and the protection of Recognized Persons' Clients residing in the jurisdiction of the Recognizing Authority; and

(b) Designate in the Side Letter contact offices at the COB and the CFTC to receive and process all requests for such information sharing.

3. With respect to Recognized Persons, the information sharing described in this Article will include, without limitation, information concerning:

(a) Transaction specific data, including confirmation data and position data;

(b) Any data necessary to trace the funds: (1) that are located in the jurisdiction of an Authority; (2) that concern transactions on the Markets subject to the supervision of that Authority; (3) that are held by, or on behalf of, Authorized or Registered Persons recognized by the other Authority; and (4) that belong to Clients residing in the jurisdiction of such other Authority; and

(c) Data on the standing of the Recognized Person to do business, including its financial condition.

4. With respect to any arrangement between the Markets of each Authority to permit access to each others Futures or Option Contracts traded on an electronic trading system which has been authorized in the respective jurisdiction of both Authorities, information necessary to permit each Authority to ensure compliance with, or enforcement of, any Laws and Regulations of the jurisdiction of that Authority, may be shared pursuant to the provisions of this MRMOU.

5. A request for information pursuant to this Article must be made in writing and addressed to the contact office of the requested Authority designated in accordance with paragraph 2(b) above.

Such request will be accompanied by a translation in French in the case of a request to the COB, and by a translation in English in the case of a request to the CFTC. A request must specify the following:

(a) The information sought by the requesting Authority;

(b) A general description of the matter which is the subject of the request and the purpose for which the information is sought; and

(c) The desired time period for the reply and, where appropriate, the urgency thereof, in the event of urgency, a request for information and a reply thereto may be transmitted by summary or emergency procedures by mutual arrangement of the Authorities.

6. In response to a request, made in accordance with paragraph 5 above, for immediate access to the books and records of a Recognized Person that are required to be maintained under the Laws and Regulations in France or in the United States, as the case may be, and that relate to transactions subject to this MRMOU, each Authority will provide the other Authority with the copies of the books and records which are the subject of the request.

7. In addition to the specific notice provisions set forth in Article V hereunder, each Authority will inform the other Authority, on an "as needed" basis, about the authorization or registration status of a Person subject to its jurisdiction and about the status of Futures or Option Contracts traded on the Markets subject to its supervision.

8. Each Authority will use its best efforts to notify and consult with the other Authority if it becomes aware of any information which, in its judgment, materially and adversely affects the financial or operational viability of any Authorized or Registered Person recognized by such other Authority.

9. Each Authority will provide, or will cause to be provided, to the other Authority, commencing with the first filing due after the effective date of this MRMOU, as promptly as practicable after receipt of the relevant report, the following information with respect to a Registered or Authorized Person recognized by the other Authority:

(a) Copies of the annual audited financial statement, required under the Laws and Regulations of the jurisdiction of that Authority. The Authority, or its designee(s), will represent that the annual financial statement of this Person has been certified as required under the Laws and Regulations of its jurisdiction. Such Authority, or its designee(s), will further represent that, through the access it has to financial compliance information regarding the Authorized or Registered Person, it has no reason to believe that such Person has violated any of the financial requirements of the jurisdiction of this Authority; and

(b) Details of any notice received by the Authority, or its designee(s), under the Laws and Regulations of the jurisdiction of this Authority regarding any breach of financial requirements under such Laws and Regulations.

10. No provision of this MRMOU shall be considered as conferring the right to ask for, or challenge, the execution of a request for information upon any Person other than the Authorities.

11. The Authorities acknowledge that this MRMOU does not prohibit either Authority from taking measures, to the extent permitted by international law, otherwise than as provided herein to obtain information necessary to ensure compliance with, or enforcement of, its Laws and Regulations.

Article IV—Confidentiality of the Information Shared Between the Authorities

1. The requesting Authority may use the information furnished pursuant to this MRMOU solely:

(a) For the purpose stated in the request, including ensuring compliance with, or enforcement of, any Laws and Regulations specified in such request; or

(b) For purposes within the general framework of the use stated in the request, including conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory enforcement proceeding, assisting in a proceeding, including a proceeding whose purpose is to permit a subsequent criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the provision specified in the request.

2. In order to use the information furnished for any purpose other than those stated in paragraph 1 of this Article, the requesting Authority must first inform the requested Authority of its intention and provide this Authority with the opportunity to oppose such use. If, under such conditions, the requested Authority does not oppose such use, this Authority may subject it to certain conditions. In the event where this use of the information is opposed by the requested Authority, the Authorities agree to consult pursuant to paragraph 8 of Article VI hereunder as to the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

3. Each Authority shall keep confidential requests made within the framework of this MRMOU, the contents of such requests, and any other matters arising during the operation of this MRMOU, including consultations between the Authorities.

4. In all cases, the requesting Authority shall keep confidential any information received pursuant to this MRMOU to the same extent as such information would be kept confidential in the jurisdiction of the requested Authority, except in the case where the information provided must be disclosed in the course of its use pursuant to paragraphs 1 and 2 of this Article.

5. However, the Authorities may, by mutual agreement, make an exception to the principle set forth in paragraphs 3 and 4 above, to the extent permitted by

the Laws and Regulations of each Authority.

Article V—Recognition of Persons and Contracts

1. The Authorities understand that the recognition of an Authorized or Registered Person will become effective thirty days after the completion of the following:

(a) The Authority notifies the Recognizing Authority that the Registered or Authorized Person is presently qualified to do business in its jurisdiction and expects to commence business in the jurisdiction of the Recognizing Authority; and

(b) The Authority provides the Recognizing Authority with the following written undertakings of the Authorized or Registered Person:

(1) A consent to submit to jurisdiction in France or the United States, as the case may be, with respect to transactions in Futures or Option Contracts with Clients residing in such jurisdiction, and a binding appointment of an agent for service of process in the jurisdiction of the Recognizing Authority, which has been filed with the CMT or the NFA, as the case may be, in accordance with the requirements of the Recognizing Authority, unless such appointment previously has been filed and remains valid;

(2) An acknowledgement of such Person that it can be required by the Authority in the jurisdiction in which it is authorized or registered to provide to that Authority immediate access to its books and records which are related to transactions subject to this MRMOU and which are required to be maintained under the applicable Laws and Regulations of the jurisdiction of that Authority; such Person further acknowledges that each Authority will cooperate in providing to the Recognizing Authority access to the copies of such books and records which are the subject of a request made by the Recognizing Authority in accordance with Article III of this MRMOU;

(3) A list of its principals including, without limitation:

(A) Its directors and officers as well as its controlling shareholders or partners, or any Person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over its activities which are subject to regulation by an Authority;

(B) Any holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock;

(C) Any Person who has contributed ten percent or more of its capital;

(4) Subject to the provisions of the Side Letter, such Person consents to notify all Clients of the existence of, and to participate in, any procedure available under the Laws and Regulations of the Recognizing Authority to resolve on the papers Client disputes where such disputes involve transactions within the purview of this MRMOU; and

(5) Such Person agrees to provide Clients residing in the jurisdiction of the Recognizing Authority with the disclosures required by such Authority;

unless the Recognizing Authority gives notice to the other Authority that such recognition is refused in accordance with the provisions of this MRMOU.

2. Subject to paragraph 3 hereunder, the recognition by an Authority of a Registered or Authorized Person will remain in effect as long as such Person is authorized or registered in the jurisdiction of the other Authority.

3. The recognition of an Authorized or Registered Person may be terminated if:

(1) The Authorized or Registered Person violates the law of the Recognizing Authority;

(2) The Authorized or Registered Person fails to comply with any provision of this MRMOU;

(3) In the case of a Person recognized by the CFTC, a princpal of such Person has been disqualified from doing business in France, or in the case of a Person recognized by the COB, a principal of such Person has been disqualified from doing business in the United States under the CEA and CFTC regulations;

(4) The continued recognition of the Authorized or Registered Person is contrary to the Laws and Regulations of the Recognizing Authority; or

(5) The Authorized or Registered Person ceases to do business in the jurisdiction of the Recognizing Authority or in the jurisdiction of the Authority where such Person is authorized or registered.

4. Each Authority understands that a Recognizing Person will be required to comply with the requirements relating to protection of Client funds, prudential standards including financial requirements, risk disclosure and arbitration as set forth in the Side Letter.

5. Each Authority understands that a Recognized person will maintain its books and records according to the Laws and Regulations of the jurisdiction where such Person is authorized or registered.

6. Each Authority will notify the Recognizing Authority prior to the first offer or sale of an Option Contract subject to its regulation to Clients residing in the jurisdiction of the Recognizing Authority. The Authorities understand that the recognition of the Option Contract by such Authority will not become effective until thirty days after publication in the Bulletin Mensuel of the COB or in the **Federal Register**, as the case may be, of a notice specifying the Option Contract to be offered or sold, unless such recognition is refused as permitted by paragraph 7 of Article II of this MRMOU.

7. The Authority with jurisdiction over the Market on which are traded the Futures or Option Contracts offered or sold to Clients residing in the jurisdiction of the Recognizing Authority by an Authorized or Registered Person, will conduct, or will cause to be conducted, sales practice audits of this Authorized or Registered Person.

Article VI—Effective Date and Miscellaneous Representations

1. Each Authority acknowledges that this MRMOU has been executed in accordance with the applicable laws and Regulations in France and the United States and is based on the representations made and supporting materials exchanged by the Authorities.

2. This MRMOU will be published, in France, in the Bulletin Mensuel of the COB, and in the United States, in the **Federal Register**.

3. The Authorities acknowledge that the effectiveness of this MRMOU will depend upon the adoption of the domestic measures that are necessary to implement fully its provisions in the respective jurisdiction of each Authority. The Authorities will exchange letters to inform each other of the adoption of such measures.

4. This MRMOU will enter immediately into force upon the exchange of letters referenced in the preceding paragraph, provided that a delay of thirty days has elapsed since the publication of this MRMOU in the Bulletin Mensuel of the COB and in the **Federal Register**.

5. The Authorities acknowledge however that they will implement immediately those provisions of this MRMOU which are already in compliance with the Laws and Regulations of the jurisdiction of both Authorities, provided that the thirty-day delay referenced in the preceding paragraph has elapsed. For this purpose, the information sharing assistance between the Authorities will be subject to the conditions described in the Side Letter.

6. Subject to the notice provisions set forth in Article V above, the Authorities,

or their designees, may periodically update the Annexes of this MRMOU.

7. The Recognizing Authority will promptly notify the other Authority before refusing, suspending or terminating the recognition of an Authorized or Registered Person, and before refusing, suspending or terminating the recognition of a Futures or Option Contract subject to regulation by the other Authority.

8. The Authorities will consult, upon the request of an Authority, in the event of:

(a) A refusal by an Authority to comply with a request for information in accordance with Article III of this MRMOU; or

(b) A change in market conditions, or in their respective Laws and Regulations, or in the event of any other difficulty which may make it necessary to amend or interpret this MRMOU.

9. The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this MRMOU.

10. This MRMOU may be amended by mutual written agreement of the Authorities.

11. Each Authority understands that if the continued effectiveness of this MRMOU, in general or with respect to a particular Recognizing Person, or a Futures or Option Contract, or a Futures or Option Market, would prejudice the sovereignty, security, fundamental interests or public order of an Authority, that Authority may condition, modify, suspend or terminate the recognition of an Authorized or Registered Person or the recognition of a Futures or Option Contract, or otherwise restrict such recognition upon its motion and written notice to the other Authority.

12. This MRMOU shall remain in effect unless terminated by either Authority upon thirty days written notice to the other Authority.

In Witness Whereof, the Undersigned, being duly authorized, have signed this MRMOU.

Done at Washington, DC, in duplicate, this 6th day of June, 1990, in the English and French languages, each text being equally authoritative.

Wendy L. Gramm,

Chairman, Commodity Futures Trading Commission.

Jean Saint-Geours,

Le Président, Commission des Opérations de Bourse.

Annex A

Futures and/or Option Markets Placed under the Supervision of the COB

The Futures and/or Option Markets placed under the supervision of the COB and referenced in the provisions of this MRMOU are the following:

Marché à Terme International de France (MATIF).

Annex B

Futures and/or Option Markets Placed under the Supervision of the CFTC

The Futures and/or Option Markets placed under the supervision of the CFTC and referenced in the provisions of this NRMOU are the following:

Amex Commodities Corporation
Chicago Board of Trade
Chicago Mercantile Exchange
Chicago Rice and Cotton Exchange
Coffee, Sugar & Cocoa Exchange, Inc.
Commodity Exchange, Inc.
Kansas City Board of Trade
MidAmerica Commodity Exchange
Minneapolis Grain Exchange
New York Cotton Exchange
New York Futures Exchange, Inc.
New York Mercantile Exchange
Philadelphia Board of Trade, Inc.
Pacific Futures Exchange

Annex C

Registered Persons

The Registered Persons that, pursuant to this MRMOU, are permitted to offer or sell the Futures or Option Contracts listed in Annex D of this MRMOU to Clients residing in France are the following:

(List to be provided by the CFTC).

Annex D

Futures or Option Contracts Placed Under the Supervision of the CFTC

The Futures or Option Contracts placed under the supervision of the CFTC that, pursuant to this MRMOU, are permitted to be offered or sold to Clients residing in France are the following:

(List to be provided by the CFTC).

Annex E

Authorized Persons

The Authorized Persons that, pursuant to this MRMOU, are permitted to offer or sell the Futures or Option Contracts listed in Annex F of this MRMOU to Clients residing in the United States are the following:

(List to be provided by the COB).

Annex F

Futures or Option Contracts Placed Under the Supervision of the COB

The Futures or Option Contracts placed under the supervision of the COB that, pursuant to this MRMOU, are permitted to be offered or sold to Clients residing in the United States are the following:

(List to be provided by the COB).

SIDE LETTER

June the 6th, 1990.

Wendy L. Gramm, Chairman, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Jean Saint-Geours, Le Président, Commission des Opérations de Bourse, 39–43 Quai André Citroën, 75739 PARIS CEDEX 15.

Re: *Mutual Recognition Memorandum of Understanding between the CFTC and the COB ("MRMOU") dated June 6, 1990*

This letter refers to the agreement which was signed today by the duly authorized representatives of the Commodity Futures Trading Commission ("CFTC") and the Commission des Opérations de Bourse ("COB") (collectively, the "Authorities"), concerning the mutual recognition of Futures or Option Contracts traded on the Futures and/or Option Markets subject to the supervision of these Authorities, as well as the recognition of Authorized or Registered Persons transacting business on such Markets ("MRMOU"). This letter is intended to facilitate the operation of this MRMOU and to further clarify certain conditions imposed by the Authorities for its implementation. All terms used in this letter have the same meanings as set forth in this MRMOU.

This MRMOU is the result of extensive consultations among the Authorities and of the exchange of correspondence concerning the financial capacities of the Futures and/or Option Markets subject to their supervision.

Article V of this MRMOU sets forth certain conditions imposed by each Authority in order for an Authorized or Registered Person to become and remain recognized by such Authority. The Authorities understand that, in addition to Article V of this MRMOU and in addition to any applicable Laws and Regulations, the recognition of an Authorized or Registered Person, for the purpose of permitting the offer or sale of Futures or Option Contracts in the jurisdiction of the Recognizing Authority, will be subject to the following further conditions:

1. Protection of Client Funds

(a) In the case of an Authorized Person, the Clearing House referenced in Article 9 of the Law dated March 28, 1885, as amended, and Article 1.3.0.4. of the General Regulation of the CMT, will guarantee to such Person's Clients residing in the United States the deposits, and any variation margins, due by the Authorized Person to such Clients with respect to Futures and Option Contracts traded on a Market subject to the regulation of the COB. This full performance guarantee will be provided to such Clients provided that: (i) The Authorized Person will insure that its own positions and the positions of its Clients will be cleared separately, and that the obligations in respect of such positions cannot be offset; (ii) the Authorized Person will maintain, on behalf of such Clients, the amount of the deposit required by the Clearing House, in liquid assets which are permitted under the CMT rules; and (iii) in the event of a default of the Authorized Person, the amount referenced in subparagraph (ii) above will be transferable to another Authorized Person as Client's property. Furthermore, the undisbursed accruals will also be maintained by the Authorized Person, on behalf of such Clients, in liquid assets that are identifiable as property of a particular Client and that can

be claimed as Client's property according to Article 30 of Law N° 83–01 of January 3, 1983, as amended;

(b) In the case of a Registered Person, such Person will maintain the funds described in 1.3(gg) of the CFTC regulations, 17 CFR 1.3(gg), in accordance with the segregation provisions of section 4d of the CEA and part 1 of the CFTC regulations thereunder, 17 CFR part 1.

2. Prudential Requirements

(a) In the case of an Authorized Person, such Person will maintain net equity as required under the CMT General Regulation, provided that, according to such regulation, no subordinated debt or guarantee may be substituted for such net equity in order to fulfill the minimum capital requirements, *i.e.*, FF 7.5 million for nonclearing members, FF 50 million for individual clearing members, and FF 375 million for general clearing members, and provided, further, that, if a more stringent financial requirement is imposed by the European Economic Community on european investment firms, the Authorized Person will meet such requirement;

(b) In the case of a Registered Person, such Person will maintain capital as required under the CFTC rule 1.17, 17 CFR 1.17;

(c) The Authorities acknowledge that they will consult further as to the comparability of the prudential requirements of their respective jurisdictions concerning the Authorized or Registered Persons. As a preliminary agreement, each Authority also agrees to consult if the obligations of a Person which is authorized or registered in its jurisdiction, in respect to Clients residing in the jurisdiction of the other Authority, exceed twenty-five times any such Person's net equity. The Authorities will further consult if a substantial part of the obligations that an Authorized or Registered Person owes to his Clients originates from Clients residing in the jurisdiction of the other Authority.

