

information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes was published in the Federal Register on July 23, 1992 (57 FR 32746). That action proposed to require initial and repeated inspections of the rear pressure bulkhead, using both visual and non-destructive test methods, and repair of damaged parts, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 87 Viscount Model 744, 745D, and 810 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 work hours per airplane to accomplish the required actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$159,500, or \$5,500 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-22-03. British Aerospace: Amendment 39-8389. Docket 91-NM-277-AD.

Applicability: All Viscount Model 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the bulkhead and associated decompression of the passenger cabin, accomplish the following:

(a) Within 90 days after the effective date of this AD, using both visual and specified non-destructive test methods, inspect the rear pressure bulkhead for corrosion, cracks, and damage, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet 195, Issue 2, dated August 20, 1991 (for Model 810 series airplanes); or British Aerospace Viscount Alert Preliminary Technical Leaflet 325, Issue 2, dated August 22, 1991 (for Model 744 and 745D series airplanes); as applicable.

(b) Repeat the visual and non-destructive test inspections required by paragraph (a) of this AD at the following intervals:

(1) For "Part One: Rear Pressure Bulkhead—Forward Face—Rear Face," as specified in the applicable service bulletin: Repeat the inspections at intervals not to

exceed 500 landings or 6 months, whichever occurs first.

(2) For "Part Two: Rear Pressure Bulkhead Web Lap-Joints," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 1,000 landings or 2 years, whichever occurs first.

(3) For "Part Three: Rear Pressure Bulkhead Rear Face, Boundary Member, Adjacent Skin and Structure," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 2,500 landings or 3 years, whichever occurs first.

(c) If corroded, cracked, or damaged parts are found as a result of inspections required by paragraphs (a) or (b) of this AD, prior to further flight, repair in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 195, Issue 2, dated August 20, 1991; or PTL 325, Issue 2, dated August 22, 1991; as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repairs shall be done in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet 195, Issue 2, dated August 20, 1991; or British Aerospace Viscount Alert Preliminary Technical Leaflet 325, Issue 2, dated August 22, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 3, 1992.

Issued in Renton, Washington, on September 30, 1992.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 92-26201 Filed 10-28-92; 8:45 am]

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DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 921052-2252]

Public Information; Freedom of Information Initial Denial Officials

AGENCY: U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending its Freedom of Information Act rules by revising a listing of officials authorized to make initial denials for Freedom of Information requests. This amendment revises the list of authorized International Trade Administration (ITA) officials to reflect a recent ITA reorganization.

EFFECTIVE DATE: October 29, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Geraldine P. LeBoo, Departmental Freedom of Information Officer, Office of Federal Assistance and Management Support, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue NW., Washington, DC 20230, Telephone: 202-482-4115.

SUPPLEMENTARY INFORMATION: The Department of Commerce is amending its Freedom of Information Act regulations, 15 CFR part 4, to reflect current redelegation of authority for officials within the International Trade Administration who are authorized to make initial denials of requests for records.

The redelegation of authority for this particular Commerce component follows the reorganization within the International Trade Administration which became effective on June 15, 1992. Because this rule relates solely to organization and management, it is exempt from all requirements of section 553 of the Administrative Procedure Act, including notice and comment and delayed effective date. Accordingly, this revision is effective upon publication.

Because a notice of proposed rulemaking is not required by section 553 of the Administrative Procedures Act or any other law, a Regulatory Flexibility Analysis is not necessary for purposes of the Regulatory Flexibility Act.

This rule, relating to agency organization and management, is not subject to the requirements of Executive Order 12291.

This rule does not contain information collection activity as defined by the Paperwork Reduction Act.

This rule does not contain policies

with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 4

Freedom of Information, Public information.

For the reasons set forth in the preamble, 15 CFR part 4 is amended as follows:

1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552, 5 U.S.C. 553, Reorganization Plan No. 5 of 1950; 32 U.S.C. 3717.

PART 4—[AMENDED]

2. Appendix C is amended by revising the list of officials under the "International Trade Administration" heading to read as follows:

Appendix C—Officials Authorized To Make Initial Denials of Requests for Records

* * * * *

International Trade Administration

Deputy Under Secretary for International Trade

Deputy Assistant Secretary for Planning
Director, Office of Public Affairs
Director, Office of Legislative and Intergovernmental Affairs

International Economic Policy

Director, Office of Policy Coordination
Director, Office of Multilateral Affairs
Director, Office of Africa
Director, Office of the Near East
Director, Office of South Asia
Director, Office of Western Europe
Director, Office of European Community Affairs

Director, Office of Eastern Europe, Russia and Independent States
Director, Office of Latin America
Director, Office of Mexico
Director, Office of Canada
Director, Office of the PRC and Hong Kong

Director, Office of the Pacific Basin
Director, Office of Japan Trade Policy
Director, Office of Japan Commercial Programs

Import Administration

Director, Foreign Trade Zones Staff
Director, Office of Policy
Director, Statutory Import Programs Staff

Director, Office of Antidumping Compliance

Director, Office of Countervailing Compliance

Director, Office of Countervailing Agreements Compliance
Director, Office of Antidumping Investigations