3. Risk Disclosure Statements

(a) Prior to the opening of an account in Futures or Option Contracts traded on Markets subject to the supervision of the COB, for Clients residing in the United States, the Authorized Person will provide such Clients with:

(1) The information notice, translated into English, which is approved by the COB pursuant to Article 14-bis of the Law dated March 28, 1885, as amended, and by Regulation N° 90–[_____] of the COB, as attached hereto as appendix I; and

(2) The risk disclosure statements in accordance with rule 30.6 and rule 33.7 of the CFTC, 17 CFR 30.6 and 33.7, as attached hereto as appendices II and III;

(b) Prior to the opening of an account in Futures or Option Contracts traded on Markets subject to the supervision of the CFTC, for Clients residing in France, the Registered Person will provide such Clients with:

(1) The information document required by Regulation N° 90–[_____] of the COB regarding the offer or sale of securities, futures contracts, and financial products traded on a non-French market, as attached hereto as appendix IV; and

(2) The risk disclosure statements, translated into French, in accordance with CFTC rules 33.7, 1.55 and 190.10, 17 CFR 33.7, 1.55 and 190.10, as attached hereto respectively as appendices III, V and VI.

4. Arbitration Procedures

The Authorized or Registered Person consents to arbitrate, at the election of the Client, at the NFA or the CMT, the arbitration programs of each of which provides a mechanism for a hearing on the papers; provided, however, that if the claim arises primarily out of delivery, clearing, settlement or floor practices on Futures and/or Option Markets, the Recognized Person can elect to arbitrate at the forum of the jurisdiction in which it is authorized or registered; and provided, further, that the demand for arbitration at the CMT or the NFA can be filed by the Client at either such forum.

For purposes of this MRMOU, the term "public interest" in paragraph 7 of Article II of this MRMOU shall include, without limitation, the Laws and Regulations governing disqualification from authorization or registration in effect in the jurisdiction of each Authority. The Authorities understand that no employee or representative of a Recognized Person may be permitted to engage in activities subject to this MRMOU if, to the best knowledge and belief of the Authority in the jurisdiction of which the Recognized Person is authorized or registered, the employee or representative of the Recognized Person has been disqualified, or would be statutorily disqualified, from so acting under the Laws and Regulations of the jurisdiction of the Recognizing Authority.

For purposes of this MRMOU, the term "designee(s)" in paragraph 9 of Article III of this MRMOU shall mean the NFA, the CMT, or in appropriate circumstances, a Futures and/or Option Market.

The Authorities understand that Futures or Option Contracts concerning stock indices, and certain debt securities which are not exempt securities under section 3(a)(12) of the Securities Exchange Act of 1934 and rule 3a12–8 promulgated thereunder, may not be permitted to be offered or sold pursuant to this MRMOU without compliance with certain additional procedures (*see* section 2(a)(1) of the CEA, 7 U.S.C. 2, section 3(a)(12) of the Securities Exchange Act of 1934 and rule 3a12–8 promulgated thereunder).

The Authorities acknowledge that the provisions of this MRMOU concerning the recognition of Authorized or Registered Persons are only directed to those Persons residing outside the jurisdiction of the Recognizing Authority. The Authorities will ascertain, in accordance with mutually agreed upon compliance procedures or requirements, that the Persons which are authorized or registered in their respective jurisdiction, to the extent possible, do not permit their affiliates or subsidiaries which are located in the jurisdiction of the Recognizing Authority, to engage in their behalf in the activities subject to this MRMOU.

The Authorities understand that the failure by an Authorized or Registered Person to comply with any provision of this MRMOU, or the conditions and understandings referenced above may result in a denial or termination of recognition by the Recognizing Authority. A termination of recognition will be communicated, within thirty days, by written notice to the Authority of the jurisdiction in which the Person is authorized or registered. Such termination may be communicated orally in the event of an emergency. At the discretion of the Authority terminating recognition, a period of time may be permitted to make different arrangements for Clients residing in the jurisdiction of that Authority.

The Authorities also understand that the refusal by an Authority to honor any provision of this MRMOU, or the conditions and understandings referenced above, may result in a termination of this MRMOU. A termination of this MRMOU under the terms thereof will be communicated in writing, and a period of time mutually acceptable to the Authorities will be accorded to permit Recognized Persons to make other arrangements.

Each Authority will be responsible for monitoring whether the Authorized or the Registered Person that are recognized by the other Authority, meet the terms of this MRMOU and the Side Letter, and are otherwise in compliance with the respective regulatory regime of each Authority.

Until the exchange of letters of notification referenced in paragraph 3 of Article VI of this MRMOU, the Authorities acknowledge their participation in a proceeding for the return to the requested Authority of the documents, and any copies thereof, that such Authority has designated as confidential information.

Article III of this MRMOU provides that the Authorities will designate contact offices at their respective agencies to receive and process all requests for assistance in obtaining information concerning the oversight and protection of their Markets and the protection of Recognized Persons' Clients residing in their respective jurisdiction. The Authorities hereby designate such contact offices as follows:

CFTC: Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, Tel: (202) 254–8955, Fax: (202) 254–3534.

COB: Service des Placements, Commission des Opérations de Bourse, 39–43 Quai André Citröen, 75739 Paris Cedex 15, Tel: (1) 40 58 66 87, Fax: (1) 40 58 65 00.

Wendy L. Gramm,

Chairman, Commodity Futures Trading Commission.

Jean Saint-Geours,

Le Président, Commission des Opérations de Bourse.

Attachments:

List of Subjects in 17 CFR Part 30

Commodity futures.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTION

1 The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7, U.S.C. 2, 6, 6c, and 12a (1982).

2. Appendix B to part 30 is amended by adding the following entry alphabetically:

Appendix B—Option Contracts Permitted To Be Offered and Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
Marche a Terme Internationale de France.	[To be Provided].	1990; FR
* *	* *	*

3. Appendix C to part 30 is amended by adding the following entry to read as follows:

Appendix C—Foreign Petitioners Granted Relief From the Application of Certain of the Part 30 Rules Pursuant to § 30.10

Authorized Persons as designated in Annex E to Mutual Recognition Memorandum of Understanding.

FR date and citation: _____, 1990; 55 FR __.

Issued in Washington, DC, on June 6, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-13599 Filed 6-12-90; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

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

[Rel. Nos. 33-6867; 34-28094; File No. S7-16-89]

RIN 3235-AB79

Registration and Reporting Requirements for Employee Benefit Plans

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today announced the adoption of rule and form amendments to revise registration and reporting requirements relating to employee benefit plans. The amendments are intended to reduce costs and expedite the effectiveness and updating of Form S-8 registration statements for such plans by: (1) Streamlining Form S-8 registration procedures under the Securities Act of 1933; and (2) amending Form 11-K under the Securities Exchange Act of 1934 to eliminate the requirement for the annual description of the plan.

EFFECTIVE DATE: All amendments are effective July 13, 1990. Registrants may elect to comply with the new rules on or after the date of this release (June 6, 1990). Registrants electing early compliance and seeking immediate effectiveness for a registration statement filed after the release date (June 6, 1990) must include a statement in the top right corner of the cover page of the Form S-8 registration statement requesting that the registration statement become automatically effective upon filing in accordance with Rule 462. Failure to include the statement will cause the Form S-8 registration statement to be subject to automatic effectiveness 20 days after filing. Refer to Section II.J. of the release for detailed information concerning transition to the new rules under the revised regulatory framework, including the applicability, if any, to ongoing offerings on Form S-8.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Murphy, Barbara C. Smith, or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 272-2589, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. After the effective date, contact Mary Anne Busse, Office of Chief Counsel, Division of Corporation Finance, at (202) 272-2573.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Forms S-8,[1] S-3,[2] and F-3[3] under the Securities Act of 1933 ("Securities Act");[4] to Rules 402,[5] 405,[6] 416,[7] 424(b),[8] 457(h),[9] 472,[10] and 475a[11] under Regulation C of the Securities Act;[12] Items 512[13] and 601[14] of Regulation S-K,[15] and Form 11-K[16] and Rule 15d-21[17] under the Securities Exchange Act of 1934 ("Exchange Act").[18] The Commission also is adding Rules 428 and 462 to Regulation C.

Table of Contents

I. Executive Summary

The Commission is adopting substantial revisions to the procedures for registering employee benefit plan[19]

[1] 17 CFR 239.16b.
[2] 17 CFR 239.13.
[3] 17 CFR 239.33.
[4] 15 U.S.C. 77a, *et seq.*
[5] 17 CFR 230.402.
[6] 17 CFR 230.405.
[7] 17 CFR 230.416.
[8] 17 CFR 230.424(b).
[9] 17 CFR 230.457(h).
[10] 17 CFR 230.472.
[11] 17 CFR 230.475a.
[12] 17 CFR 230.400-230.499.
[13] 17 CFR 229.512.
[14] 17 CFR 229.601.
[15] 17 CFR 229.10-229.802.
[16] 17 CFR 249.311.
[17] 17 CFR 240.15d-21.
[18] 15 U.S.C. 78a, *et seq.*
[19] Securities Act Rule 405 has been amended to define "employee benefit plan" as any written purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan or written compensation contract solely for

Continued

securities on Form S–8. The abbreviated disclosure format of Form S–8 reflects the Commission's historic distinction between offerings made to employees[20] primarily for compensatory and incentive purposes and offerings made by registrants for capital-raising purposes. In recognition of the benefits to employees of participation in benefit plans, the Commission traditionally has exercised its rulemaking authority to reduce the costs and burdens incident to registration of employee benefit plan securities, where consistent with investor protection.[21]

The revisions adopted today should reduce costs to registrants by eliminating the need to prepare and file separate documents for federal securities law purposes that duplicate information otherwise provided to plan participants, while assuring timely delivery of information necessary for participants to make informed investment decisions. Under the new framework, the required plan information (excluding plan financial statements) and a written statement advising participants of the availability upon request of Exchange Act reports and other documents incorporated by reference into the Form S–8 registration statement are required to be delivered to participants,[22] but no longer will have to be in the form of a customary prospectus.[23] Registrants will be given the flexibility to use materials prepared in the ordinary course of employee communications to advise employees about their benefits.

Many employee benefit plans involve the registration not only of employer securities, but also of interests in the plan constituting separate securities.[24] To simplify the process of registering and reporting on plan interests, the Commission has: (1) Amended Form 11–K, the annual report for employee benefit plans, to require only plan financial statements;[25] (2) amended rule 416 to provide for registration of an indeterminate amount of plan interests;[26] and (3) amended Rule 457 to provide that there is no separate fee calculation for registration of plan interests.[27]

In addition, the Commission has expanded the availability of Form S–8. Under the amendments, the Form may be used by any registrant reporting under the Exchange Act, rather than only those that have been reporting for 90 days.[28] Form S–8 will be available for securities issued pursuant to individually negotiated written compensation contracts[29] and securities issued to compensate consultants and advisors employed by the registrant, under specified circumstances.[30] Form S–8 will be available for securities acquired pursuant to transfers within plans by former employees or the exercise of employee benefit plan stock options by former employees as well as the executors, administrators or beneficiaries of the estates of deceased employees, guardians or members of a committee for incompetent former employees, or similar persons duly authorized by law to administer the estate or assets of former employees.[31] Form S–8 also will be available for securities issued to compensate insurance agents who are exclusive agents of the registrant, its subsidiaries or parents.[32]

Other amendments to facilitate Form S–8 offerings, reduce costs, and provide guidance include: permitting registrants to deliver to plan participants, in lieu of the annual report to security holders containing the information required by Exchange Act Rule 14a–3, one of several other documents containing substantially the same rule 14a–3(b) information;[33] automatic effectiveness of Form S–8 registration statements upon filing;[34] clarification of filing fees for employee benefit plans;[35] simplification of procedures for the registration of additional plan securities;[36] streamlining Form S–8 disclosure requirements;[37] and clarifying and expanding the provisions for use of Form S–8 for resales.[38]

The adopted amendments differ from the proposed revisions in seven significant respects: (1) Registrants will be permitted to identify portions of documents deemed part of the Section 10(a) prospectus; (2) registrants will be required to maintain legended documents constituting the Section 10(a) prospectus for a five-year period after their last use; (3) as proposed, the adopted requirements regarding plan information include specific disclosure items but clarify that disclosure need only be made in response to an item if material to the particular plan being described; (4) financial data concerning two or more investment media must be presented for a minimum three-year period; (5) an opinion of counsel as to the legality of the securities being registered need be filed only if such securities are original issuance shares; (6) in lieu of the requirement to provide an opinion of counsel concerning compliance with the requirements of ERISA or a determination letter from the Internal Revenue Service ("IRS") that the plan is qualified under Section 401 of the Internal Revenue Code,[39] registrants will be permitted to undertake to submit the plan and amendment to the IRS in a timely manner and make all changes required by the IRS in order to qualify the plan; and (7) in lieu of the Form 11–K financial statement requirements, plans

---

employees, directors, general partners, trustees (where the registrant is a business trust), or consultants and advisors, *provided that bona fide* services shall be rendered by consultants or advisors and such services must not be in connection with the offer or sale of securities in a capital-raising transaction. *See* Section II.E.3, *infra*, regarding the availability of Form S–8 for the issuance of securities to consultants and advisors. In addition, Form S–8 will be available for securities issued to compensate insurance agents who are exclusive agents of the registrant, its subsidiaries or parents. *See* General Instruction A.1 to revised Form S–8.

[20] For purposes of this release, the terms "plan participants," "participants," and "employees" generally refer to persons eligible to participate in an employee benefit plan.

[21] *See* Release No. 33–6836 (June 12, 1989) (54 FR 25936), proposing amendments to Form S–8 ("Proposing Release"), n.27 for a list of the significant releases issued to adopt, amend, and interpret Form S–8. The Proposing Release elicited letters from 35 commenters; these letters, as well as the comment summary prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room (*see* File No. S7–16–89).

[22] Both new and existing requirements to deliver information to employees are set forth in rule 428(b), rather than as undertakings formerly required by Item 512(f) of Regulation S–K (17 CFR 229.512(f)). Accordingly, such undertakings have been rescinded and the remaining successive undertakings redesignated.

[23] The plan information required to be delivered to participants, the statement of documents available upon request, and the documents incorporated by reference in the Form S–8 registration statement will constitute the prospectus satisfying the requirements of Securities Act section 10(a) (15 U.S.C. 77j(a)) pursuant to rule 428. Documents containing registrant information and plan financial information will be included in both the section 10(a) prospectus and the registration statement through incorporation by reference of Exchange Act filings. The plan information will not be included in the Form S–8 registration statement, and will not be filed with the Commission pursuant to Rule 424(b).

[24] *See Section II.H.2, infra*, regarding the registration of plan interests.

[25] Special provisions applicable to plans subject to the Employee Retirement Income Security Act of 1974 (Pub. L. No. 93–406, 88 Stat. 829 (codified at 29 U.S.C. 1001, *et seq.*)), are discussed *infra* in this section. *See also* Section II.I, *infra*.

[26] Rule 416(c).

[27] Rule 457(h)(2).

[28] General Instruction A.1 to revised Form S–8.

[29] Rule 405.

[30] *Id. See also* General Instruction A.1 to revised Form S–8.

[31] General Instruction A.1. to revised Form S–8.

[32] *Id.*

[33] 17 CFR 240.14a–3(b).

[34] Rule 462.

[35] Rule 457(h).

[36] General Instruction E to Form S–8.

[37] Item 1 of Form S–8.

[38] General Instruction C to Form S–8.

[39] 26 U.S.C. 401.

subject to the Employee Retirement Insurance Security Act of 1974 ("ERISA") need furnish only such financial statements and schedules as are required to be filed under applicable ERISA regulations, except that the "limited scope" audit exemption permitted under ERISA [40] will not be available. An ERISA plan also may file Form 11–K within 180 days after the plan's fiscal year end.

Part III of the release contains two charts, the first showing changes to Form S–8 and the second comparing the Form S–8 undertakings to deliver information formerly required pursuant to Item 512(f) of Regulation S–K, which has been rescinded, to the delivery requirements of Rule 428(b). Significant changes effected by the adopted requirements are discussed below. Clarifying language revisions and other minor changes also have been adopted.

II. Amendments to Registration and Reporting Requirements

A. Prospectus Requirements

1. Plan Documents Constitute Section 10(a) Prospectus Under Revised Framework

The amendments adopted today eliminate the requirement that registrants prepare a separate document for federal securities law purposes in order to convey plan information to employees in connection with offers and sales of securities being made pursuant to an employee benefit plan. Instead, based on a recognition that materials containing plan information often are prepared by personnel and employee relations offices, the rules require that current plan information be delivered to employees in a timely fashion, but do not specify a legal format for that information, which may be contained in one or more documents provided to plan participants.[41]

The amendments eliminate the requirement that registrants fulfill their prospectus delivery obligations imposed by section 5 of the Securities Act [42] by disseminating a customary prospectus included in the registration statement.[43] Rather, registrants will fulfill such obligations by providing plan participants: (1) Document(s) containing the plan information required by Form S–8, updated as necessary;[44] and (2) a written statement advising participants of the availability, upon written or oral request, of the documents incorporated by reference in the registration statement and stating that those documents are incorporated by reference in the prospectus.[45] These delivered documents, together with the documents incorporated by reference into the Form S–8,[46] will constitute a prospectus meeting the requirements of section 10(a) of the Securities Act pursuant to paragraph (a)(1) of rule 428. Item 3 to Form S–8, adopted as proposed, will permit incorporation by reference of an effective Exchange Act registration statement on Form 10 or 20–F [47] as an alternative to the registrant's annual report filed pursuant to section 13(a) or 15(d) of the Exchange Act or Rule 424(b) prospectus. Registrants also no longer will be required to file the section 10(a) prospectus with the Commission pursuant to rule 424.

Several of the commenters suggested expanded use of summary plan descriptions ("SPD") for plans subject to ERISA.[48] As with any other document describing the plan, the SPD may be used to fulfill the plan information delivery requirements, provided that: (1) The SPD includes all material plan information required by Item 1 of Form S–8, or is supplemented with an additional document or documents containing required information not included in the SPD;[49] (2) the required legend noting Securities Act registration is included in the forepart of the document;[50] and (3) the SPD is prepared early enough to ensure timely delivery of current plan information to participants under the federal securities laws. Since ERISA mandates that plan administrators furnish an initial SPD to plan particpants either within 90 days after an employee becomes a participant or within 120 days after the plan becomes subject to ERISA,[51] the SPD generally would have to be distributed to plan participants prior to the ERISA deadlines in order to be timely delivered for securities law purposes, as delivery would have to precede or accompany offers and sales of the registrant's securities.

2. Legend on Plan Documents

To identify the documents constituting part of the Section 10(a) prospectus, registrants will have to include a legend [52] in a conspicuous place at the beginning of each document intended to meet the information delivery requirement stating: "This document (specifically designated portions of this document) constitutes (constitute) part of a prospectus covering securities that have been registered under the Securities Act of 1933." [53] Consistent with former requirements, registrants also will have to date each document constituting part of the Section 10(a) prospectus.[54]

---

[40] *See* section 103(a)(3)(C) of ERISA.

[41] If the registrant uses more than one document to convey plan information, such documents may be delivered to each participant as a complete package or at separate intervals, provided that all material plan information is distributed on a timely basis, *i.e.*, prior to offers and sales of the registrant's securities.

[42] 15 U.S.C. 77e.

[43] Securities Act section 5(b)(2) (15 U.S.C. 77e(b)(2)) requires that a section 10(a) prospectus accompany or precede the sale or delivery after sale of any security.

[44] The plan information to be delivered to participants is set forth in Part I, Item 1 of Form S–8.

[45] Part I, Item 2 of Form S–8.

[46] Part II, Item 3 of Form S–8 retains former incorporation by reference requirements. The following documents must be incorporated by reference into the registration statement and section 10(a) prospectus: (1) The registrant's latest annual report and, where plan interests are being registered, the plan's latest annual financial report filed pursuant to Exchange Act Section 13(a) (15 U.S.C. 78m(a)) or 15(d) (15 U.S.C. 78o(d)), or specified other documents containing audited financial statements for the registrant's latest fiscal year; (2) all other reports filed pursuant to Exchange Act section 13(a) or (15(d) since the end of the fiscal year covered by the document referred to in (1) above; (3) if the class of securities to be offered is registered under Exchange Act Section 12 (15 U.S.C. 78*l*), the description of that class contained in a registration statement filed thereunder, including any amendment or report filed for the purpose of updating that description; and (4) all documents filed subsequently by the registrant pursuant to Exchange Act Sections 13(a), 13(c) (15 U.S.C. 78m(c)), 14 (15 U.S.C. 78n), and 15(d). An accountant's consent will continue to be required with respect to audited financial statements incorporated by reference into Form S–8. The consent will be filed initially as an exhibit to the registration statement, and then as an exhibit to each subsequently filed annual report on Form 10–K (17 CFR 249.310) or 11–K incorporated by reference. *See* Rule 439 (17 CFR 230.439).

[47] 17 CFR 249.210; 17 CFR 249.220f.

[48] ERISA Section 101(b)(1) (29 U.S.C. 1021(b)(1)) requires the administrator of an ERISA plan to file an SPD with the Secretary of Labor. Under ERISA Section 104(b)(1) (29 U.S.C. 1024(b)(1)), the administrator must furnish the SPD to each participant and each beneficiary receiving benefits under the plan. The SPD is, essentially, a written report describing the most significant features of a plan.

[49] For example, certain information regarding alternative investment media is required by Item 1 of Form S–8 but may not be required in the SPD.

[50] *See* section II.A.2, *infra*, regarding legending requirements.

[51] ERISA section 104(b)(1). An updated SPD or Summary of Material Modifications ("SMM") may be used to update the section 10(a) prospectus provided that the document: (i) Includes or is supplemented by an additional document or documents containing all information required by Form S–8; (ii) is appropriately legended (*see* section II.A.2, *infra*); and (iii) is timely delivered to participants for purposes of the federal securities laws.

[52] Rule 428(b)(1)(iii). In response to commenters' remarks, the requirement that the legend be printed or stamped on the document has been revised to also permit typed legends.

[53] The bracketed language should be substituted as appropriate. *See* section II.A.3, *infra*.

[54] Rule 428(b)(1)(iii).

3. Identification of Portions of Documents Deemed Part of Section 10(a) Prospectus

The Proposing Release recognized that some of the documents delivered to plan participants may include information not required by Form S–8. Therefore, comment was solicited as to whether only required plan information contained in each of the documents delivered to plan participants, rather than the entire document, should be deemed part of the Section 10(a) prospectus.[55]

All but one of the commenters remarking on the issue supported identification of portions of documents deemed to constitute part of the prospectus, and Rule 428, as adopted, permits such identification.[56] Rule 428 states, however, that unless a registrant clearly identifies the portions of a document constituting part of the prospectus, the entire document will be deemed to constitute part of the prospectus. A registrant choosing to provide that only portions of a document constitute part of the section 10(a) prospectus may, for example: (i) Include a statement in a conspicuous place at the beginning of the document clearly identifying the information constituting part of the prospectus by reference to section headings, section numbers, paragraphs or page numbers appearing within the document; or (ii) specifically designate throughout the text of the document those portions constituting part of the prospectus. Registrants will not be permitted to designate only words or sentences within a paragraph as part of the prospectus.

4. Section 10(a) Prospectus Documents Retained for Five Years

The Proposing Release provided that registrants would be required to maintain legended documents constituting the section 10(a) prospectus for a period of three years after the securities had been offered or sold; the Commission also solicited comment on whether a different document maintenance requirement would be appropriate. The adopted rules[57] require registrants to retain each document constituting part of the section 10(a) prospectus in a document file until five years after it is last used as part of the section 10(a) prospectus.

The adopted requirement clarifies, in response to comments, that the five year period is a rolling period that relates to last use of each document constituting part of the section 10(a) prospectus, rather than the collective file. Upon request, a registrant must furnish to the Commission or its staff a copy of any or all of the documents constituting the section 10(a) prospectus included in the file. The five year retention period has been adopted to ensure that documents constituting part of the section 10(a) prospectus will be maintained throughout the statute of limitations period governing many private fraud claims.[58]

B. Updating the Section 10(a) Prospectus

Registrants are required to deliver current plan information to plan participants. Accordingly, documents containing plan information must be updated to reflect material changes.[59] Registrants may update plan information simply by providing plan participants with a letter, memorandum, or other written document provided that the information is presented in a clear and organized fashion. As with information initially furnished, the updated information will have to be dated and include the legend stating that such information constitutes part of the section 10(a) prospectus.

Registrants will have to furnish only the updating material to existing plan participants; previously furnished documents need to be delivered only upon an existing participant's request. With respect to new plan participants, registrants must deliver the basic plan disclosure documents as well as all updates to such documents. If updates obscure the readability of the plan information or render it confusing, however, or otherwise unduly complicate presentation of the material information, registrants will be required to consolidate the documents and distribute the revised version to new plan participants.[60]

C. Section 10(a) Prospectus Liability

Under the amendments, non-financial plan information, which is not filed as part of the registration statement, will continue to be subject to section 12(2) of the Securites Act,[61] as well as section 17(a) of the Securities Act and section 10(b) of the Exchange Act, but will not be subject to Securities Act Section 11 liability.[62] Section 11, as well as the other civil liability and antifraud provisions, will continue to apply to the Form S–8 registration statement, including the registrant's and the plan's filings that are incorporated by reference.

The elimination of section 11 liability with respect to the narrative plan information should not increase the risk of inadequate disclosure to plan participants, since the compensatory nature of security offerings under employee benefit plans and the relationship between registrants and plan participants provide incentives for the preparation and distribution of accurate plan information. A review of the reported benefit plan cases asserting liability under the federal securities laws indicates that they have been based upon sections 17(a) and 12(2) of the Securities Act and section 10(b) of the Exchange Act and rule 10b–5 thereunder, rather than section 11. None of the commenters raised concerns with respect to this issue, and the liability aspects of the approach are adopted without modification.

D. Delivery Requirements

1. Delivery of Registrant Information

Formerly, to satisfy the eligibility requirements of Form S–8, a registrant had to furnish plan participants with an annual report to security holders for its latest fiscal year.[63] Delivery of such annual report was required to precede or accompany delivery of the Form S–8 prospectus.[64] This requirement caused

[55] Any delivered plan information that is not made a part of the section 10(a) prospectus will continue to be subject to antifraud provisions of the federal securities laws. *See* Securities Act section 17(a) (15 U.S.C. 77q(a)), Exchange Act section 10(b) (15 U.S.C. 78(b)), and Rule 10b–5 thereunder (17 CFR 240.10b–5).

[56] Rule 428(b)(1)(ii).

[57] Rule 428(a)(2). Documents containing registrant information and employee benefit plan annual reports that are incorporated by reference into the registration statement pursuant to Item 3 of Form S–8 are not required to be in the document file as they will have been filed with, and be available from, the Commission.

[58] Although there is no federal statute of limitations governing private claims under Exchange Act section 10(b) and rule 10b–5 thereunder, the Commission has argued that such claims should be governed by a five year statute of limitations drawn from Exchange Act section 20A (15 U.S.C. 78t–1). Section 20A was added by the Insider Trading and Securities Fraud Enforcement Act of 1988. *See* Brief of the Securities and Exchange Commission, *Amicus Curiae*, *Ceres Partners* v. *GEL Associates*, 714 F. Supp. 679 (S.D.N.Y. 1989), *appeal docketed*, No. 89–7666 (2d Cir. July 11, 1989).

[59] Rule 428(b)(1)(i).

[60] Rule 428(b)(1)(iv). Cf. *In re Franchard Corp.*, 42 S.E.C. 163, 184–85 (1964). *See also* Release No. 33–4844 (August 5, 1968) (31 FR 10667). The fact that a plan has been amended several times does not in and of itself require preparation of a revised consolidated document.

[61] 15 U.S.C. 77*l*(2).

[62] 15 U.S.C. 77k. In addition, registrant information and plan financial information which are incorporated by reference into the Section 10a prospectus will be subject to the same liability provisions.

[63] General Instruction A(1) to former Form S–8.

[64] Former Item 512(f)(1) of Regulation S–K.

difficulty for reporting issuers not subject to the Commission's proxy and information statement regulations.[65]

Under the revised requirements, delivery of the annual report to security holders is not the only means by which registrant information can be delivered to plan participants. Instead, registrants are permitted to use one of several other documents to disseminate registrant information to plan participants. Thus, a registrant not subject to the annual report to security holders requirement,[66] and not choosing to prepare such a report, will nonetheless be eligible to use Form S–8.

Pursuant to the new requirement,[67] registrants must deliver or cause to be delivered with the documents containing the information required by Part I of Form S–8, to each participant to whom such information is sent, a copy of one of the following: (1) The registrant's annual report to security holders; (2) the registrant's annual report on Form 10–K, U5S,[68] or 20–F; [69] (3) the registrant's latest prospectus filed pursuant to rule 424(b) under the Securities Act,[70] provided that the prospectus contains substantially the information required by rule 14a–3(b), or the registration statement was either on Form S–18 or F–1; [71] or (4) the registrant's effective Exchange Act registration statement on either Form 10 or 20–F.[72] Audited financial statements for the registrant's latest fiscal year must be included in whichever document is used.[73]

2. Delivery of Shareholder Communications

The rules adopted today will continue to obligate a Form S–8 registrant to furnish all shareholder communications and other reports furnished to shareholders on a continunig basis to plan participants who do not otherwise receive such information.[74] However, the amendments codify the staff's interpretive position that registrants need not deliver shareholder communications and other reports to plan participants electing not to invest in employer securities unless they request such information.[75]

The amended requirements [76] also codify the staff's interpretive position that registrants are not required to deliver shareholder communications and other reports to plan participants "in the manner" in which those materials are sent to their shareholders.[77] Rather, registrants will be permitted to furnish such information by any means reasonably calculated to reach plan participants, provided that it is sent or delivered no later than the time such material is sent to its security holders. Therefore, desk-top delivery, for example, would be permitted.[78]

E. Registration Statement Requirements

1. Revised Format

The Form S–8 registration statement no longer contains narrative plan information or the Section 10(a) prospectus. While Part I of Form S–8 continues to set forth requirements for disclosure of plan information, documents containing that information will not be filed with the Commission, as explained above. Therefore, pursuant to the revisions, the registration statement will consist of: The facing page; enumeration of documents incorporated by reference into the registration statement (Item 3); description of securities (Item 4); interests of named experts and counsel (Item 5); indemnification of directors and officers (Item 6); exemption from registration claimed (Item 7); [79] exhibits (Item 8); undertakings (Item 9); [80] and the signature page. Section 11 liability will continue to apply to all information set forth in or incorporated by reference into the registration statement.

As formerly, documents containing registrant information or plan financial statements incorporated by reference in the registration statement will be updated automatically by forward incorporation by reference of subsequently filed Exchange Act reports into the registration statement. Pursuant to rule 428, these documents will constitute part of the section 10(a) prospectus as well.

The updating procedures for plan and registrant information have been adopted as proposed, and are described in General Instruction G to Form S–8. As formerly, Form S–8 registrants will be required to describe any material changes in their affairs occurring since the end of the latest fiscal year that have not been previously included in Exchange Act filings incorporated by reference into the registration statement. General Instruction G(2) states that registrant information shall be updated by the incorporation by reference of Exchange Act reports into Form S–8 and that any material changes in the registrant's affairs required to be disclosed in the registration statement, but not required to be included in a specific Exchange Act report, shall be reported on Form 8–K [81] pursuant to

---

[65] Regulations 14A and 14C (17 CFR 240.14a–1–.14b–2; 17 CFR 240.14c–1–.14c–101).

[66] The requirement is imposed by either rule 14a–3 or 14c–3 (17 CFR 240.14a–3; 17 CFR 240.14c–3). Foreign private issuers eligible to file on Form 20–F (17 CFR 249.220f) and companies subject to Exchange Act reporting pursuant to section 15(d) are not subject to the rules under Section 14(a) (15 U.S.C. 78n(a)) or 14(c) (15 U.S.C. 78n(c)) of the Exchange Act.

[67] Rule 428(b)(2).

[68] 17 CFR 259.5s.

[69] Item 512(f)(4) of Regulation S–K (17 CFR 229.512(f)(4)), relating to the use of Form 20–F by foreign private issuers in lieu of the annual report to security holders, has been deleted because rule 428(b)(2) specifically permits such issuers to use Form 20–F or F–1. Additionally, former Instruction E to Form S–8, relating to non-Canadian foreign private issuers, has been rescinded as unnecessary since the use of Form 20–F is provided for by rule 428(b)(2) and the second part of the Instruction, concerning reoffers, is dealt with in revised General Instruction C.

[70] A proviso has been added to rule 428(b)(2)(iii) indicating that the financial statements included in the rule 424(b) prospectus may not be incorporated by reference from another filing.

[71] 17 CFR 239.28; 17 CFR 239.31.

[72] The document used must contain substantially the same information required by rule 14a–3, including the Management's Discussion and Analysis (required by Regulation S–K Item 303 (17 CFR 229.303)), except with respect to certain documents delivered by foreign private issuers reporting on Form 20–F and registrants complying with the requirements of Form S–18, which must contain the textual and financial information appropriate to those forms.

[73] Proposed Rule 428(b)(2)(iv) included a statement indicating that if an employee previously had received a copy of the document required to be delivered under rule 428(b)(2), the document would have to be re-delivered only upon employee request. This statement now appears as Instruction 1 to rule 428(b)(2). Proposed Rule 428(b)(2)(iv) also indicated that if the latest fiscal year of the registrant had ended within 120 days prior to delivery of documents containing plan information, the document delivered pursuant to rule 428(b)(2) could contain financial statements for the previous year, provided that a document containing financial statements for the latest fiscal year was delivered within the 120 day period. This statement appears as Instruction 2 to rule 428 and has been revised to indicate that a 190 day, rather than 120 day, period applies with respect to foreign private issuers eligible to file on Form 20–F, since such report must be filed within six months after the end of the fiscal year covered by the report.

[74] Rule 428(b)(5).

[75] *See* letter re *Union Carbide Corp.*, available Dec. 14, 1981.

[76] Rule 428(b)(5).

[77] *See* the undertaking formerly required by Regulation S–K Item 512(f)(2) (17 CFR 229.512(f)(2)).

[78] *See* letter re *Revlon, Inc.*, available June 6, 1984.

[79] Formerly, under Note 2(a) to Instruction C of Form S–8 regarding reoffers and resales, registrants were required to file as an exhibit to the registration statement a statement indicating the section of the Securities Act or Commission rule under which exemption from registration was claimed with respect to the original issuance of restricted securities registered for resale. As adopted, this requirement appears in Part II, Item 7 of the Form S–8, consistent with other Securities Act registration forms that require comparable information concerning recent sales of unregistered securities to be provided as Part II information (*e.g.*, Item 15 of Form S–1).

[80] The undertakings formerly required by Item 512(f) of Regulation S–K (relating to Form S–8 exclusively) have been incorporated in Rule 428.

[81] 17 CFR 249.308.

Item 5 thereof.[82] This will preserve Section 11 liability on all registrant information. As discussed in the Proposing Release, former Form S–8 permitted material changes in the registrant's affiars to be set forth in the prospectus or supplement thereto in lieu of being disclosed in an Exchange Act filing.[83] Requiring the changes to be set forth in Form 8–K reflects the elimination of the customary prospectus from the registration statement.

The requirement in former Item 14 of Form S–8 that registrants describe the securities being offered in accordance with Item 202 of Regulation S–K,[84] or that, if such securities constitute capital stock registered under Section 12 of the Exchange Act, the description be incorporated by reference from Exchange Act documents, is included in Part II, Item 4 of the revised Form S–8, as proposed.[85] This Item has been modified to provide that the incorporation by reference of the description of Section 12 securities no longer will be limited to capital stock.[86] If the class of securities being offered is not registered under Section 12 of the Exchange Act, the information required by Item 202 of Regulation S–K must be included in the registration statement.