Director, Office of Countervailing Investigations
Director, Office of Accounting

Trade Development

Director, Office of Trade and Economic Analysis
Director, Office of Export Promotion Coordination

Director, Office of Planning, Coordination and Resource Management
Director, Office of Aerospace
Director, Office of Computers and Business Equipment

Director, Office of Microelectronics, Medical Equipment and Instrumentation
Director, Office of Telecommunications
Director, Office of Automotive Affairs
Director, Office of Materials, Machinery and Chemicals

Director, Office of Energy, Environment and Infrastructure
Director, Office of Textiles and Apparel
Director, Office of Consumer Goods
Director, Office of Export Trading Company Affairs

Director, Office of Finance
Director, Office of Service Industries
U.S. and Foreign Commercial Service
Director, Office of Information Systems
Deputy Assistant Secretary for International Operations
Deputy Assistant Secretary for Domestic Operations

Director, Planning and Resource Management Staff
Manager, Export Promotion Services
Administration
Director, Office of Organization and Management Support
Director, Office of Personnel
Director, Office of Financial Management

Director, Office of Information Resources Management
* * * * *

Sonya G. Stewart,
Director for Federal Assistance and Management Support.

[FR Doc. 92-26221 Filed 10-28-92; 8:45 am]
BILLING CODE 3510-25-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6965, 34-31349, 35-25658, 39-2296, IC-19048, IA-1352]

Records Services, Fee Schedule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is revising § 200.80e, Appendix E, of Title 17, to increase the costs for photocopying services provided in connection with requests made pursuant to the Freedom of Information Act. Based on a review of cost and revenue information provided for the past year, the Commission has determined that a price increase from \$.20 per page to \$.22 per page is justified. **EFFECTIVE DATE:** November 1, 1992.

FOR FURTHER INFORMATION CONTACT: Jessica L. Kole ((202) 272-2700), Office of Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The price for copying services provided in connection with FOIA requests was last increased in November, 1989. After a review of cost and revenue information for the past year, the Commission has determined that a \$.02 price increase for this service is justified.

The Commission finds, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(3)(A)), that this revision relates solely to agency organization, procedures, or practices. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice and opportunity for comment.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200 continues to read as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

2. Section 200.80e is amended by revising the paragraph entitled "Regular service" to read as follows:

§ 200.80e Appendix E—Schedule of fees for records services.

Freedom of Information Act services. Paper copies of original paper copies, or from microfiche accessible to the contractor, provided in connection with Freedom of Information Act requests, will be shipped within seven calendar days after order and material are received by the contractor—each page—\$0.22. (Delivery costs and applicable sales taxes are additional.) This service is the same price as similar services provided through the Public Reference Room.

Dated: October 23, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-28259 Filed 10-28-92; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Parts 230, 239, 240 and 249

[Release Nos. 33-6964, 34-31345]

RIN 3235-AD67

Simplification of Registration Procedures for Primary Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today adopted revisions to rules and forms under the Securities Act of 1933 ("Securities Act") and Securities Exchange Act of 1934 ("Exchange Act") to provide issuers greater flexibility and efficiency in accessing the public securities markets. The availability of Form S-3, the short-form registration statement under the Securities Act, has been expanded to additional issuers and classes of transactions. The expanded availability of Form S-3 also extends the benefits of rule 415, the shelf registration rule, to a greater variety of offerings, including investment grade asset-backed securities offerings. Today's revised rules also permit shelf registration of debt, equity and other securities without a specific allocation of offering amounts among the classes of securities being registered; provide for immediate effectiveness of Form S-3 registration statements for dividend and interest reinvestment plans; permit specified price and volume changes to be made after effectiveness under Rule 430A without the filing of a post-effective amendment; and streamline the registration of securities on Form 8-A

under the Exchange Act. A change to the prospectus filing rule, rule 424, also has been adopted that will accommodate the special timing constraints in connection with offerings of mortgage-related and other asset-backed securities.

EFFECTIVE DATE: October 29, 1992.

FOR FURTHER INFORMATION CONTACT: Darrell N. Braman, Jr. or Meredith B. Cross, at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today adopted amendments to Form S-3¹ under the Securities Act.² The amendments increase the classes of issuers and transactions eligible to use that registration statement form and consequently the shelf registration offering procedures of rule 415,³ and permit eligible issuers to register debt, equity and other classes of securities on a single shelf registration statement without a specific allocation of offering amounts among the classes of securities being registered. Corresponding revisions to rule 457,⁴ the fee calculation rule, and Forms S-3 and S-4,⁵ implement this registration procedure. Revisions to Form S-3 and rule 462⁶ provide for automatic effectiveness of registration statements on Form S-3 for dividend and interest reinvestment plans upon filing with the Commission. The Commission also amended rule 430A⁷ to permit specified changes in price and volume information to be made after effectiveness without the need to file a post-effective amendment, provided the changes do not materially change the disclosure contained in the registration statement at effectiveness. Further, an instruction has been added to the prospectus filing rule, rule 424,⁸ to allow prospectus supplements containing pricing and other transaction-specific information with respect to mortgage-related and investment grade asset-backed offerings to be filed no later than two business days following first use. Finally, the Commission amended Form 8-A,⁹ the short-form used to register securities under Section 12 of the Exchange Act,¹⁰ and rule 12b-

¹ 17 CFR 239.13.