2. Elimination of Ninety Day Eligibility Requirement

The Form S–8 amendments eliminate the requirement that a registrant be subject to the reporting requirements of Exchange Act section 13 or 15(d) for 90 days prior to filing a Form S–8 registration statement.[87] Form S–8, as revised, permits any registrant to use Form S–8 that: (a) Immediately prior to the time the Form S–8 registration statement is filed, was subject to section 13 or 15(d) reporting requirements; and (b) has filed all reports and other materials pursuant to such requirements during the preceding year or such shorter period that the registrant has been subject to the requirements.[88] The condition that Form S–8 registrants be subject to Exchange Act reporting requirements has been retained to ensure that current public information about the registrant is available.

3. Use of Form S–8 for Securities Issued Pursuant to Compensatory Contracts, to Former Employees, and to Consultants and Advisors

As proposed, the General Instructions to Form S–8 would have been revised to indicate that Form S–8 will be available not only for the registration of securities offered pursuant to employee benefit plans [89] but also for the registration of securities offerings pursuant to "plans" benefiting individuals in the form of individually negotiated written compensation contracts. The rules, as adopted, incorporate this proposal, but the amendment is included in rule 405 for clarity and consistency.[90] The amendments to General Instruction A[91] codify the staff's interpretive position[92] that Form S–8 is available for the exercise of non-transferable employee benefit plan stock options and the subsequent sale of the securities by plan participants who are no longer employed by the registrant at the time of exercise or sale, provided that such exercises are not prohibited under the plan.[93]

The revised General Instructions also clarify that the term "employee" includes executors, administrators or beneficiaries of the estates of deceased employees, guardians or members of a committee for incompetent former employees, or similiar persons duly authorized by law to administer the estate or assets of former employees. The inclusion of such individuals in the term "employee" is only to permit Form S–8 registration in connection with: The exercise of employee benefit plan stock options that are non-transferable (except under the laws of descent and distribution) and subsequent sale of the underlying securities, and the acquisition of registrant securities pursuant to intra-plan transfers among plan funds (including the reinvestment of earnings on plan funds) by former employees, provided that such exercises, sales or transfers are not prohibited under the terms of the plan.

Form S–8 will be available for offerings to consultants or advisors pursuant to compensatory benefit plans or written compensatory contracts under specified circumstances. The Securities Act definition of "employee benefit plan"[94] and General Instruction A to Form S–8 have been revised to include consultants or advisors who render *bona fide* services to the registrant, provided that such services are not in connection with the offer or sale of securities in a capital-raising transaction.[95] General Instruction A also has been revised to permit Form S–8 to be used for insurance agents who are exclusive agents of the registrant, its subsidiaries or parents.

F. Disclosure Requirements

1. Streamlined Plan Disclosure

As proposed, the amended Form S–8 streamlines and regroups certain former disclosure requirements[96] relating to plan information, and consolidates them as Item 1.[97] In the Proposing Release, the Commission solicited comments as to whether it would be practical to include the specified plan information in documents not specifically designed to comply with the Form S–8 disclosure requirements, as contemplated by the revised format. The Commission also requested comment on whether plan

[82] Item 5 of Form 8–K permits the registrant, at its option, to report under that item any events, with respect to which information is not otherwise called for by the form, that the registrant deems of importance to security holders. Accordingly, a Form 8–K providing item 5 disclosure would not, in and of itself, be determinative that the reported information is material.

[83] Item 16 of former Form S–8.

[84] 17 CFR 229.202.

[85] The description of securities is retained in the registration statement, notwithstanding its inclusion in the Section 10(a) prospectus, in order to preserve Section 11 liability on the information.

[86] Item 4 of Form S–8.

[87] General Instruction A(1) to former Form S–8.

[88] General Instruction A.1 to revised Form S–8.

[89] In the past, Form S–8 has been permitted to be used on a few occasions to register securities offered and sold in connection with transactions that were neither routine nor primarily compensatory in nature. *See* letter re *Rath Packing Co.*, available Jan. 7, 1980, involving establishment of a trust to concentrate the voting power of stock distributed pursuant to an employee stock wage payment plan. Form S–8, as amended, is available only for compensatory offerings of securities to employees (or consultants or advisors under specified circumstances) in the ordinary course of the registrant's operations. Questions as to whether an offering to employees is a compensatory offering that may be registered on Form S–8 should be directed to the Office of Chief Counsel, Division of Corporation Finance.

[90] A registrant entering into an informal unwritten compensation agreement with an employee (or consultant or advisor under specified circumstances) involving the offering of registrant securities will be permitted to register such securities on Form S–8 if the agreement is reduced to writing before registration is required. *See* letter re *Praxis Biologies, Inc.*, available May 12, 1989, in which the staff expressed the view that an issuer would satisfy the written agreement requirement in rule 701 [17 CFR 230.701] with respect to any shares of common stock that would be issued upon exercise of warrants that had been granted to certain consultants and advisors pursuant to an oral agreement entered into at the time of the grant, so long as the agreement was reduced to writing prior to the exercise of the warrants.

[91] General Instruction A.1(a) to Form S–8, as adopted.

[92] *See* letters to Donald W. Glazer, Co-Chairman, Subcommittee on Employee Benefits and Executive Compensation, American Bar Association from William E. Morley, Associate Director (Legal), Division of Corporation Finance, available Feb. 14, 1989 and May 1, 1989.

[93] *See* Section II.G, *infra*, for a discussion of Form S–8 resale provisions.

[94] *See* Rule 405.

[95] *Cf.* Rule 701, which contains similar provisions.

[96] See former Form S–8 Items 4–13.

[97] *See* the chart in Section III.A, *infra*, reflecting revisions to Form S–8.

disclosure requirements should be more general, with each registrant having the flexibility to provide plan information which in its opinion is material to participants under the circumstances.

The majority of those remarking on the proposal supported replacement of detailed disclosure requirements with a more general requirement. Some commenters, however, supported retention of specific disclosure requirements on the grounds that: (i) They provide useful guidance to registrants; and (ii) inadequate disclosure could develop if the specific requirements were eliminated. One commenter noted that, for the most part, it is practical to include the information specified by revised Item 1 in documents not specifically tailored to comply with Form S–8 requirements, but suggested that registrants be given more flexibility to decide which information is material to participants in making an informed investment decision.

Based upon these comments, Item 1 states that registrants shall deliver or cause to be delivered to each participant material information regarding the plan and its operations that will enable participants to make informed decisions with respect to investment in the plan. This information must include, but is not limited to, disclosure in response to the specified information items to the extent that such disclosure is material to the particular plan being described.

Several of the specific disclosure items in Item 1 have been reorganized and modified in response to commenters' remarks and for further clarification. The new requirements reflect the following modifications from those proposed:

(a) The former Form S–8 Item 4(f) requirement that unusual risks associated with plan participaton be disclosed has been retained; [98]

(b) The requirement that the name of each company whose employees are entitled to participate in the plan, including subsidiaries, be disclosed has been eliminated;

(c) The item requiring registrants to briefly indicate whether the plan is subject to ERISA and those provisions to which it is subject has been amended to require disclosure only of the general nature of such provisions; [99]

(d) The item requiring identification of plan administrators has been amended to provide that only an address and a telephone number which participants may use to obtain additional information about the plan and its administrators must be disclosed; [100]

(e) The item requiring that any person, other than a participating employee, with investment discretion as to any or all plan assets in one or more investment media be named and that the investment policies to be followed be described has been retained with respect to ERISA as well as non-ERISA plans; [101]

(f) The proposed requirement concerning the description of securities [102] to be included in delivered plan documents has been modified to state that documents must include the information required by Item 202 of Regulation S–K if other than common stock registered under section 12 of the Exchange Act is being offered;

(g) The item requiring a description of the securities to be offered, [103] has been amended to state that if plan interests are being registered, they need not be separately described;

(h) The instruction to the proposed requirements mandating disclosure as to whether the requirements of Regulations G [104] or T [105] has been met, if the plan involved the extension of credit to finance the acquisition of securities, has been converted to a note stating that consideration should be given to the applicability of these regulations; [106]

(i) The items regarding assignment of interests under the plan and charges and deductions that may be made against participants have been revised to indicate that no disclosure need be provided as to the effect of a qualified domestic relations order as defined in ERISA section 206(d) (29 U.S.C. 1056(d)); [107]

(j) The item regarding defaults under the plan has been retitled, "Forfeitures and Penalties," and revised to require disclosure of any event which under the plan could result in a forfeiture by, or a penalty to, a participant, and the consequences thereof; [108] and

(k) The item requiring comparative data about investment media has been revised to require financial data concerning alternative investment media to be set forth for at least a three-year period and any additional period necessary to make the data not misleading, but in no event need the total period exceed five years. [109]

Item 1 has been further revised, as proposed, to eliminate the requirements formerly specified by Items 1–3 of Form S–8 [110] concerning summary information, risk factors [111] and ratio of earnings to fixed charges, as well as information to appear in the forepart of the registration statement, inside and outside front cover pages of the prospectus, and outside back cover page of the prospectus. [112]

2. Financial Data Concerning Alternative Investment Media

Formerly, Item 12 of Form S–8 required registrants to provide five year financial data in tabular form about each investment medium, if participants could direct all or any part of the assets under a plan to two or more investment media. The proposed amendments would have continued to require that registrants set forth financial data that would enable plan participants to make informed decisions concerning the investment media, but would have eliminated the requirement that such financial data be presented for a specific time period. Moreover, the proposed amendments would have permitted financial data concerning investment alternatives to be in tabular form or other meaningful presentation. Comment was solicited as to whether it would be preferable to specify a definite time period for disclosing performance data and what the appropriate length of time should be, *e.g.*, five years, three years, or two years.

Under Form S–8, as amended, registrants will be permitted to present financial data related to two or more investment media in tabular form or other meaningful presentation; however, in a change from the proposal, Item 1(g) of revised Form S–8 requires that this data be provided for a minimum of three years (or such lesser period for which the data with respect to each investment

[98] Item 1.

[99] Item 1(a)(3).

[100] Item 1(a)(4).

[101] *Id.*

[102] Item 1(b)(2).

[103] Item 1(b)(2).

[104] 12 CFR part 207.

[105] 12 CFR part 220.

[106] Item 1(d).

[107] Items 1 (h) and (j).

[108] Item 1(i).

[109] Item 1(g).

[110] These items require the information specified by Items 501, 502 and 503 of Regulation S–K (17 CFR 229.501–.503).

[111] The former Form S–8 requirement that risk factors be disclosed pursuant to Item 503(c) of Regulation S–K (17 CFR 229.503(c)) has been deleted due to the unstructured format of the revised Section 10(a) prospectus; this disclosure will continue to be required, where applicable, in the Management's Discussion and Analysis section of Exchange Act reports that are incorporated by reference in Form S–8.

[112] The Item 502(c) of Regulation S–K (17 CFR 229.502(c)) requirement that the registrant include an undertaking to provide upon request copies of documents incorporated by reference is the only requirement from former Items 1–3 that has been retained. It is now included in Rule 428(b)(3).

medium is available). Registrants must include information for additional fiscal years if necessary to make the required data not misleading, but the total period presented need not exceed five years. [113] A specific time period has been retained to ensure that participants have a sufficient basis for evaluating performance trends.

3. Exhibits, Signatures and Undertakings

The amendments modify the exhibit requirements for registration statements on Form S–8 with respect to opinions of counsel.[114] Pursuant to section 7 of the Securities Act, the Commission today has determined to rescind the requirement that an opinion of counsel as to the legality of the securities being registered be filed unless such shares are original issuance shares. [115] In addition, in lieu of the requirement to provide an opinion of counsel concerning compliance with the requirements of ERISA or a determination letter that the plan is qualified under section 401 of the Internal Revenue Code from the IRS, [116] registrants will be permitted to undertake to submit the plan or amendment to the IRS in a timely manner and make all changes required by the IRS in order to qualify the plan. [117] Both of these changes are made at the suggestion of a commenter who noted that the legality opinion requirement for open market purchases is particularly burdensome, indicating that counsel need to opine on all prior issuances of the securities and that employees did not need greater protection under these circumstances than investors buying shares in the open market. With respect to obtaining an IRS determination letter in lieu of an opinion of counsel, the commenter noted the delays inherent in the process.

Elimination of these exhibit requirements is consistent with the Commission's traditional exercise of its rulemaking authority to reduce the costs and burdens incident to registration of employee benefit plan securities, where consistent with the protection of investors, and reflects the Commission's historic distinction between offerings made to employees primarily for compensatory and incentive purposes and offerings made by registrants for capital-raising purposes. Accordingly, the Commission finds that these requirements are inapplicable to offerings registered on Form S–8 under the circumstances specified, and that the Form S–8 disclosure requirements are adequate for the protection of investors. It should be noted, however, that if either employee benefit plan securities registered on Form S–8 are not legally issued, fully paid and non-assessable when offered or sold, or disclosure concerning compliance of the plan with ERISA is materially misleading, the civil liability provision of section 12(2) of the Securities Act as well as the antifraud provisions of section 17 of the Securities Act and Exchange Act section 10(b) and rule 10b–5 thereunder would apply.

A registrant filing on Form S–8 will be required to include in the registration statement the indemnification undertaking contained in Item 512(h) of Regulation S–K. [118] Form S–8 will continue to require disclosure in part II of the registration statement of a registrant's policies and arrangements with respect to the indemnification of its directors and officers.[119] Two notes have been added to Item 9, Undertakings. The first explains that the Regulation S–K Item 512(a) [120] undertakings are required since Form S–8 registration statements usually involve the delayed or continuous offering and sale of securities.[121] The second clarifies that the undertaking requiring foreign private issuers to file a post-effective amendment to the registration statement, including any financial statements required byArticle 3–19 of Regulation S–X, [122] at the start of any delayed offering or throughout a continuous offering, does not apply in the Form S–8 context. [123]

Finally, Instruction 1 to the Form S–8 signature requirements has been amended, as proposed, to restore the requirement that the chief financial officer sign the registration statement.

C. Reoffer and Resale Requirements

As formerly was the case, registration of reoffers or resales of employee benefit plan securities may continue to be effected by use of a reoffer prospectus filed in the customary format under cover of Form S–8 but containing the disclosure specified in Part I of Form S–3.[124] General Instruction C to Form S–8 has been adopted substantially as proposed in order to clarify the reoffer procedure.[125] The new structure highlights the distinction between treatment of control securities (securities issued under an employee benefit plan registered on Form S–8 to be reoffered by affiliates) [126] and restricted securities [127] (previously unregistered securities issued under an employee benefit plan pursuant to a Securities Act exemption to affiliates or non-affiliates).[128]

---

[113] For example, registrants may need to include financial data for more than three fiscal years if recent performance results have been erratic or reflect a misleading trend. Information for a period longer than three years may be included provided that the period selected is not misleading.

[114] Regulation S–K Item 601 specifies required exhibits.

[115] Item 601(b)(5) of Regulation S–K (17 CFR 229.601(b)(5)). Thus, for shares purchase by the plan on the open market, an opinion of counsel as to the legality of the shares being registered would not be required to be filed.

[116] *Id.*

[117] These changes are reflected in Item 8 (Exhibits) of Form S–8. A cross-reference to these provisions has been added to Item 601(b)(5) of Regulation S–K.

[118] 17 CFR 229.512(h), formerly 17 CFR 229.512(f). Pursuant to this undertaking, a registrant agrees to submit to a court of appropriate jurisdiction, in connection with any claim for indemnification against liability under the Securities Act, the question of whether such indemnification is against public policy as expressed in the Act, and is therefore unenforceable. Item 18 of former Form S–8 required registrants to disclose in part II of the registration statement the Commission's position on indemnification. *See* Section II.J, *infra*, for a discussion of the applicability of this undertaking to ongoing offerings as of the effective date of the amendments.

[119] Item 6 of Form S–8, formerly Item 19.

[120] 17 CFR 229.512(a).

[121] *See* Rule 415(a)(1)(ii) (17 CFR 230.415(a)(1)(ii)), which permits securities registered pursuant to an employee benefit plan of the registrant to be offered and sold on a delayed or continuous basis.

[122] 17 CFR 210.3–19.

[123] Item 512(a)(4) of Regulation S–K (17 CFR 229.512(a)(4)).

[124] Special provisions applicable to foreign private issuers eligible to file on Form 20–F are discussed *infra* in this section.

[125] In addition to the revision to General Instruction C, the last sentence of General Instruction I.B.3 to Forms S–3 and F–3 has been amended to clarify that the sentence is merely a cross-reference to the reoffer procedure provided in Form S–8. Also, the reference in Form F–3 to compliance with Item 18 of Form 20–F has been moved to the first sentence of the Instruction as clarification.

[126] *See* definition of "affiliate" in rule 405.

[127] *See* Rule 144(a)(3) (17 CFR 230.144(a)(3)).

[128] As stated in the Proposing Release, effective as of June 20, 1989, with respect to all future issuances of securities under "top hat" stock option plans sold to executives pursuant to an exemption from registration under section 4(2) (15 U.S.C. 77d(2)) of the Securities Act or Regulation D thereunder, it is the staff's position that such securities are "restricted securities" as defined by rule 144 as are all securities issued in reliance upon an exemption from registration under section 4(2) or Regulation D.

This position does not affect plans in which securities may be issued to employees as bonus awards without consideration. In such plans, the securities issued will not be restricted securities if the issuer is subject to periodic reporting under the Exchange Act, its securities are actively traded, and the amount distributed is relatively small in comparison to the total amount of the securities of the issuer which are issued and outstanding after the distribution. *See* Release 33–5750 (Oct. 8, 1976) (41 FR 45632) and 33–6188 (Feb. 1, 1980) (45 FR 8960). The amount distributed will always be "relatively small" if it is less than 1% of the amount outstanding. *See* Release 33–6281 (Jan. 15, 1981) (46 FR 8446). An amount greater than 1% may still be "relatively small" within the meaning of the test if

Continued

In particular, General Instruction C to Form S–8 has been amended to codify the staff's interpretive position that permits registrants to refer generically to selling security holders of control securities in the reoffer prospectus, provided that the names of those intending to resell are not known at the time of filing the Form S–8 registration statement. Later, as the names become known, registrants must supplement the reoffer prospectus with that information and file the supplement as required by rule 424(b).[129] This procedure will not be available with respect to reoffers by sellers of restricted securities, whether affiliates or non-affiliates of the registrant, since their identity should be known at the time the reoffer transaction is registered.[130]

The Commission has eliminated the 10% volume limitation on the number of securities that may be registered for resale, as proposed. The volume limitations imposed by rule 144(e) [131] will continue to apply to the amount of securities reoffered or resold by means of the reoffer prospectus if the registrant does not meet the registrant requirements of Form S–3.[132]

In addition, the Instruction has been revised, as proposed, to specify less burdensome procedures for reoffers by selling shareholders of foreign private issuers eligible to file on Form 20–F. Formerly, General Instruction E to Form S–8 specified that resales by shareholders of such issuers could be made using the same procedures described in General Instruction C with respect to resales by shareholders of domestic registrants, except that a prospectus on either Form F–2 [133] or F–3 would be used (depending on the issuer's eligibility to use the respective form) in lieu of a reoffer prospectus prepared in accordance with the requirements of Form S–3. General Instruction E has been rescinded and General Instruction C revised to substitute Form F–3 for S–3 with respect to foreign private issuers eligible to file on Form 20–F wherever applicable. Thus, the reoffer prospectus used in connection with resales of plan securities by employees of any foreign private issuer eligible to file on Form 20–F will comply with the requirements of Form F–3, just as the Form S–3 prospectus is available for a domestic registrant. Similarly, if the foreign private issuer is eligible to use Form F–3, the volume limitations imposed by Rule 144(e) will not apply to reoffers, just as for a domestic registrant meeting the registrant requirements of Form S–3.

H. Other Proposed Amendments to Form S–8

The Commission has adopted, as proposed, the following other changes to Form S–8.

1. Immediate Effectiveness of Form S–8 Registration Statements Upon Filing

Form S–8 registration statements will become effective automatically upon filing, as proposed.[134]

2. Automatic Registration of Plan Interests

In order to simplify procedures for registering plan interests,[135] paragraph (c) has been added to rule 416 to provide that a registration statement covering both registrant securities offered pursuant to an employee benefit plan and plan interests that constitute separate securities will be deemed to cover such plan interests in an indeterminate amount.[136] The facing page of Form S–8 has been modified to require registrants to include a statement, where appropriate, indicating that the registration statement covers an indeterminate amount of plan interests. Thus, plan interests will be registered automatically together with the other securities being offered.

3. Filing Fees

Formerly, the aggregate offering price and the amount of the registration fee for Form S–8 registration statements was computed with respect to the aggregate contributions of employees, except that employer contributions were included if employees could choose the medium in which the employer's contributions were to be invested.[137] As proposed and adopted, the method of calculating registration fees is based upon the aggregate offering price for the maximum amount of the registrant's securities (other than plan interests) covered by the registration statement.[138] If the offering price per share (or the option exercise price) is unknown, the fee is calculated on the basis of the market price of registrant securities of the same class as those to be offered, as determined in accordance with paragraph (c) of rule 457.[139] Rule 457(h)(2) provides that there is no separate fee calculation for plan interests. Paragraph (h)(3) of rule 457 has been added, as proposed, to clarify that, as formerly, where a registration statement covers securities to be offered to employees pursuant to an employee benefit plan, as well as the resale of those securities, no additional filing fee

distribution of such amount would have no measurable effect on the public market for the employer's securities. *See, e.g.*, letter re *Premark International Inc.*, available March 29, 1988 (approximately 3% of outstanding).

[129] Formerly, the Instruction required registrants to specify the names of selling persons and file either a post-effective amendment or a Rule 424(b) prospectus to add names to the reoffer prospectus.

[130] General Instruction C has been amended to increase the number of shares that a non-affiliate may sell before being named in the reoffer prospectus from the lesser of 400 shares or 1% of the shares issuable under the plan to the lesser of 1000 shares or 1% of the shares issuable under the plan.

[131] 17 CFR 230.144(e).

[132] As proposed, Form S–8 as adopted permits "control securities" and "restricted securities" to be registered for reoffer or resale in any amount because each seller of such securities would continue to be subject to Rule 144(e) volume limitations, unless the registrant was eligible to use Forms S–3 or F–3. It should be noted that other securities sold pursuant to the volume limitations of Rule 144(e) would not include securities sold pursuant to the Form S–8 reoffer prospectus. *See* Rule 144(e)(3)(VII), which provides that securities sold pursuant to an effective registration statement such as a Form S–8 need not be included in determining the amount of securities sold in reliance upon rule 144.

[133] 17 CFR 239.32.

[134] *See* Rule 462. General Instruction D to Form S–8 has been revised to state that registration statements become effective upon filing and eliminate the provisions regarding pre-effective amendments to Form S–8 registration statements as unnecessary. This Instruction also has been modified to clarify that applications pursuant to rule 24b–2 (17 CFR 240.24b–2) for confidential treatment of portions of Exchange Act documents incorporated by reference into the Form S–8 must be acted upon, *i.e.*, granted or denied, by the Commission staff prior to the filing of the registration statement. In addition, amendments to this Instruction were proposed to reduce the number of copies that need to be filed with the Commission and to delete requirements to furnish the Commission copies of amendments marked to show changes as well as copies of documents incorporated by reference. As adopted, these changes are reflected in new paragraphs to rules 402 and 472.

[135] Whether a separate security in the form of a plan interest exists depends upon the facts and circumstances of the particular plan. *See* Release Nos. 33–6188, pt. II(A), and 33–6281, pts. I and II, which discuss some of the criteria to be considered in making such a determination.

[136] This was proposed as new rule 416A, but restructured as part of existing rule 416. General Instruction F directs registrants' attention to rule 416(c).

[137] *See* letter to William F. Archerd, available April 13, 1984. Since the revised rules base registration fees solely on the maximum amount of the registrant's securities to be covered by Form S–8, the staff's position in that letter regarding fee calculations no longer is applicable.

[138] Revised rule 457(h)(1). If employer and employee contributions will be used to purchase registrant securities, the maximum amount of securities to be offered must be registered and the registration fee calculated based upon such maximum amount.

[139] 17 CFR 230.457(c). If there is no market for the securities to be offered, rule 457(h)(1) states that the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used.

must be paid with respect to the securities to be offered for resale. Also as formerly, a fee will have to be paid for restricted securities registered for resale by employees as permitted by General Instruction C to Form S–8.

4. Registration of Additional Securities

As discussed in the Proposing Release, when a registrant increases the number of securities that may be issued pursuant to an existing plan, it is required to file a new registration statement to cover the additional securities. When such registration statement is filed, rule 429 [140] allows the previously registered securities to be offered and sold through the delivery of the prospectus filed as part of the new registration statement.[141]

The procedure specified by rule 429, enabling registrants to disseminate a single prospectus to plan participants in connection with offerings of plan securities registered under two or more registration statements, will not be available with respect to Form S–8 registration statements under the revised framework since rule 429 contemplates the filing of a prospectus. However, use of a prospectus applicable to securities registered at different times remains possible, without the rule 429 procedure, because registrants will have the flexibility to modify prospectuses without filing them.

General Instruction E to Form S–8 provides a procedure for the filing of a simplified registration statement covering additional securities of the same class as other employee benefit plan securities for which a previously filed Form S–8 registration statement or registration statements are effective.[142] There is no need to repeat previously filed information. The registration statement would consist only of the facing page; a statement indicating that the contents of the earlier registration statement, identified by file number, are incorporated by reference; the signature page; the legality opinion;[143] the consents of the accountant and counsel;[144] and any additional required information not filed earlier, *e.g.*, an exhibit not required to be filed as part of the earlier Form S–8 registration statement.

If the new registration statement covers restricted securities being offered for resale it must include the required reoffer prospectus. If the earlier registration statement included a reoffer prospectus, the new registration statement is deemed to include that reoffer prospectus; however, a revised reoffer prospectus must be filed if the reoffer prospectus is substantively different from that filed in the earlier registration statement.

Registrants will continue to update the Section 10(a) prospectus by delivery of plan information to employees and through incorporation by reference of registrant information and plan financial statements in the prospectus; this information also is incorporated by reference in the Form S–8 registration statement. A filing fee will be paid only with respect to the additional securities being registered.

I. Form 11–K

The amendments to Form 11–K [145] have been adopted as proposed, except that the filing requirements for ERISA plans have been modified to address commenters' concerns as discussed below. The requirements for disclosure of non-financial plan information have been eliminated.

Several commenters advocated an exemption from the Form 11–K annual reporting requirements for ERISA plans given ERISA regulatory requirements. Although such an exemption has not been adopted, the Form 11–K reporting framework has been modified in response to commenters' remarks to eliminate the need to prepare and file separate Form 11–K financial statements for federal securities law purposes that duplicate information otherwise provided to plan participants. Under the amendments adopted today, Form 11–K financial statements may be prepared in accordance with the financial reporting requirements of ERISA.[146] To the extent required by ERISA, the plan financial statements will be required to be examined by an independent public accountant, except that the "limited scope exemption" will not be available.[147] Finally, plans subject to ERISA will be permitted to file their Forms 11–K within 180 days after the plan's fiscal year end.[148]

Exchange Act Rule 15d–21 permits plan annual financial statements to be filed as part of a registrant's annual report on Form 10–K, or as an amendment thereto, rather than on Form 11–K, within 120 days after the end of the plan's fiscal year. The Proposing Release solicited comment as to whether such period should be reduced to 90 days to conform to the Form 11–K filing requirements. In view of the comments received as to the value to registrants in having this additional 30 day period, (*e.g.*, so as not to overlap with a registrant's Form 10–K preparation), the 120-day filing period option afforded by the Rule has been retained.[149]

J. Transition to New System

The Form S–8 amendments adopted today will become effective 30 days after publication in the Federal Register ("Effective Date"). All new Form S–8 registration statements filed with the Commission on or after the Effective Date must comply with the revised rule and form requirements and will become effective immediately upon filing in accordance with rule 462.

Registrants may elect early compliance with the new rules and seek immediate effectiveness of a registration statement filed on or after the date of this Release ("Release Date") but must include the following legend in the top right corner of the cover page of the registration statement: "The registrant requests that the registration statement become effective immediately upon filing pursuant to Securities Act Rule 462." Any registrant filing a Form S–8 registration statement prior to the Effective Date that does not include this legend may file a pre-effective amendment to elect effectiveness upon filing. Failure to include the legend will cause a registation statement filed before the Effective Date to become effective on the twentieth day from the date of filing.

---

[140] 17 CFR 230.429.

[141] The prospectus must include all information required by Form S–8 with respect to securities covered by both the earlier registration statement and the later one.

[142] The additional securities registered on the simplified registration statement must be used in connection with the same plan or plans for which securities previously were registered.

[143] Item 601(b)(5) of Regulation S–K (17 CFR 229.601(b)(5)).

[144] Item 601(b)(24) of Regulation S–K (17 CFR 229.601(b)(24)).

[145] Form 11–K is the annual or transition report required to be filed by employee benefit plans subject to Exchange Act section 15(d) where plan interests are separate securities registered under the Securities Act. The facing page of Form 11–K has been amended to include boxes to be marked to show whether the form is filed as an annual or a transition report pursuant to section 15(d) of the Exchange Act. This amendment should ensure consistency among the Exchange Act Forms.

[146] ERISA requires an income statement only for the plan's last fiscal year and balance sheet reflecting beginning and end of plan year balances only (ERISA sections 103(b)(3) (A) and (B) (29 U.S.C. 1023(b)(3) (A) and (B))). In addition, ERISA does not require audited financial statements for plans with less than 100 participants.

[147] *See* section 103(a)(3)(C) of ERISA.

[148] ERISA requires a plan administrator to file a plan annual report within 210 days after the close of the plan year, (ERISA section 104(a)(1)(A) (29 U.S.C. 1024(a)(1)(A))).

[149] In addition, rule 15d–21 conforms the timing requirement for plans subject to ERISA to that specified by Form 11–K.

Registrants with ongoing offerings of securities on Form S–8 may elect to comply with the revised rules and forms at any time on or after the Release Date.[150] If a registrant elects to continue to use its previously distributed prospectus as its new section 10(a) prospectus, no additional filing is required, provided that the prospectus is current for Federal securities law purposes. If a registrant elects to designate a previously distributed plan document(s), or parts thereof (other than a customary prospectus), as constituting part of the new section 10(a) prospectus, then it must distribute a dated written notice to plan participants which indicates that the document constitutes part of the section 10(a) prospectus and states that additional copies of the document(s) are available upon request.[151] All plan documents delivered to new participants under the revised rules must include a legend in accordance with Rule 428(b)(1)(iii).

Registrants with ongoing offerings of securities on Form S–8 will be required to comply with the revised rules and forms pursuant to rule 401(b) [152] when section 10(a)(3) of the Securities Act [153] requires the registration statement to be updated. The section 10(a)(3) updating requirement for a Form S–8 registration statement generally is fulfilled by the registrant's filing of an annual report on Form 10–K. Many registrants becoming subject to the new requirements with the filing of the Form 10–K will not have to take any affirmative steps to comply with the new rules; no additional filing is required unless necessary to add Part II information newly required by Form S–8 that has not previously been filed, such as the indemnification undertaking required by Item 512(h) (formerly Item 512(i)) of Regulation S–K.[154] Registrants with ongoing Form S–8 offerings may rely on rule 416(c) [155] with respect to the offer or sale of plan interests made on or after the Release Date; no additional filing needs to be made to indicate such reliance. Rule 416(c) will not apply to offers of sales or plan interests made prior to the Release Date. With respect to the Form 11–K revisions, plans with fiscal years ending on or after the Effective Date will become subject to the new rules. Optional early compliance with these rules also is permitted.

III. Charts Reflecting Revisions

The following charts highlight the substantive changes between the former and revised Form S–8 and information delivery requirements. Editorial and clarifying change are not noted.

A. Revisions to Form S–8

[150] All registrants electing early compliance with the revised rules and forms must comply with all applicable revisions.

[151] The document must be current for Federal securities law purposes and include all required disclosure, by itself or together with other documents constituting part of the section 10(a) prospectus.

[152] 17 CFR 230.401(b).

[153] 15 U.S.C. 77j(a)(3).

[154] This additional information may be included in either a Form 8–K, which is incorporated by reference in the registration statement, or a post-effective amendment (which does not have to repeat previously filed information). Many Form S–8 registrants included this undertaking voluntarily and accordingly would not have to repeat it.

[155] Where a Form S–8 registration statement relates to securities to be offered pursuant to an employee benefit plan, including plan interests, rule 416(c) deems an indeterminate amount of such interests to be registered.

Former form S–8	Revised form S–8
Facing page	Legend required, where appropriate, stating that the registration statement also covers an indeterminate amount of plan interests.
General Instruction A(1)—Rule as to Use of Form S–8	Registrant must be subject to Exchange Act reporting requirements immediately prior to filing registration statement rather than for 90 days prior to filing. Requirement to furnish an annual report to security holders moved to Rule 428(b)(2); Rule 428 (b)(2) expanded to permit delivery of other documents which contain financial statements for the issuer's latest fiscal year instead of the annual report to security holders.
	Rule 405 amended to define "employee benefit plan" to include written compensation contracts. This term also expanded to include advisors or consultants provided that *bona fide* services are rendered by the consultant or advisor and such services are not in connection with the offer or sale of securities in a capital-raising transaction. The term "employee" for purposes of Form S–8 has been expanded to include former employees as well as executors, administrators, or beneficiaries of the estates of deceased employees, guardians or members of a committee for incompetent former employees, or similar persons duly authorized by law to administer the estate or assets of former employees to permit: (1) exercise of stock options and the subsequent sale of the securities provided that such exercises and sales are not prohibited under the plan; and (2) acquisition of registrant securities pursuant to intra-plan transfers among plan funds provided that such transfers are not prohibited by the plan. General Instruction A also revised to permit Form S–8 to be used for insurance agents who are exclusive agents of the registrant, its subsidiaries or parents.
	"Registrant" defined as the person whose securities are to be offered pursuant to the plan and also may include the plan itself. The term "registrant" is used throughout Form S–8 in lieu of "issuer."
General Instruction B—Application of Rules and Regulations	Definitions removed to General Instruction A.1.
General Instruction C—Reoffers and Resales	Restructured for clarity. Control and restricted securities acquired pursuant to an employee benefit plan may be registered for reoffer or resale in any amount, provided that the amount of securities that may be reoffered or resold by each person may not exceed, during any three-month period, the amount specified in Rule 144(e). If the registrant satisfies the registrant requirements for Forms S–3 or F–3, the control and restricted securities may be reoffered or resold without limitation. (The former 10% limit on the number of restricted securities that may be registered for resale has been rescinded.) The number of shares that a non-affiliate may sell before being named in the reoffer prospectus is increased from 400 to 1000.
	Foreign private issuers eligible to file on Form 20–F may use Form F–3 in lieu of Form S–3, thereby liberalizing the treatment of such issuers set forth in former General Instruction E. Requirement to file an exhibit setting forth a statement indicating the exemption from registration claimed modified to require only a statement (rather than an exhibit) and redesignated as Part II, Item 7. Method of naming selling security holders clarified.
General Instruction D—Filing and Effectiveness, etc.	Registration statement becomes effective upon filing, pursuant to Rule 462, rather than in 20 days. References to pre-effective amendments deleted. Statement added that requests for confidential treatment under the Exchange Act with respect to reports incorporated by reference in Form S–8 must be acted upon by the staff prior to the filing of the Form S–8.