² 15 U.S.C. 77a et seq.

³ 17 CFR 230.415.

⁴ 17 CFR 230.457.

⁵ 17 CFR 239.25.

⁶ 17 CFR 230.462.

⁷ 17 CFR 230.430A.

⁸ 17 CFR 230.424.

⁹ 17 CFR 249.208a.

¹⁰ 15 U.S.C. 78j(g).

23¹¹ to permit limited information about the terms of the securities to be incorporated by reference from prospectus supplements filed after the effective date.

I. Executive Summary

The Commission today adopted several initiatives that will simplify substantially the securities registration process. These initiatives, which were published for comment in July of this year,¹² received enthusiastic support from commenters.¹³ Commenters agreed that, if adopted, the proposed revisions would provide significant cost savings, efficiency and flexibility for many issuers. The initiatives have been adopted substantially as proposed.

Today's initiatives recognize and build on the success of the integrated disclosure system and shelf registration process adopted 10 years ago. Form S-3, the short-form registration statement that permits maximum reliance upon Exchange Act reports filed by issuers, will now be available to a larger class of issuers and transactions, including issuers of investment grade asset-backed securities. The Commission's shelf registration procedures also are extended to these newly eligible issuers, thereby allowing significantly greater numbers of issuers the flexibility to access the public securities markets on demand without having to obtain additional clearance from the Commission's staff. These changes remove unnecessary regulatory obstacles to capital raising and should reduce the costs of securitizing a variety of financial assets, including pools of small business loans.

Three principal changes to the Form S-3 eligibility requirements have been made. First, the reporting history necessary to register on Form S-3 has been reduced from 36 to 12 months for most issuers. Second, the aggregate market value of the issuer's voting stock held by non-affiliates (referred to as the "public float") qualifying an issuer for use of Form S-3 for any of its securities has been reduced from \$150 million to \$75 million, and the 3 million share trading volume test has been eliminated. Third, Form S-3 has been amended to specifically permit registration of investment grade asset-backed securities without regard to whether the

issuer or registrant has a reporting history.

Because shelf registration is available for offerings registered, or eligible to be registered, on Form S-3,¹⁴ these changes to Form S-3 also extend shelf registration to these newly eligible issuers and offerings. Thus, Rule 415 shelf registration will be available for offerings of investment grade asset-backed securities, whether registered on Form S-3 or one of the Commission's other registration forms, such as Form S-1 or Form S-11.

To provide additional flexibility and facilitate the use of shelf registration for delayed offerings of common stock, Form S-3 has been revised as proposed to permit Form S-3 eligible companies to register debt, equity and other securities on a single shelf registration statement, without having to specify in the registration statement the amount of each class of securities to be offered. Prospectus supplements filed after effectiveness will disclose the amount of the particular security being offered to investors, thereby insuring that investors receive the same information currently provided. In addition, an amendment to the prospectus filing rule has been adopted as proposed to accommodate the special timing constraints present in asset-backed securities offerings. Under this revision, prospectus supplements containing price and other offering information for asset-backed securities offerings may be filed within two business days following first use, rather than two business days following the earlier of pricing or first use as was previously required.¹⁵

The Commission also has adopted the proposed revisions to provide for immediate effectiveness of Form S-3 registration statements covering dividend and interest reinvestment plans; the proposed revision to rule 430A to allow certain changes in the offering price and decreases in the amount of the securities offered to be reflected after effectiveness in the final prospectus without the need to file a post-effective amendment; and the proposed revision to Form 8-A, the Exchange Act short-form registration statement, to eliminate the need to file a pre-effective pricing amendment to that form. Each of these changes was endorsed by commenters.

II. Initiatives to Simplify the Registration Process

A. Revisions to the Form S-3 Registration Statement

1. Introduction

The rule and form changes adopted today expand the number of issuers and types of transactions eligible for Form S-3 and, thereby, accord these newly eligible issuers the benefits of shelf registration. With the exceptions noted below, these revisions have been adopted substantially as proposed.

2. Registrant Requirements—Reporting History

The proposal to reduce Form S-3's reporting history requirement from 36 to 12 months for all offerings of non-asset-backed securities was overwhelmingly supported by commenters and has been adopted as proposed. Under this change, an issuer subject to reporting for at least 12 months prior to filing its registration statement, and which had timely filed all required reports during the 12 months prior to filing, will be eligible to use Form S-3, assuming other applicable transaction requirements are met.¹⁶ This change applies to all offerings of non-asset-backed securities permitted to be registered on Form S-3, including, for example, primary offerings of debt, equity or other securities (whether or not investment grade), secondary offerings, rights offerings to shareholders and offerings of securities issuable upon exercise of warrants.