Former form S-8	Revised form S-8
	Cross-references provided to new paragraphs (c) and (d) to Rules 402 and 472, respectively, which provide that amendments marked to show changes and copies of documents incorporated by reference no longer required in Form S-8. Total number of copies of registration statement reduced.
General Instruction E—Foreign Registrant	Deleted. Requirements to deliver an annual report on Form 20-F moved to Rule 428(b)(2). Reference to use of the reoffer prospectus by foreign private issuer incorporated in General Instruction C.
	General Instruction E—Procedure set forth for registering additional plan securities.
	General Instruction F—Reference to Rule 416(c) regarding registration of an indeterminate amount of plan interests.
	General Instruction G—Procedures for updating (replaces former Instruction to Part II).
Part I—Information Required in the Section 10(a) Prospectus	Headnote added setting forth the new approach that Part I information can be provided to employees in the document(s) specified in Rule 428(b)(1). Customary prospectus format no longer required.
Item 1—Forepart of Prospectus and Outside Front Cover Page	Deleted.
Item 2—Inside Front and Outside Back Cover Pages of Prospectus.	Deleted, except that requirement to deliver, upon request, documents incorporated by reference is moved to Rule 428(b)(3). Delivery of documents was formerly required by Item 502(c) of S-K through Item 2 of S-8. The registrant's statement to employees that such information is available upon request moved to Item 2 of S-8.
Item 3—Summary Information, etc	Deleted.
Item 4—General Information Regarding the Plan	Introductory language included in Item 1(a) that the specified information is required only to the extent material to the particular plan being described.
	Former Item 4 retained and redesignated as Item 1(a), with the following exceptions: 1. Deletion of the requirements in former Item 4(a) that the name of each company whose employees are entitled to participate in the plan, including subsidiaries, be disclosed and that an exhibit be filed naming subsidiaries. 2. Deletion of requirement in former Item 4(b) to state when plan was created, the parties thereto, and the manner of its creation. 3. Redesignation of former Item 4(c) (tax disclosure) as Item 1(f). 4. Deletion of former Item 4(d) (number of employees participating and eligible to participate in the plan). 5. Modification of first sentence of former Item 4(e) as Item 1(a)(3) to require disclosure of the general nature of applicable ERISA provisions. Deletion of second sentence of same former item which requires disclosure of the principal protective provisions of Titles I and IV of ERISA not applicable to the plan and whether such protections will be extended to participants by the registrant. 6. Former Item 4(f) (certain risks to participants) incorporated in Item 1. 7. Redesignation of former Item 11 (administration of the plan) as Item 1(a)(4) except that only an address and a telephone number which participants may use to obtain additional information about the plan and its administrators is required.
Item 5—Securities to be Offered and Employees Who May Participate in the Plan.	Retained and redesignated as Items 1 (b) and (c), with the following exceptions: 1. Elimination of second sentence of former Item 5(a) (limitation on amount of securities to be offered), which required statement as to the source of any limitation on the amount of securities to be offered. 2. Redesignation of former Item 5(b) (restrictions on resale) as Item 1(e). 3. Redesignation of former Item 5(c) (disclosure of participation and basis of eligibility) as Item 1(c). 4. Deletion of former Item 5(d) (maximum and minimum amounts of securities). 5. Requirement added in Item 1(b)(2) to furnish the information required by Item 202 of Regulation S-K with respect to the securities being offered, if other than common stock registered under Section 12 of the Exchange Act. Addition of statement that if plan interests are being registered, they need not be separately described.
Item 6—Purchase of Securities Pursuant to the Plan	Retitled "Purchase of Securities Pursuant To The Plan and Payment For Securities Offered" and redesignated as new Item 1(d). Deletion of requirement for tabular information about options (former Instructions 1-4) and addition of requirement to describe terms regarding the amount of securities that can be purchased (see discussion of former Item 5). Redesignation of former Item 12(c) as Item 1(d)(6).
Item 7—Payment for Securities Offered	Retained and redesignated as Item 1(d) (2) and (5). Instruction mandating disclosure as to whether the requirements of Regulation G or T have been met converted to a note advising registrants to consider the applicability of these regulations.
Item 8—Contributions Under the Plan	Retained and redesignated as Item 1(d)(4).
Item 9—Withdrawal from the Plan—Assignment of Interest	Retained and redesignated as Item 1(h). Addition of a paragraph stating that no information need be provided as to the effect of a qualified domestic relations order as defined by ERISA Section 206(d).
Item 10—Defaults Under the Plan	Retitled "Forfeitures and Penalties" and redesignated as Item 1(i). Requirement modified to set forth events which could, under the plan, result in a forfeiture by, or a penalty to, a participant, and the consequences thereof.
Item 11—Administration of the Plan	Retained and redesignated as Item 1(a), except that certain disclosure (*e.g.*, any material relationship between the administrators and the employees, the registrant or its affiliates) not required for ERISA plans.
Item 12—Investment of Funds	Retained and redesignated as Item (1)(g), except that: 1. Requirement to present five year tabular information for alternative investment media is replaced by requirement to provide tabular or other meaningful presentation of financial data for a minimum of three years. Registrants must include information for additional fiscal years if necessary to make the required data not misleading, but the total period presented need not exceed five years. 2. Retention and redesignation of Item 12(b) (investment discretion of persons other than a participating employee) as Item 1(a)(4). 3. Retention and redesignation of Item 12(c) (nature of asset purchases by non-ERISA plans) as Item 1(d)(6). 4. Deletion of Item 12(d) (brokers and their commissions).

Former form S-8	Revised form S-8
Item 13—Charges and Deductions and Liens Therefor	Retained and redesignated as Item 1(j). Addition of a paragraph stating that no information need be provided as to the effect of a qualified domestic relations order as defined by ERISA Section 206(d).
Item 14—Description of Registrant's Securities	Unless common stock registered under Section 12 offered, delivered plan documents must include S-K Item 202 information (see discussion of Item 1(b)(2)). Requirement to incorporate by reference description of securities (if a Section 12 class) or provide a description as required by S-K Item 202 (if not a Section 12 class) redesignated as Part II, Items 3(c) and 4. Ability to incorporate by reference from Section 12 description of securities no longer limited to common stock.
Item 15—Incorporation of Certain Documents by Reference	Retained and redesignated as Part II, Item 3. Documents are incorporated by reference in the registration statement (as well as the prospectus, as formerly). Enumerated documents expanded to include effective registration statement on Form 10 or 20-F.
Item 16—Additional Information	Deleted since such information required to be included in Exchange Act reports. Updating requirements set forth in General Instruction G which provides, among other matters, that any material changes required to be disclosed in the registration statement but not required to be included in a specific Exchange Act report must be reported pursuant to Item 5 of Form 8-K.
Item 17—Interests of Name Experts and Counsel	Retained and redesignated as Part II, Item 5.
Item 18—Disclosure of Commission Position on Indemnification, etc..	Replaced by requirement to include undertaking on indemnification in Part II, Item 6. Former S-K Item 512(i) redesignated as S-K Item 512(h).
Part II—Information Not Required in Prospectus	Retitled, "Information Required in the Registration Statement."
Item 19—Indemnification of Directors and Officers	Retained and redesignated as Part II, Item 6.
Item 20—Exhibits	Retained and redesignated as Part II, Item 8. Requirement to file an exhibit setting forth a statement indicating the exemption from registration claimed modified to require only a statement (rather than an exhibit) and redesignated as Part II, Item 7. Opinion of counsel and IRS determination letter requirements modified.
Item 21—Undertakings	Retained and redesignated as Part II, Item 9. Required undertakings specifically enumerated.
Instruction to Part II re updating	Deleted; replaced by General Instruction G.
Signatures	Requirement that principal financial officer sign registration statement added to Instruction 1.

B. Revisions to Information Delivery Requirements

(Form S-8 undertakings formerly specified by Item 512(f) of Regulation S-K now included in Rule 428(b).)

Former undertakings	Rule 428(b)
512(f)(1)—Delivery of annual report to security holders	Redesignated as Rule 428(b)(2) and expanded to permit delivery of other documents containing audited financial statements for the issuer's latest fiscal year in lieu of the annual report to security holders. Filings made by foreign private issuers (*e.g.* Form 20-F) may be used as delivery documents.
512(f)(2)—Delivery of shareholder communications	Redesignated as 428(b)(5). Delivery required only to employees participating in a stock option plan or plan fund investing in registrant's securities and other plan participants who so request. Registrants permitted to deliver such information by any means calculated to reach plan participants provided that the material is sent or delivered no later than the time the material is sent to its security holders.
512(f)(3)—Delivery upon request of annual report of the plan	Redesignated as Rule 428(b)(4) and simplified in structure.
512(f)(4)—Delivery of Form 20-F by foreign private issuer in lieu of annual report to security holders.	Included in Rule 428(b)(2).
Rule 428(b)(3)—Registrant must deliver promptly to each employee to whom information is required to be delivered, upon request, a copy of the information incorporated by reference pursuant to Part II, Item 3, not including exhibits. (Delivery was formerly required pursuant to Item 502(c) of S-K through Item 2 or Form S-8.)	
Rule 428(b)(1)—Requirements for delivery of plan information and for updating information set forth. Documents constituting part of the Section 10(a) prospectus or containing portions constituting part of the prospectus shall be dated and legended to indicate that they constitute part of the Section 10(a) prospectus. If portions of a document are so designated, a statement is required in the forepart of the document to identify the portion clearly. Revision of documents provided to new employees required if documents containing updating information obscure the readability of the plan information.	

IV. Cost-Benefit Analysis

In the Proposing Release, the Commission requested commenters to provide views and data to aid in evaluating the costs and benefits associated with the proposed rule and form changes. Each of the three commenters who responded to the request indicated that there would be substantial savings to registrants due to the elimination of redundant and unnecessary disclosure.[156]

[156] The American Society of Corporate Secretaries, Inc. (ASCS) included in its comment

Continued

The Commission believes that the changes to the Form S–8 registration and reporting requirements will decrease significantly the time and expense incurred by reporting companies in registering employer securities to be offered pursuant to employee benefit plans while preserving investor protection and the availability of information to plan participants about the registrant and plan operations under the federal securities laws. The amendments to Form S–8 will reduce prospectus preparation, printing and distribution costs substantially by relying on employer communications to convey material information about employee benefit plans. Elimination of requirements for filing non-financial plan information with the Commission also will reduce costs associated with the issuance of securities pursuant to such plans.

Furthermore, the simplified registration form, with the attendant savings, will benefit a larger number of registrants than could take advantage of Form S–8 registration under the former regulations. Form S–8 registration is available to more issuers because the amended regulations no longer require that a registrant be subject to the reporting requirements of Exchange Act section 13 or 15(d) for 90 days prior to filing a Form S–8 registration statement. In addition, its use will be expanded to certain offerings to former employees as well as to those made pursuant to compensatory contracts. Moreover, Form S–8 may be used in connection with offers and sales to consultants and advisors under specified conditions and for securities issued to compensate insurance agents who are exclusive agents of the registrant, its subsidiaries or parents.

The revisions making Form S–8 registration statements effective upon filing, simplifying the method of calculating filing fees, and simplifying the procedures for the registration of additional securities and plan interests each will reduce the burdens and costs associated with the registration process. Finally, amendments to Form 11–K that eliminate the requirement for non-financial plan information and permit ERISA plans to furnish financial statements and schedules that are prepared in accordance with the financial reporting requirements of ERISA, in lieu of the Form 11–K financial statement requirements, should reduce substantially the costs of complying with reporting obligations of plans that are subject to Exchange Act section 15(d).

letter statistics compiled from a 1986 survey of its membership which indicated the costs of compliance with Form S–8. With respect to ERISA plans, the cost of a new registration statement or post-effective amendment ranged from $15,000 to $135,000, and the cost of a 424(c) appendix ranged from $2,000 to $33,000. With respect to stock option plans, the cost of a new registration statement or post-effective amendment ranged from $4,000 to $6,000 and the cost of a 424(c) appendix ranged from $500 to $3,000. ASCS indicated that these figures were still valid, subject to adjustment for inflation. Another commenter suggested that the cost of compliance with the former Form S–8 requirements was well in excess of $100,000 per year.

V. Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 has been prepared regarding the amendments described in this release. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Elizabeth M. Murphy, Barbara C. Smith, or James R. Budge, (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The corresponding Initial Regulatory Flexibility Analysis appears at 54 FR 25948 (Securities Act Release No. 6836).

VI. Statutory Basis for Rules and Forms

Rules 428 and 462, amendments to Rules 402, 405, 416, 424(b), 457(h), 472, and 475a, Items 512 and 601 of Regulation S–K, and Forms S–8, S–3, and F–3 are being adopted by the Commission pursuant to sections 6, 7, 8, 10, and 19 of the Securities Act.[157] The amendments to Form 11–K and Rule 15d–21 are being adopted pursuant to sections 15(d) and 23(a) of the Exchange Act.[158]

List of Subjects in 17 CFR Parts 229, 230, 239, 240 and 249

Prospectus delivery requirements, Reporting and recordkeeping requirements, Registration requirements, Securities.

VII. Text of the Amendments

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

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

1. The authority citation for part 229 is revised to read as follows:

[157] 15 U.S.C. 77 f, g, h, j and s.

[158] 15 U.S.C. 78o(d) and 78w(a).

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30 and 80a–37, as amended, unless otherwise noted.

2. The authority citations following §§ 229.512 and 229.601 are removed.

3. By removing paragraph (f) of § 229.512; redesignating paragraphs (g), (h), (i) and (j) as (f), (g), (h) and (i); and revising redesignated paragraph (h) introductory text as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(h) *Request for acceleration of effective date or filing of registration statement on Form S–8.* Include the following if acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act (§ 230.461 of this chapter), or if the registration statement is filed on Form S–8, and: * * *

* * * * *

4. By amending § 229.601 by adding a note to the end of paragraph (b)(5) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(5) * * *

Note: Attention is directed to Item 8 of Form S–8 for exemptions to this exhibit requirement applicable to that Form.

* * * * *

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

1. The authority citation for part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 79t, and 80a–37, as amended, unless otherwise noted.

Authority Citations for §§ 230.402, 230.416, 230.424, 230.457, and 230.472 [Removed]

2. The authority citations following §§ 230.402, 203.416, 230.424, 230.457 and 230.472 are removed.

3. By adding paragraph (c) to § 230.402 to read as follows:

§ 230.402 Number of copies; binding; signatures.

* * * * *

(c) Notwithstanding any other provision of this section, if a registration statement is filed on Form S–8 (§ 239.16b of this chapter), three copies of the complete registration statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the

Commission. Each copy shall be bound, in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. At least one such copy shall be manually signed by the persons specified in section 6(a) of the Act. Unsigned copies shall be conformed. Three additional copies of the registration statement, similarly bound, also shall be furnished to the Commission for use in the examination of the registration statement, public inspection, copying and other purposes. No exhibits are required to accompany the additional copies of registration statements filed on Form S–8.

4. By amending § 230.405 to revise the definition of "Employee benefit plan" to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Employee benefit plan. The term "employee benefit plan" means any written purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan or written compensation contract solely for employees, directors, general partners, trustees (where the registrant is a business trust), officers, or consultants or advisors, *provided that bona fide* services shall be rendered by consultants or advisors and such services must not be in connection with the offer or sale of securities in a capital-raising transaction.

* * * * *

5. By revising the section heading and adding paragraph (c) to § 230.416 to read as follows:

§ 230.416 Securities to be issued as a result of stock splits, stock dividends and anti-dilution provisions and interests to be issued pursuant to certain employee benefit plans.

* * * * *

(c) Where a registration statement on Form S–8 relates to securities to be offered pursuant to an employee benefit plan, including interests in such plan that constitute separate securities required to be registered under the Act, such registration statement shall be deemed to register an indeterminate amount of such plan interests.

6. By amending paragraph (b) of § 230.424 by adding a clause after the first citation "(15 U.S.C. 77j)," to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b) * * * except for documents constituting a prospectus pursuant to Rule 428(a) (§ 230.428(a) of this chapter), * * *

* * * * *

7. By adding § 230.428 to read as follows:

§ 230.428 Documents constituting a section 10(a) prospectus for Form S–8 registration statement; requirements relating to offerings of securities registered on Form S–8.

(a)(1) Where securities are to be offered pursuant to a registration statement on Form S–8 (§ 239.16b of this chapter), the following, taken together, shall constitute a prospectus that meets the requirements of section 10(a) of the Act: (i) The document(s), or portions thereof as permitted by paragraph (b)(1)(ii) of this section, containing the employee benefit plan information required by Item 1 of the Form; (ii) the statement of availability of registrant information, employee benefit plan annual reports and other information required by Item 2; and (iii) the documents containing registrant information and employee benefit plan annual reports that are incorporated by reference in the registration statement pursuant to Item 3.

(2) The registrant shall maintain a file of the documents that, pursuant to paragraph (a) of this section, at any time are part of the section 10(a) prospectus, except for documents required to be incorporated by reference in the registration statement pursuant to Item 3 of Form S–8. Each such document shall be included in the file until five years after it is last used as part of the Section 10(a) prospectus to offer or sell securities pursuant to the plan. With respect to documents containing specifically designated portions that constitute part of the section 10(a) prospectus pursuant to paragraph (b)(1)(ii) of this section, the entire document shall be maintained in the file. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all of the documents included in the file.

(b) Where securities are offered pursuant to a registration statement on Form S–8:

(1)(i) The registrant shall deliver or cause to be delivered, to each employee who is eligible to participate (or selected by the registrant to participate, in the case of a stock option or other plan with selective participation) in an employee benefit plan to which the registration statement relates, the information required by Part I of Form S–8. The information shall be in written form and shall be updated in writing in a timely manner to reflect any material changes during any period in which offers or sales are being made. When updating information is furnished, documents previously furnished need not be re-delivered, but the registrant shall furnish promptly without charge to each employee, upon written or oral request, a copy of all documents containing the plan information required by Part I that then constitute part of the section 10(a) prospectus.