3. Transactional Requirements

a. *Public float requirement.* The proposal to reduce the minimum public float eligibility criteria of Form S-3 to \$75 million, which also was favored by commenters, has been adopted as proposed. Under the amendment, an issuer with at least \$75 million in voting stock held by non-affiliates is now eligible to use Form S-3 to register any class of its securities, so long as the issuer satisfies the other issuer eligibility requirements.¹⁷ Consistent with the proposal, the trading volume test for companies with a public float of under \$150 million has been eliminated.¹⁸ As a result of the changes

¹⁶ The amendment does not alter any other registrant eligibility requirements set forth in General Instruction I.A. of Form S-3.

¹⁷ General Instruction I.B.1 ("Primary Offerings by Certain Registrants") of Form S-3 formerly required a minimum public float of \$150 million.

¹⁸ Until today, issuers with a public float between \$100 million and \$150 million were required to have an annual trading volume of 3 million shares in order to use Form S-3 for primary offerings of securities.

¹¹ 17 CFR 240.12b-23.

¹² See Securities Act Release No. 6943 (July 16, 1992) [57 FR 32461] ("Proposing Release").

¹³ Pursuant to Commission request for comment, 29 commenters submitted letters. The letters and a staff summary of the letters are available for public inspection and copying at the Commission's Public Reference Room. (See File No. S7-20-92).

¹⁴ See Rule 415(a)(1)(x).

¹⁵ This revision codifies a staff interpretive position applicable to offerings of collateralized mortgage obligations. See Division of Corporation Finance Interpretive Letter to Skadden, Arps, Slate, Meager & Flom regarding "Certain Mortgage Related Securities Under Rule 415(a)(1)(vii) and Prospectus Filing Requirements of Rule 424(b) (2) and (5)" (avail. Aug. 19, 1987).

in the reporting history and public float criteria, an estimated 450 additional companies with an aggregate public float of \$88 billion will now be eligible to register primary offerings of any of their securities on Form S-3.

b. *Investment grade non-convertible securities.* The Form S-3 eligibility criteria for investment grade securities have been amended as proposed to substitute the term "non-convertible securities" for the current specific references to non-convertible debt or preferred stock. This change clarifies that other investment grade financing instruments (such as foreign currency or other cash settled derivative securities) may be registered under the investment grade eligibility standard.

In addition, Form S-3 has been revised to clarify that investment grade securities must have the required rating at the time of sale to the public in order to qualify for this Form S-3 eligibility category. However, in response to commenter concern that the proposed instruction could be construed to require an investment grade rating at the time the registration statement is filed rather than at the time that the securities are actually sold, the term "offer" has been deleted to make clear that the requirement must be satisfied at the time of sale.¹⁹ If the final rating falls below investment grade, a post-effective amendment on Form S-1 or Form S-2 could be used before a particular take-down is made for sales of securities off the shelf; or alternatively, the issuer could file a new registration statement with respect to the non-qualifying securities.

c. *Investment grade asset-backed securities.*—(i) *General.* Before today, the benefits of Form S-3 and shelf registration for delayed offerings generally were not available to issuers of non-mortgage related investment grade asset-backed securities. As a result, for example, investment grade small business loan or credit card receivables trust certificates generally could not be registered for sale on a

delayed basis. By contrast, mortgage-related asset backed securities, which may be of comparable character and quality to other investment grade asset-backed securities, were specifically permitted to be offered on a delayed basis under rule 415(a)(1)(vii), whether or not registered on Form S-3.

In order to eliminate this anomaly, Form S-3 has been amended in substantially the same manner as proposed to add offerings of investment grade asset-backed securities as an additional category of transactions that may be registered on the form. As a result of this change, asset-backed securities registered, or qualified to be registered, on Form S-3 may be sold on a delayed basis pursuant to Rule 415(a)(1)(x). The shelf rule will be available for offerings of these securities whether registered on Form S-3 or on another form, such as Form S-1 or Form S-11, since Rule 415(a)(1)(x) requires only that the securities be "qualified" to be registered on Form S-3.

(ii) *Reporting history.* Asset-backed securities may be registered on Form S-3 whether or not the issuer (i.e., the trust or other limited purpose entity) or the registrant (i.e., the trust or other limited purpose entity) or the registrant (i.e., the sponsor, servicer or depositor) has a previous Exchange Act reporting history. Technical changes have been made to the Form S-3 eligibility requirements in response to commenter concerns over the use of the terms "issuer" and "registrant" in the proposed instructions. To clarify that neither the issuer nor the registrant is required to have a previous reporting obligation, proposed Instruction A.4. to Form S-3 has been revised to read that the reporting history requirements do not apply to "any registered offerings of investment grade asset-backed securities."²⁰ Commenters agreed that a reporting history requirement would be of limited utility due to the unique nature of asset-backed securities offerings—ordinarily a different issuer with its own discrete asset pool is formed for each particular offering, and therefore, a reporting history would be of little practical use for investors.

(iii) *"Asset-backed security" definition.* The definition of "asset-backed security" has been adopted substantially as proposed. A broad standard has been adopted in order to

provide sufficient flexibility and to accommodate future developments in the asset-backed marketplace. To qualify for Form S-3 registration, the securities must be investment grade and must be primarily serviced by the cashflows of a discrete pool of receivables or other financial assets.

The definition does not distinguish between pass-through (i.e., equity) and pay-through (i.e., debt) asset-backed securities. Consequently, both pay-through and pass-through securities, as well as residual or subordinate interests, can be registered on the form if all other conditions are met. At a commenter's suggestion, the term "obligations," in the proposed definition has been deleted from the phrase "a security the obligations of which are primarily serviced" in order to clarify that the definition does not distinguish between debt and equity. The definition also does not distinguish between whole securities and components of such securities, such as interest-only ("IO") and principal-only ("PO") securities.

The definition does not include a list of "eligible" assets that could be securitized. Although some commenters suggested that a non-exclusive list of eligible assets be included for guidance, this approach has not been adopted because the Commission believes it could prove to be too limiting. Instead, the definition is intended to be quite broad, referring to "receivables or other financial assets" that by their terms convert into cash within a finite time period. This would encompass any of the assets included in proposed Rule 3a-7 under the Investment Company Act of 1940,²¹ such as notes, leases, installment contracts and interest rate swaps, as well as other financial assets, such as small business loans, credit card receivables, accounts receivable and franchise or servicing arrangements.

In response to commenter concern that the reference to a "discrete" pool of assets in the proposed definition might not permit securitization of revolving assets, the phrase "fixed or revolving" has been added in order to make clear that the definition covers "revolving" credit arrangements, such as credit card and short-term trade receivables, home equity loans and automotive dealer floorplan financings, where account or loan balances revolve due to periodic payments, charge-offs and closings of the receivables.²² Thus, Form S-3 and

¹⁹ At the time of filing, the registrant must have a reasonable belief based upon, for example, the registrant's own investment grade rating or a recent rating assigned to a similar class of securities, that the security rating requirement will be met by the time of sale. Generally, in order to sign the Form S-3, the registrant must certify that it has reasonable grounds to believe that it meets all the requirements for filing on the form. A conforming amendment has been made to the Form S-3 signature instruction applicable to the investment grade rating eligibility requirement. Under this instruction as amended, a registrant may sign the registration statement notwithstanding the fact that a security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the rating requirement will be met by the time of sale.

²⁰ An additional change has been made to the proposed instruction in order to make clear that the conditions of Instruction A.2. to Form S-3, which requires that a registrant have a class of equity securities registered under sections 12(b) or 12(g) or otherwise be required to file reports pursuant to section 15(d) of the Exchange Act, do not apply to investment grade asset-backed securities offerings.

²¹ See Investment Company Act Release No. 18736 (May 29, 1992).

²² In credit card financings, for example, the securities are backed by current and future

shelf registration would be available for asset-backed securities where the payment obligations on the securities are serviced primarily by the cashflows of a pool of discrete liquidating assets, whether fixed or revolving.

The assets also may include guarantees, letters of credit, financial insurance or other instruments provided as a credit enhancement for the securities of the issuer or which support the underlying assets in the pool. Several commenters requested clarification as to whether "ancillary" or "incidental" assets would be encompassed by the definition. For example, many structured financings permit the servicer or trustee to reinvest idle cash in short-term debt obligations when there is a timing mismatch between collections and payments to investors. Another example would include equipment or property obtained by the trustee or servicer upon the lease default of a third-party lessee. The definition is not intended to exclude "ancillary" or "incidental" assets that comprise a portion of the asset pool during the term of the structured finance arrangement, and which are necessary in the course of servicing the underlying assets or to assure the distribution of cashflow and/or proceeds to securityholders. Because the definition as proposed did not exclude such assets, no change is necessary to address this concern.

Commenters were also concerned that the phrase "convert into cash within a specified period of time" connotes that the cash flow from the underlying assets must be constant and uninterrupted. The definition, as proposed and as adopted, is sufficiently broad to encompass any self-liquidating asset which by its terms converts into one or more cash payments within a finite period of time. There are no substantive requirements as to the timing of the cashflows under the definition—the payments on the asset-backed securities, however, must be based primarily upon the cashflow from the assets held by the asset-backed issuer.

The requirement that the asset-backed securities be rated "investment grade" by a nationally recognized statistical rating organization ("NRSRO") has been adopted. Under this standard, asset-backed securities will be "investment

grade" if at the time of sale to the public the securities are rated by at least one NRSRO in one of its generic rating categories which signifies investment grade, typically one of the four highest categories.²³ Consistent with the proposal, this standard will extend the benefits of shelf registration to mortgage-backed securities that are rated in the top four rating categories, but not the top two categories, as was previously required.²⁴ Commenters supported the investment grade rating requirement for asset-backed securities, as well as the broadening of the standard for mortgage-related securities.

(iv) *Disclosure obligations.* By making Form S-3 and shelf registration available for asset-backed securities offerings, the Commission does not intend to change the character or quality of the disclosure that is customary in these offerings. The type or category of asset to be securitized must be fully described in the registration statement at the time of effectiveness. A registration statement may not merely identify several alternative types of assets that may be securitized. In addition, the risks associated with changes in interest rates or prepayment levels should be fully disclosed. The various scenarios under which payments on the asset-backed securities could be impaired should also be discussed.

When asset-backed securities are registered for the shelf, in addition to identifying the assets that will be used, the registration statement must identify the types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes (including IO or PO securities), planned amortization or companion classes or residual or subordinated interests.

Consistent with staff practice for offerings of mortgage-related securities, when an offering of asset-backed securities includes classes which bear a disproportionate share of the credit or prepayment risks, the prospectus (or prospectus supplement in a shelf offering) must include clear, concise and understandable descriptions of the characteristics of such classes and the

consequences of the characteristics. Some of the consequences which may be material, depending on the prepayment pattern of the assets and the characteristics of the offered class, include: (1) Past prepayment of principal rates and the factors that affect the rate of principal repayment; (2) the risk that interest-weighted classes bought at a premium may not return the purchase price in the event of rapid repayment; (3) the degree to which an investor's yield is sensitive to principal repayments; (4) the consequences of an increasing prepayment rate in a declining interest rate environment and a declining prepayment rate in an increasing interest rate environment; and (5) an explanation of what an NRSRO rating addresses and the characteristics the rating does not address.

(v) *Asset concentration.* Asset-backed securities generally are serviced by a pool of financial assets representing obligations of a large number of obligors. For example, in a credit card receivables trust, payments on the underlying credit cards would come from numerous members of the general public. In that situation, the information about the financial condition of any one obligor is not important to an investment decision. With this structure in mind, the Proposing Release requested comment as to whether the definition of asset-backed security should include an "asset concentration" limit—that is, a security would be excluded from the definition if a certain amount of the pool assets represented obligations of one obligor or related obligors. Most commenters opposed a specific asset concentration test, believing that such a test would unnecessarily limit the intended flexibility of the new rules.

The definition as adopted does not include an asset concentration test. Instead, questions with respect to asset concentration will be addressed through existing disclosure rules. For example, if a significant amount of the asset pool represents obligations of a single obligor or related obligors, financial information and other disclosure about the obligor(s) may be required. Similarly, asset-backed offerings with significant asset concentration may involve one or more co-issuers under Securities Act Rule 140.²⁵ Finally, although an asset

²³ Consistent with the revision to the eligibility criteria for investment grade securities on Form S-3, the required rating is not required to be obtained at the time of filing. Rather, the rating must be obtained before the securities are sold.

²⁴ In order to rely upon rule 415(a)(1)(vii), mortgage-related securities must fall within Section 3(a)(41) under the Exchange Act [15 U.S.C. 78(c)(41)], which imposes a condition that such securities be rated in one of the two highest rating categories. Mortgage-backed securities that are rated in the top four rating categories and that otherwise qualify for Form S-3 now may rely upon rule 415(a)(1)(x).

²⁵ 17 CFR 230.140. Securities Act Rule 140 states, in pertinent part, as follows:

"A person, the chief part of whose business consists of the purchase of the securities of one issuer, or two or more affiliated issuers, and the sale of its own securities, * * * to furnish the proceeds with which to acquire the securities of such issuer or affiliated issuers, is to be regarded as engaged in

Continued

receivables generated by specified credit card accounts. The balances of the pooled assets fluctuate as new receivables are generated and existing amounts are paid or charged off as a default. If the accounts do not generate sufficient cashflow to support the securities, the sponsor may be required to assign additional receivables from other accounts to the public securityholders' interest in the pool.

concentration test has not been included, the definition does not encompass securities issued in structured financings for one obligor or group of related obligors.

(vi) *Prospectus supplements.* Finally, in connection with the use of shelf registration for asset-backed securities offerings, rule 424(b), the prospectus filing rule, has been amended as proposed to codify a staff interpretive position that permits issuers of collateralized mortgage obligations to file prospectus supplements containing price and other offering information within two business days following first use (or to transmit such supplements by a means reasonably calculated to result in filing by such date), rather than rule 424(b)'s general rule that the prospectus be filed not later than the earlier of two business days following pricing or first use (or transmitted by a means reasonably calculated to result in filing by such date). This revision also extends to issuers of other mortgage-related and asset-backed securities.

4. Majority-Owned Subsidiaries

Form S-3 is available to majority-owned subsidiaries in three circumstances.²⁶ General Instruction I.C.3. has been revised to make it clear that Form S-3 is available where a Form S-3 eligible parent fully and unconditionally guarantees the "payment obligations" on the subsidiary's non-convertible securities being registered. This change, which was favored by commenters, is intended to clarify that the form is available to register securities other than traditional debt securities.

5. Dividend or Interest Reinvestment Plans

Form S-3 has also been amended to provide for the automatic effectiveness upon filing of a Form S-3 registration statement relating solely to a dividend or interest reinvestment plan, including those plans which permit voluntary investment of additional funds by existing securityholders.²⁷ A corresponding amendment was made to rule 462 to provide for such immediate effectiveness. Commenters were supportive of this proposed change.

the distribution of the securities of such issuer or affiliated issuers within the meaning of Section 2(11) of the [Securities] Act."

²⁶ See General Instruction I.C. to Form S-3.

²⁷ See rule 405 (17 CFR 230.405) under the Securities Act, which defines "dividend or interest reinvestment plan" to include plans that permit existing securityholders to reinvest dividends but "also may allow additional cash amounts to be contributed by the participants in the plan."

6. Shelf Registration of Aggregate Amounts of Securities Without Allocation Among Classes

The proposal relating to the shelf registration of an aggregate amount of securities, without specifying particular amounts, has been adopted as proposed. Registrants offering securities on a Form S-3 shelf registration statement will no longer be required to specify the amount of each class of securities to be offered—registration of an aggregate amount of securities is acceptable. Thus, an issuer registering securities on Form S-3 based on the public float of its voting stock or investment grade rating of the securities being offered²⁸ may now disclose the various types and categories of securities covered by the registration statement (both debt and equity), but is not required to assign a specific dollar amount to each category to be offered. The registration statement would list the types of securities covered and the prospectus supplement would specify the amount of the particular security to be offered. In this way, the registrant would be able to offer any category of securities specified in the registration statement up to the total dollar amount registered.²⁹ Investors will receive the same information as is currently required for any self offering. No change is intended concerning the disclosures necessary in a shelf registration statement with respect to the types of each category of securities being registered. A conforming change to Form S-4 was made for shelf acquisition registrations by Form S-3 eligible issuers.

One commenter requested clarification of an informal staff practice regarding a 48-hour waiting period before securities may be sold from an effective, delayed-basis, shelf registration statement. The practice apparently had developed in response to concerns about immediate underwritten sales of a large (or the entire) amount of securities offered pursuant to a registration statement that disclosed that the securities would be offered from time to time in the market, and did not disclose the terms of the distribution effected immediately after effectiveness. The 48-hour practice has been discontinued; such delay does not address the fundamental issue—

whether the registration statement was accurate at the time of effectiveness with respect to the plan of distribution. Questions about the accuracy of such disclosure will be treated like any other disclosure issues that are raised after effectiveness of the registration statement. Registrants are reminded that disclosure in the registration statement at the time of effectiveness should accurately reflect the registrant's current plans and arrangements with respect to the distribution of its securities—a 48-hour waiting period is not a prescription for a "delayed basis" shelf registration under rule 415(a)(1)(x).³⁰

B. Revisions to Rule 430A

An amendment to rule 430A has been adopted as proposed to permit price changes and volume decreases that do not materially change the disclosure in the registration statement to be reflected in the final prospectus without the need to file a post-effective amendment. Rule 430A permits the omission of specified price-related information from the registration statement at the time of effectiveness, provided specific conditions are met. Formerly, even immaterial decreases in the volume of securities offered and a pricing change which fell outside of a bona fide range would have required the filing of a post-effective amendment.

As of today, a new materiality standard is to be used in determining whether a post-effective amendment would be required to reflect a decrease in volume or to update price range information. Under this materiality standard, a post-effective amendment will not be required unless a decrease in the volume or a change in the price range would materially change the disclosure included in the registration statement at effectiveness.³¹ Examples of situations in which a post-effective amendment would be required include changes to the volume or price that would materially affect the public float after the offering, the use of proceeds, the issuer's financial condition or the control of the issuer.

³⁰ A registrant that is eligible to engage in a delayed basis offering, and which is uncertain at the time of filing of whether or not the securities will be offered promptly after effectiveness or on a delayed basis under rule 415, may follow an established administrative procedure to retain the option to proceed under either rule 430A or rule 415 with respect to all or a portion of the registered securities. See Section II.A.11. of Securities Act Release No. 6714 (May 27, 1987).

³¹ This information will be treated the same as any other information omitted in reliance upon paragraph (a) of Rule 430A.

²⁸ Of course, registrants relying solely upon the investment grade eligibility requirement for use of Form S-3 could not include unrated securities, such as common stock, among the categories of securities being offered.

²⁹ In computing the amount available on the registration statement, the dollar amount of each offering would be subtracted from the remaining amount. See new Securities Act Rule 457(o) for the computation of the filing fee.

C. Concurrent Securities Act and Exchange Act Registration

The Exchange Act registration form used in a concurrent registration has been amended to permit price-related terms of the securities to be omitted at the time of effectiveness in a manner similar to Securities Act Rule 430A. This revision has been adopted as proposed—comment was overwhelmingly favorable.

Form 8-A is used to accomplish concurrent Exchange Act registration of securities sold pursuant to an effective Securities Act registration statement. Prior to today's change, where the security being registered was one in which the "terms" were established at the time of pricing, an amendment to the Form 8-A was required before sales could commence to set forth the pricing-related terms. The need for this Form 8-A pricing amendment undercut the utility and efficiencies of rule 430A and rule 415.

In order to address this concern, Form 8-A has been amended to permit the Form 8-A to become effective without the final, price-related terms of the securities. This price-related information may be incorporated by reference into the Form 8-A from a prospectus or prospectus supplement filed in accordance with current rule 424(b) under the Securities Act.³² The same price-related information that is permitted to be omitted from the Securities Act registration statement at the time of effectiveness in reliance upon Rule 430A may now be omitted from the Form 8-A.³³

III. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendments to Form S-3, Form S-4, rule 424, rule 430A, rule 457, rule 462, Form 8-A, and rule 12b-23, the Commission requested commenters to provide views and empirical data as to the costs and benefits associated with amending the rules and forms to expand the

availability of Form S-3 and the resultant extension of rule 415 to a greater variety of offerings. The vast majority of public commenters were of the view that the proposals, if adopted, would work substantial cost savings to issuers by expanding the availability of shelf registration to a greater variety of offerings, including investment grade asset-backed securities. The expanded use of shelf registration by both newly eligible corporate issuers and asset-backed securities issuers would, according to commenters, reduce issuers' out-of-pocket expenses for printing, accounting, and legal services as well as mailing costs. Also, commenters believed that the proposals would bring additional financing flexibility to the structured finance market by reducing transaction costs associated with offering multiple issues of a series of asset-backed securities. In fact, one asset-backed securities issuer anticipated that its particular cost savings resulting from the proposals would be approximately \$30,000 to \$50,000 per transaction. Furthermore, these cost savings will be effected without a reduction in the amount of information or a change in the nature of the disclosure to the investing public under the Securities Act or the Exchange Act.

IV. Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared regarding the amendments in accordance with 5 U.S.C. 604. A copy of the analysis may be obtained by contacting Darrell N. Braman, Jr., Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The summary of the corresponding Initial Regulatory Flexibility Analysis appears at 57 FR 32461 (Rel. No. 33-6943).

V. Effective Date

The amendments to the rules and forms relating to the simplification of registration procedures for primary securities offerings are effective upon publication in the *Federal Register*. Pursuant to 5 U.S.C. 553(d)(1), immediate effectiveness is appropriate because the amendments to the rules and forms relieve restrictions on the use of Form S-3, thereby expanding the availability of shelf registration to additional classes of issuers and transactions, which will provide issuers greater flexibility and efficiency in accessing the public securities markets. The amendments also will relieve issuers of certain procedural restrictions which formerly impaired the efficiency of the shelf registration process. The benefits of

these amendments to both persons subject to the federal securities laws as well as potential investors should be available at the earliest possible time.

VI. Statutory Bases

The amendments to the Commission's rules and forms are being adopted pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended, sections 12, 13, 15(d) and 23(a) of the Securities Exchange Act of 1934, as amended.

List of Subjects

17 CFR Parts 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

VII. Text of Amendments

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

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

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

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 78l(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

2. By amending § 230.424 by adding a new Instruction after paragraph (b)(6) to read as follows:

§ 230.424 Filing of Prospectuses, Number of Copies.

* * * * *

(b) * * *

(6) * * *

Instruction. Notwithstanding § 230.424 (b)(2) and (b)(5) above, a form of prospectus or prospectus supplement relating to an offering of mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) or asset-backed securities on a delayed basis under § 230.415(a)(1)(x) that is required to be filed pursuant to paragraph (b) of this section shall be filed with the Commission no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

3. By amending § 230.430A by adding an instruction after paragraph (a)(3) to read as follows:

§ 230.430A Prospectus in a Registration Statement at the Time of Effectiveness.

(a) * * *

³² A related technical amendment to rule 12b-23 under the Exchange Act has been made to except rule 424(b) supplements filed after effectiveness of a Form 8-A from rule 12b-23's requirement that information incorporated by reference into an Exchange Act registration statement be included as an exhibit to the registration statement.

³³ Registrants are permitted to provide the title of the securities on the cover of the Form 8-A in preliminary form before the securities are priced (e.g., "debentures due 20__"), so that the requirement to provide the title of the securities would not be an impediment to the effectiveness of the Form 8-A prior to pricing.

Because foreign issuers also may use Form 8-A for concurrent Exchange Act registration, the new Form 8-A pricing amendment procedure will be available to these issuers.

(3) * * *

Instruction to paragraph (a): A decrease in the volume of securities offered or change in the bona fide estimate of the maximum offering price range from that indicated in the form of prospectus filed as part of a registration statement that is declared effective may be disclosed in the form of prospectus filed with the Commission pursuant to § 230.424(b) or § 230.497(h) under the Securities Act so long as the decrease in the volume or change in the price range would not materially change the disclosure contained in the registration statement at effectiveness.

4. By amending § 230.457 by adding new paragraph (o) to read as follows:

§ 230.457 Computation of Fee.

(o) Where an issuer eligible to use Form S-3 is registering securities pursuant to General Instruction I.B.1 or I.B.2 to Form S-3 to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(x), or pursuant to General Instruction H. to Form S-4 in connection with a business combination transaction pursuant to § 230.415(a)(1)(viii), the registration fee may be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table.

5. By revising § 230.462 to read as follows:

§ 230.462 Effective Date of a Registration Statement Filed on Form S-8 and Dividend or Interest Reinvestment Plan Filed on Form S-3.

A registration statement on Form S-8 (§ 239.16b of this chapter) and a registration statement on Form S-3 (§ 239.13) for a dividend or interest reinvestment plan shall become effective upon filing with the Commission.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77a, et seq., unless otherwise noted.

7. By amending § 239.13 by revising the introductory text to paragraph (a); revising paragraph (a)(3)(i); redesignating paragraphs (a)(4) through (a)(6) as paragraphs (a)(5) through (a)(7); adding new paragraph (a)(4); in the introductory text