(ii) The registrant may designate an entire document or only portions of a document as constituting part of the section 10(a) prospectus. If the registrant designates only portions of a document as constituting part of the prospectus, rather than the entire document, a statement clearly identifying such portions, for example, by reference to section headings, section numbers, paragraphs or page numbers within the document must be included in a conspicuous place in the forepart of the document, or such portions must be specifically designated throughout the text of the document. Registrants shall not designate only words or sentences within a paragraph as part of a prospectus. Unless the portions of a document constituting part of the section 10(a) prospectus are clearly identified, the entire document shall constitute part of the prospectus.

(iii) The registrant shall date any document constituting part of the section 10(a) prospectus or containing portions constituting part of the prospectus and shall include the following printed, stamped or typed legend in a conspicuous place in the forepart of the document, substituting the bracketed language as appropriate: "This document [Specifically designated portions of this document] constitutes [constitute] part of a prospectus covering securities that have been registered under the Securities Act of 1933."

(iv) The registrant shall revise the document(s) containing the plan information sent or given to newly eligible participants pursuant to paragraph (b)(1)(i) of this section, if documents containing updating information would obscure the readability of the plan information.

(2) The registrant shall deliver or cause to be delivered with the document(s) containing the information required by Part I of Form S–8, to each employee to whom such information is sent or given, a copy of any one of the following: (i) The registrant's annual report to security holders containing the information required by Rule 14a–3(b) (§ 240.14a–3(b) of this chapter) under the Securities Exchange Act of 1934 ("Exchange Act") for its latest fiscal

year; (ii) the registrant's annual report on Form 10–K (§ 249.310 of this chapter), U5S (§ 259.5s of this chapter), or 20–F (§ 249.220f of this chapter) for its latest fiscal year; (iii) the latest prospectus filed pursuant to Rule 424(b) (§ 230.424(b) of this chapter) under the Act that contains audited financial statements for the registrant's latest fiscal year, *provided that* the financial statements are not incorporated by reference from another filing, and *provided further* that such prospectus contains substantially the information required by Rule 14a–3(b) or the registration statement was on Form S–18 (§ 239.28 of this chapter) or F–1 (§ 239.31 of this chapter); or (iv) the registrant's effective Exchange Act registration statement on Form 10 (§ 249.210 of this chapter) or 20–F containing audited financial statements for the registrant's latest fiscal year.

Instructions. 1. If a registrant has previously sent or given an employee a copy of any document specified in clauses (i)–(iv) of paragraph (b)(2) for the latest fiscal year, it need not be re-delivered, but the registrant shall furnish promptly, without charge, a copy of such document upon written or oral request of the employee.

2. If the latest fiscal year of the registrant has ended within 120 days (or 190 days with respect to foreign private issuers eligible to file on Form 20–F) prior to the delivery of the documents containing the information specified by Part I of Form S–8, the registrant may deliver a document containing financial statements for the fiscal year preceding the latest fiscal year, *provided that* within the 120 or 190 day period a document containing financial statements for the latest fiscal year is furnished to each employee.

(3) The registrant shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the information that has been incorporated by reference pursuant to Item 3 of Form S–8 (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the registration statement incorporates).

(4) Where interests in a plan are registered, the registrant shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the then latest annual report of the plan filed pursuant to Section 15(d) of the Exchange Act, whether on Form 11–K (§ 249.311 of this chapter) or included as part of the registrant's annual report on Form 10–K.

(5) The registrant shall deliver or cause to be delivered to all employees participating in a stock option plan or plan fund that invests in registrant securities (and other plan participants who request such information orally or in writing) who do not otherwise receive such material, copies of all reports, proxy statements and other communications distributed to its security holders generally, provided that such material is sent or delivered no later than the time it is sent to security holders.

(c) As used in this Rule, the term "employee benefit plan" is defined in Rule 405 of Regulation C (§ 230.405 of this chapter) and the term "employee" is defined in General Instruction A.1 of Form S–8.

8. By revising paragraph (h) of § 230.457 to read as follows:

§ 230.457 Computation of fee.

* * * * *

(h)(1) Where securities are to be offered pursuant to an employee benefit plan, the aggregate offering price and the amount of the registration fee shall be computed with respect to the maximum number of the registrant's securities issuable under the plan that are covered by the registration statement. If the offering price is not known, the fee shall be computed upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. In the case of an employee stock option plan, the aggregate offering price and the fee shall be computed upon the basis of the price at which the options may be exercised, or, if such price is not known, upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. If there is no market for the securities to be offered, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used.

(2) If the registration statement registers securities of the registrant and also registers interests in the plan constituting separate securities, no separate fee is required with respect to the plan interests.

(3) Where a registration statement includes securities to be offered pursuant to an employee benefit plan and covers the resale of the same securities, no additional filing fee shall be paid with respect to the securities to be offered for resale. A filing fee determined in accordance with paragraph (c) of this section shall be paid with respect to any additional securities to be offered for resale.

* * * * *

9. By adding § 230.462 to read as follows:

§ 230.462 Effective date of a registration statement filed on Form S–8.

A registration statement on Form S–8 (§ 239.16b of this chapter) shall become effective upon filing with the Commission.

10. By adding paragraph (d) to § 230.472 to read as follows:

§ 230.472 Filing of amendments; number of copies.

* * * * *

(d) Notwithstanding any other provision of this section, if a registration statement filed on Form S–8 (§ 239.16b of this chapter) is amended, there shall be filed with the Commission three complete, unmarked copies of every amendment, including exhibits and all other papers and documents filed as part of the amendment. Three additional, unmarked copies of such amendments shall be furnished to the Commission. No exhibits are required to accompany the additional copies of amendments to registration statements filed on Form S–8.

11. By revising the section heading and introductory phrase in § 230.475a up to the second ";" to read as follows:

§ 230.475a 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–3, F–2, or F–3 (§ 239.13, § 239.32 or § 239.33 of this chapter) relating to a dividend or interest reinvestment plan; * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. By revising General Instruction I.B.3 of Form F–3 (§ 239.33) to read as follows:

Note—The text of Form F–3 is not and the amendment will not be included in the Code of Federal Regulations.

Instructions and Form

FORM F–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

I.B.3. Transactions involving Secondary Offerings

Outstanding securities to be offered for the account of any person other than the issuer,

including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if the financial statements in the registrant's latest filing on Form 20-F comply with Item 18 thereof. (In addition, attention is directed to General Instruction C to Form S-8 (§ 239.16b) for the registration of employee benefit plan securities for resale.)

* * * * *

3. By revising the last sentence of General Instruction I.B.3 of Form S-3 (§ 239.13) to read as follows:

Note—The text of Form S-3 is not and the amendment will not be included in the Code of Federal Regulations.

Instructions and Form

FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

General Instructions

* * * * *

I.B.3. * * * (In addition, attention is directed to General Instruction C to Form S-8 (§ 239.16b) for the registration of employee benefit plan securities for resale.)

* * * * *

4. By revising § 239.16b to read as follows:

§ 239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

Any registrant that, immediately prior to the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934, and has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), may use this form for registration under the Securities Act of 1933 (the "Act") of the following securities:

(a) Securities of such registrant to be offered to its employees or employees of its subsidiaries or parents pursuant to any employee benefit plan.

(b) Interests in the above plans, if such interests constitute securities and are required to be registered under the Act. (*See* Release No. 33-6188 (February 1, 1980) and section 3(a)(2) of the Act.)

5. By revising the text of Form S-8 (§ 239.16b) to read as follows:

Note—The text of Form S-8 is not and the amendments will not be included in the Code of Federal Regulations.

OMB approval

OMB Number: 3235-0066
Expires: April 30, 1992
Estimated average burden hours per response—49

Instructions and Form

FORM S-8

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)

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

(Address of Principal Executive Offices)

(Zip Code)

(Full title of the plan)

(Name and address of agent for service)

(Telephone number, including area code, of agent for service)

Calculation of Registration Fee

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee

(If plan interests are being registered, include the following: In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the employee benefit plan(s) described herein.)

General Instructions

A. Rule as to Use of Form S-8

1. Any registrant that, immediately prior to the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act"), and has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), may use this form for registration under the Securities Act of 1933 ("Act") of the following securities:

(a) Securities of such registrant to be offered pursuant to any employee benefit plan to its employees or employees of its subsidiaries or parents. For purposes of this form, the term "employee benefit plan" is defined in Rule 405 of Regulation C (§ 230.405). For purposes of this form, the term "employee" is defined as any employee, director, general partner, trustee (where the registrant is a business trust), officer, or consultant or advisor, *provided that bona fide* services shall be rendered by consultants or advisors and such services must not be in connection with the offer or sale of securities in a capital-raising transaction. In addition, the term "employee" includes insurance agents who are exclusive agents of the registrant, its subsidiaries or parents. The term "employee" also includes former employees as well as executors, administrators or beneficiaries of the estates of deceased employees, guardians or members of a committee for incompetent former employees, or similar persons duly authorized by law to administer the estate or assets of former employees. The inclusion of all such individuals described in the preceding sentence in the term "employee" is only to permit registration on Form S-8 of: (i) The exercise of employee benefit plan stock options that are non-transferable (except under the laws of descent and distribution) and the subsequent sale of the securities, *provided that* such exercises and sales are not prohibited under the terms of the plan; and (ii) the acquisition of registrant securities pursuant to intra-plan transfers among plan funds, *provided that* such transfers are not prohibited under the terms of the plan. The term "registrant" as used in this Form means the person whose securities are to be offered pursuant to the plan, and also may mean the plan itself.

(b) Interests in the above plans, if such interests constitute securities and are required to be registered under the Act. (*See* Release No. 33-6188 (February 1, 1980) and section 3(a)(2) of the Act.)

2. Where interests in a plan are being registered and the plan's latest annual report filed pursuant to section 15(d) of the Exchange Act is to be incorporated by reference pursuant to the requirements of Form S-8, the plan shall either: (i) have been subject to the requirement to file reports pursuant to section 15(d) and shall have filed all reports required to be filed by such requirements during the preceding 12 months (or for such shorter period that the plan was required to file such reports); or (ii) if the plan has not previously been subject to the reporting requirements of section 15(d), concurrently with the filing of the registration statement on Form S-8, the plan shall file an annual report for its latest fiscal year (or if the plan has not yet completed its first fiscal year, then for a period ending not more than 90 days prior to the filing of this registration statement), *provided that* if the plan has not been in existence for at least 90 days prior to the filing date, the requirement to file an employee plan annual report concurrently with the Form S-8 registration statement shall not apply.

B. Application of General Rules and Regulations

1. Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.499). That Regulation contains general requirements regarding the preparation and filing of registration statements. However, any provision in this form covering the same subject matter as any such requirement shall be controlling unless otherwise specifically provided in Regulation C (*see* § 230.400).

2. Attention is directed to Regulation S–K (17 CFR part 229) for the requirements applicable to the content of the non-financial portions of registration statements under the Act. Where this form directs the registrant to furnish information required by any item of Regulation S–K, information need only be furnished to the extent appropriate.

C. Reoffers and Resales

1. *Securities.* Reoffers and resales of the following securities may be made on a continuous or delayed basis in the future, as provided by Rule 415 (§ 230.415), pursuant to a registration statement on this form by means of a separate prospectus ("reoffer prospectus"), which is prepared in accordance with the requirements of part I of Form S–3 (or, if the registrant is a foreign private issuer eligible to file on Form 20–F, in accordance with part I of Form F–3), and filed with the registration statement on Form S–8 or, in the case of control securities, a post-effective amendment thereto:

(a) *Control securities,* which are defined for purposes of this General Instruction C as securities acquired under a Securities Act registration statement held by affiliates of the registrant as defined in Rule 405 (§ 230.405). Control securities may be included in a reoffer prospectus only if they have been or will be acquired by the selling security holder pursuant to an employee benefit plan; or

(b) *Restricted securities,* which are defined for purposes of this General Instruction C as securities issued under any employee benefit plan of the registrant meeting the definition of "restricted securities" in Rule 144(a)(3) (§ 230.144(a)(3)), whether or not held by affiliates of the registrant. Restricted securities may be included in a reoffer prospectus only if they have been acquired by the selling security holder prior to the filing of the registration statement.

2. *Limitations.* The reoffer prospectus may be used as follows:

(a) If the registrant, at the time of filing such prospectus, satisfies the registrant requirements for use of Form S–3 (or if the registrant is a foreign private issuer eligible to file on Form 20–F, the registrant requirements for use of Form F–3), then control and restricted securities may be registered for reoffer and resale without any limitations.

(b) If the registrant, at the time of filing such prospectus, does not satisfy the registrant requirements for use of Form S–3 or F–3, as appropriate, then the following limitation shall apply with respect to both control securities and restricted securities: the amount of securities to be reoffered or resold by means of the reoffer prospectus, by each person, and any other person with whom he or she is acting in concert for the purpose of selling securities of the registrant, may not exceed, during any three month period, the amount specified in Rule 144(e) (§ 230.144(e)).

3. *Selling Security Holders*—(a) *Control Securities.* If the names of the security holders who intend to resell are not known by the registrant at the time of filing the Form S–8 registration statement, the registrant may either: (1) refer to the selling security holders in a generic manner in the reoffer prospectus; later, as their names and the amounts of securities to be reoffered become known, the registrant must supplement the reoffer prospectus with that information; or (2) name in the reoffer prospectus all persons eligible to resell and the amounts of securities available to be resold, whether or not they have a present intent to do so; any additional persons must be added by prospectus supplement. Prospectus supplements must be filed with the Commission as required by Rule 424(b) (§ 230.424(b)). The registrant may file a reoffer prospectus covering control securities as part of the initial registration statement or by means of a post-effective amendment to the Form S–8 registration statement.

(b) *Restricted Securities.* All persons (including non-affiliates) holding restricted securities registered for reoffer or resale pursuant to a reoffer prospectus are to be named as selling shareholders in the reoffer prospectus; *provided, however,* that any non-affiliate who holds less than the lesser of 1000 shares or 1% of the shares issuable under the plan to which the Form S–8 registration statement relates need not be named if the reoffer prospectus indicates that certain unnamed non-affiliates, each of whom may sell up to that amount, may use the reoffer prospectus for reoffers and resales. The reoffer prospectus covering restricted securities must be filed with the initial registration statement, not a post-effective amendment thereto.

Notes to General Instruction C

1. The term "person" as used in this General Instruction C shall be the same as set forth in Rule 144(a)(2) (§ 230.144(a)(2)).

2. If the conditions of this General Instruction C are not satisfied, registration of reoffers or resales must be made by means of a separate registration statement using whichever form is applicable.

D. Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment; Number of Copies

A registration statement of this Form S–8 will become effective automatically (Rule 462, § 230.462) upon filing (Rule 456, § 230.456). In addition, post-effective amendments on this form shall become effective upon filing (Rules 464, § 230.464 and 456). Delaying amendments are not permitted in connection with any registration statement on this form (Rule 473(d), § 230.473(d)), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this form become public upon filing with the Commission. As a result, requests for confidential treatment made under either Rule 406 (§ 230.406), or Exchange Act Rule 24b–2 (§ 240.24b–2) in connection with documents incorporated by reference, must be acted upon, *i.e.*, granted or denied, by the Commission staff prior to the filing of the registration statement. The number of copies of the filing required by Rules 402(c) and 472(d) (§ 230.402(c), § 230.472(d)) shall be filed with the Commission.

E. Registration of Additional Securities

With respect to the registration of additional securities of the same class as other securities for which a registration statement filed on this form relating to an employee benefit plan is effective, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any information required in the new registration statement that is not in the earlier registration statement. If the new registration statement covers restricted securities being offered for resale, it shall include the required reoffer prospectus. If the earlier registration statement included a reoffer prospectus, the new registration statement shall be deemed to include that reoffer prospectus; *provided, however,* that a revised reoffer prospectus shall be filed, if the reoffer prospectus is substantively different from that filed in the earlier registration statement. The filing fee required by the Act and Rule 457 (§ 230.457) shall be paid with respect to the additional securities only.

F. Registration of Plan Interests

Where a registration statement on this form relates to securities to be offered pursuant to an employee stock purchase, savings, or similar plan, the registration statement is deemed to register an indeterminate amount of interests in such plan that are separate securities and required to be registered under the Securities Act. *See* Rule 416(c) (§ 230.416(c)).

G. Updating

Updating of information constituting the Section 10(a) prospectus pursuant to Rule 428(a) (§ 230.428(a)) during the offering of the securities shall be accomplished as follows:

(1) Plan information specified by Item 1 of Form S–8 required to be sent or given to employees shall be updated as specified in Rule 428(b)(1) (§ 230.428(b)(1)). Such information need not be filed with the Commission.

(2) Registrant information shall be updated by the filing of Exchange Act reports, which are incorporated by reference in the registration statement and the Section 10(a) prospectus. Any material changes in the registrant's affairs required to be disclosed in the registration statement but not required to be included in a specific Exchange Act report shall be reported on Form 8–K (§ 249.308) pursuant to Item 5 thereof.

(3) An employee plan annual report incorporated by reference in the registration statement from Form 11–K (or Form 10–K, as permitted by Rule 15d–21 (§ 240.15d–21)) shall

be updated by the filing of a subsequent annual report on Form 11–K or 10–K.

Part I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Note: The document(s) containing the information specified in this Part I will be sent or given to employees as specified by Rule 428(b)(1) (§ 230.428(b)(1)). Such documents need not be filed with the Commission either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 (§230.424). These documents and the documents incorporated by reference in the registration statement pursuant to Item 3 of Part II of this form, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act. *See* Rule 428(a)(1) (§ 230.428(a)(1)).

Item 1. Plan Information

The registrant shall deliver or cause to be delivered to each participant material information regarding the plan and its operations that will enable participants to make an informed decision regarding investment in the plan. This information shall include, to the extent material to the particular plan being described, but not be limited to, the disclosure specified in (a) through (j) below. Any unusual risks associated with participation in the plan not described pursuant to a specified item shall be prominently disclosed, as, for example, when the plan imposes a substantial restriction on the ability of a participant to withdraw contributions, or when plan participation may obligate the participant's general credit in connection with purchases on a margin basis. The information may be in one or several documents, provided that it is presented in a clear, concise and understandable manner. *See* Rule 421 (§ 230.421).

(a) *General Plan Information*

(1) Give the title of the plan and the name of the registrant whose securities are to be offered pursuant to the plan.

(2) Briefly state the general nature and purpose of the plan, its duration, and any provisions for its modification, earlier termination or extension to the extent that they affect the participants.

(3) Indicate whether the plan is subject to any provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), and if so, the general nature of those provisions to which it is subject.

(4) Give an address and a telephone number, including area code, which participants may use to obtain additional information about the plan and its administrators. State the capacity in which the plan administrators act (*e.g.*, trustees or managers) and the functions that they perform. If any person other than a participating employee has discretion with respect to the investment of all or any part of the assets of the plan in one or more investment media, name such person and describe the policies followed and to be followed with respect to the type and proportion of securities or other property in which funds of the plan may be invested. If the plan is not subject to ERISA: (i) state the nature of any material relationship between the administrators and the employees, the registrant or its affiliates; and (ii) describe the manner in which the plan administrators are selected, their term of office, and the manner in which they may be removed from office.

(b) *Securities to be Offered*

(1) State the title and total amount of securities to be offered pursuant to the plan.

(2) Furnish the information required by Item 202 of Regulation S–K (§ 229.202), except that if common stock registered under Section 12 of the Exchange Act is offered, such information is unnecessary. If plan interests are being registered, they need not be described pursuant to this item.

(c) *Employees Who May Participate in the Plan*

Indicate each class or group of employees that may participate in the plan and the basis upon which the eligibility of employees to participate therein is to be determined.

(d) *Purchase of Securities Pursuant to the Plan and Payment for Securities Offered*

(1) State the period of time within which employees may elect to participate in the plan, the price at which the securities may be purchased or the basis upon which such price is to be determined, and any terms regarding the amount of securities that an eligible employee can purchase.

(2) State when and the manner in which employees are to pay for the securities purchased pursuant to the plan. If payment is to be made by payroll deductions or other installment payments, state the percentage of wages or salaries or other basis for computing such payments, and the time and manner in which an employee may alter the amount of such deductions or payment.

(3) State the amount each employee is required or permitted to contribute or, if not a fixed amount, the percentage of wages or salaries or other basis of computing contributions.

(4) If contributions are to be made under the plan by the registrant or any employer, state who is to make such contributions, when they are to be made and the nature and amount of each contribution. If such contributions are not a fixed amount, state the basis for computing contributions.

(5) State the nature and frequency of any reports to be made to participating employees as to the amount and status of their accounts.

(6) If the plan is not subject to ERISA, state whether securities are to be purchased in the open market or otherwise. If they are not to be purchased in the open market, then state from whom they are to be purchased and describe the fees, commissions or other charges paid. If the employer or any of its affiliates, or any person having a material relationship with the employer or any of its affiliates, directly or indirectly, receives any part of the aggregate purchase price (including fees, commissions or other charges), explain the basis for compensation.

Note: If the plan is one under which credit is extended to finance the acquisition of securities, consideration should be given to the applicability of Regulation G (12 CFR Part 207) or T (12 CFR Part 220).

(e) *Resale Restrictions*

Describe briefly any restriction on resale of the securities purchased under the plan which may be imposed upon the employee purchaser.

(f) *Tax Effects of Plan Participation*

Describe briefly the tax effects that may accrue to employees as a result of plan participation as well as the tax effects, if any, upon the registrant and whether or not the plan is qualified under Section 401(a) of the Internal Revenue Code.

Note: If the plan is not qualified under Section 401 of the Internal Revenue Code of 1986, as amended, consideration should be given to the applicability of the Investment Company Act of 1940. *See* Securities Act Release No. 4790 (July 13, 1965).

(g) *Investment of Funds*

If participating employees may direct all or any part of the assets under the plan to two or more investment media, furnish a brief description of the provisions of the plan with respect to the alternative investment media; and provide a tabular or other meaningful presentation of financial data for each of the past three fiscal years (or such lesser period for which the data is available with respect to each investment medium) that, in the opinion of the registrant, will apprise employees of material trends and significant changes in the performance of alternative investment media and enable them to make informed investment decisions. Financial data shall be presented for any additional fiscal years necessary to keep the information from being misleading or that the registrant deems appropriate, but the total period presented need not exceed five years.

(h) *Withdrawal from the Plan; Assignment of Interest*

(1) Describe the terms and conditions under which a participating employee may (i) withdraw from the plan and terminate his or her interest therein; or (ii) withdraw funds or investments held for the employee's account without terminating his or her interest in the plan.

(2) State whether, and the terms and conditions upon which, the plan permits an employee to assign or hypothecate his or her interest in the plan.

(3) No information need be provided as to the effect of a qualified domestic relations order as defined in ERISA Section 206(d) (29 U.S.C. 1056(d)).

(i) *Forfeitures and Penalties*

Describe briefly every event which could, under the plan, result in a forfeiture by, or a penalty to, a participant, and the consequences thereof.

(j) *Charges and Deductions and Liens Therefor*

(1) Describe all charges and deductions (other than deductions described in paragraph (d) and taxes) that may be made against employees participating in the plan or against funds, securities or other property held under the plan and indicate who will receive, directly or indirectly, any part thereof. Such description should include charges and deductions that may be made upon the termination of an employee's

interest in the plan, or upon partial withdrawals from the employee's account thereunder.

(2) State whether or not under the plan, or pursuant to any contract in connection therewith, any person has or may create a lien on any funds, securities, or other property held under the plan. If so, describe fully the circumstances under which the lien was or may be created.

(3) No information need be provided as to the effect of a qualified domestic relations order as defined in ERISA Section 206(d) (29 U.S.C. 1056(d)).

Item 2. Registrant Information and Employee Plan Annual Information

The registrant shall provide a written statement to participants advising them of the availability without charge, upon written or oral request, of the documents incorporated by reference in Item 3 of Part II of the registration statement, and stating that these documents are incorporated by reference in the Section 10(a) prospectus. The statement also shall indicate the availability without charge, upon written or oral request, of other documents required to be delivered to employees pursuant to Rule 428(b) (§ 230.428(b)). The statement shall include the address (giving title or department) and telephone number to which the request is to be directed.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The registrant, and where interests in the plan are being registered, the plan, shall state that the documents listed in (a) through (c) below are incorporated by reference in the registration statement; and shall state that all documents subsequently filed by it pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in the registration statement and to be part thereof from the date of filing of such documents. Copies of these documents are not required to be filed with the registration statement.

(a) The registrant's latest annual report, and where interests in the plan are being registered, the plan's latest annual report, filed pursuant to Section 13(a) or 15(d) of the Exchange Act, or in the case of the registrant either: (1) the latest prospectus filed pursuant to Rule 424(b) under the Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed, or (2) the registrant's effective registration statement on Form 10 or 20-F filed under the Exchange Act containing audited financial statements for the registrant's latest fiscal year.

(b) 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 registrant document referred to in (a) above.

(c) If the class of securities to be offered is registered under Section 12 of the Exchange Act, the description of such class of securities contained in a registration statement filed under such Act, including any amendment or report filed for the purpose of updating such description.

Item 4. Description of Securities

If the class of securities to be offered is not registered under Section 12 of the Exchange Act, set forth the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter). If plan interests are being registered, they need not be described pursuant to this item.

Item 5. Interests of Named Experts and Counsel

Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

Item 6. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

Item 7. Exemption from Registration Claimed

With respect to restricted securities to be reoffered or resold pursuant to this registration statement, the registrant shall indicate the section of the Act or Rule of the Commission under which exemption from registration was claimed and set forth briefly the facts relied upon to make the exemption available.

Item 8. Exhibits

Furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter), except that, with respect to Item 601(b)(5):

(a) An opinion of counsel as to the legality of the securities being registered is required only with respect to original issuance securities.

(b) Neither an opinion of counsel concerning compliance with the requirements of ERISA nor an Internal Revenue Service determination letter that the plan is qualified under Section 401 of the Internal Revenue Code shall be required if, in lieu thereof, the response to this Item 8 includes an undertaking that the registrant will submit or has submitted the plan and any amendment thereto to the Internal Revenue Service ("IRS") in a timely manner and has made or will make all changes required by the IRS in order to qualify the plan.

Item 9. Undertakings

Furnish the undertakings required by Item 512 (a), (b) and (h) of Regulation S-K (§ 229.512 (a), (b) and (h) of this chapter), as well as any other applicable undertakings in Item 512.

Notes to Item 9: (1) The Regulation S-K Item 512(a) undertakings are usually required pursuant to this item since most registration statements on Form S-8 involve the continuous offering and sale of securities under Rule 415 (§ 230.415 of this chapter).

(2) With respect to registration statements filed on this form, foreign private issuers eligible to file on Form 20-F are not required to furnish the Item 512(a)(4) undertaking.

SIGNATURES

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and 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 date indicated.

(Signature)— _____

(Title)— _____

(Date)— _____

The Plan. Pursuant to the requirements of the Securities Act of 1933, the trustees (or other persons who administer the employee benefit plan) have 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____.

(Plan)— _____

By (Signature and Title)— _____

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 at least a majority of the board of directors or persons performing similar functions. Where interests in the plan are being registered, the registration statement shall be signed by the plan. If the signing person is a foreign person, the registration statement also shall be signed by its authorized representative in the United States. Where the signing person 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 the signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. Attention is directed to Rule 402 (§ 230.402) concerning manual signatures and Item 601 (§ 229.601) of Regulation S-K concerning signatures pursuant to powers of attorney.

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

1. The authority citation for part 240 is revised to read as follows: (citations before * * * indicate general rulemaking authority).

Authority: 15 U.S.C. 78w, as amended, unless otherwise noted. * * *

2. By amending § 240.15d–21 by adding the word "and" at the end of (a)(1), removing (a)(3), and revising paragraphs (a)(2) as (b) to read as follows:

§ 240.15d–21 Reports for employee stock purchase, savings and similar plans.

(a) * * *

(2) Such issuer furnishes, as a part of its annual report on such form or as an amendment thereto, the financial statements required by Form 11–K (§ 249.311 of this chapter) with respect to the plan.

(b) If the procedure permitted by this Rule is followed, the financial statements required by Form 11–K with respect to the plan shall be filed within 120 days after the end of the fiscal year of the plan, either as a part of or as an amendment to the annual report of the issuer for its last fiscal year, *provided that* if the fiscal year of the plan ends within 62 days prior to the end of the fiscal year of the issuer, such information, financial statements and exhibits may be furnished as a part of the issuer's next annual report. If a plan subject to the Employee Retirement Income Security Act of 1974 uses the procedure permitted by this Rule, the financial statements required by Form 11–K shall be filed within 180 days after the plan's fiscal year end.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 249 continues to read as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, * * *

2. By revising the last sentence of § 249.311 to read as follows:

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

* * * Reports on this form shall be filed within 90 days after the end of the fiscal year of the plan, or, in the case of a plan subject to the Employee Retirement Income Security Act of 1974, within 180 days after the plan's fiscal year end.

3. By revising the text of Form 11–K (§ 249.311) to read as follows:

Note—The text of Form 11–K is not and the amendments will not be included in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235–0082.
Expires: March 31, 1993.
Estimated average burden hours per response—30.

Instructions and Form

FORM 11–K

FOR ANNUAL REPORTS OF EMPLOYEE STOCK PURCHASE, SAVINGS AND SIMILAR PLANS PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

General Instructions

A. Rule as to Use of Form 11–K

This form shall be used for annual reports pursuant to Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act") with respect to employee stock purchase, savings and similar plans, interests in which constitute securities registered under the Securities Act of 1933. This form also shall be used for transition reports filed pursuant to Section 15(d) of the Act. Such a report is required to be filed even though the issuer of the securities offered to employees pursuant to the plan also files annual reports pursuant to Section 13(a) or 15(d) of the Exchange Act. However, attention is directed to Rule 15d–21 (§ 240.15d–21), which provides that in certain cases the information required by this form may be furnished with respect to the plan as a part of the annual report of such issuer. Reports on this form shall be filed within 90 days after the end of the fiscal year of the plan, *provided that* plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA") shall file the plan financial statements within 180 days after the plan's fiscal year end.

B. Application of General Rules and Regulations

(a) The General Rules and Regulations under the Exchange Act contain requirements applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

(b) Particular attention is directed to Regulation 12B, which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, and the filing of the report. The definitions contained in Rule 12b–2 (§ 240.12b–2) should be especially noted. See also Regulation 15D.

(c) Four complete copies of each report on this form, including exhibits and all papers and documents filed as a part thereof, shall be filed with the Commission. At least one of the copies filed shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

C. Preparation of Report

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12 (§ 240.12b–12). The report may omit the text of Form 11–K specifying the information required provided the answers thereto are prepared in the manner specified in Rule 12b–13 (§ 240.12b–13).

D. Incorporation of Information in Report to Employees

Any financial statements contained in any plan annual report to employees covering the latest fiscal year of the plan may be incorporated by reference from such document in response to part or all of the requirements of this form, provided such financial statements substantially meet the requirements of this form and provided that such document is filed as an exhibit to this report on Form 11–K.

FORM 11–K

(Mark One)

[ ] ANNUAL REPORT PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [FEE REQUIRED]
For the fiscal year ended _____

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED] For the transition period from _____ to _____ Commission file number _____

A. Full title of the plan and the address of the plan, if different from that of the issuer named below:

B. Name of issuer of the securities held pursuant to the plan and the address of its principal executive office:

REQUIRED INFORMATION

The following financial statements shall be furnished for the plan:

1. An audited statement of financial condition as of the end of the latest two fiscal years of the plan (or such lesser period as the plan has been in existence).

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

3. The statements required by Items 1 and 2 shall be prepared in accordance with the applicable provisions of Article 6A of Regulation S–X (17 CFR 210.6A–01–.6A–05).

4. In lieu of the requirements of Items 1–3 above, plans subject to ERISA may file plan financial statements and schedules prepared in accordance with the financial reporting requirements of ERISA. To the extent required by ERISA, the plan financial statements shall be examined by an independent accountant, except that the "limited scope exemption" contained in Section 103(a)(3)(C) of ERISA shall not be available.

Note: A written consent of the accountant is required with respect to the plan annual financial statements which have been incorporated by reference in a registration statement on Form S–8 under the Securities Act of 1933. The consent should be filed as an exhibit to this annual report. Such consent shall be currently dated and manually signed.

SIGNATURES

The Plan. Pursuant to the requirements of the Securities Exchange Act of 1934, the trustees (or other persons who administer the employee benefit plan) have duly caused this

annual report to be signed on its behalf by the undersigned hereunto duly authorized.

(Name of Plan)
Date

(Signature) *
* Print name and title of the signing official under the signature.

Dated: June 6, 1990.
By the Commission.

Margaret H. McFarland,
Deputy Secretary

[FR Doc. 90-13456 Filed 6-12-90; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 89-085]

RIN 2115-AD50

Fees Charged for Services Performed by the Coast Guard

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing regulations concerning fees charged for landings of aircraft at Coast Guard Air Station, Elizabeth City, NC, for naval architecture and marine engineering computer program services, and for preapproval tests of certain Coast Guard approved equipment. This action is necessary to make Coast Guard regulations accurately reflect current agency practices. The effect of this action is to update existing Coast Guard regulations by removing obsolete information.

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant Bruce D. Branham, Office of Marine Safety, Security and Environmental Protection (G-MTH-3), U.S. Coast Guard, Washington, DC 20593-0001, (202) 267-2988.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published because this rule has no adverse safety, economic, or environmental effects, and notice and comments are considered unnecessary. Since the presence of outdated information in Coast Guard regulations leads to public confusion, the Coast Guard finds good cause to make this rulemaking effective in less than 30 days after publication in the Federal Register.

Discussion of the Regulations

1. Section 1.25 has become outdated over the years due to changes in the way the Coast Guard carries out its responsibilities. This rule amends § 1.25 by removing obsolete regulations requiring payment of fees for services that are now provided by sources other than the Coast Guard

2. Section 1.25-40(c), which lists certain service fees charged to the public by the Coast Guard, is removed. The Coast Guard no longer charges fees for aircraft landings at Air Station Elizabeth City since a portion of the air station grounds is leased to an airport authority that handles civilian aircraft landings. The previously offered naval architecture and marine engineering computer program services are obsolete and have not been provided by the Coast Guard for many years.

3. Section 1.25-50, Fees for preapproval tests, is removed. This section required that fees be paid by the manufacturer for preapproval tests of certain Coast Guard approved equipment conducted at Coast Guard facilities. The equipment approval regulations in 46 CFR subchapter Q now require manufacturers to use independent laboratories.

Drafting Information

The principal persons involved in drafting this document are LT Bruce D. Branham, Project Manager, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

E.O. 12291 and DOT Regulatory Policies and Procedures

This rule is considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary. The previously available services have not been used by the public for many years and are no longer beneficial. Removal of the regulations requiring fees for these services has no adverse economic impact.

Regulatory Flexibility Act

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that preparation of an environmental impact statement or an environmental assessment is not necessary. There are no environmental issues related to this rulemaking.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of Information, Penalties.

For the reasons set out in the preamble, 33 CFR part 1 is amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1, subpart 1.25, continues to read as follows:

Authority: Sec. 3, 60 Stat. 238, as amended; secs. 632, 633, 63 Stat. 545; sec. 501, 65 Stat. 290; 5 U.S.C. 552; 14 U.S.C. 632, 633; Department of Transportation Order 1100.1, Mar. 31, 1967; 49 CFR 1.4(a)(2).

§ 1.25-40 [Amended]

2. Section 1.25-40 is amended by removing paragraph (c) and Table 1.25-40(c).

§ 1.25-50 [Removed]

3. Section 1.25-50 is removed.

Dated: May 17, 1990.

D.H. Whitten,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-13683 Filed 6-12-90; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE01

Duty Periods

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction.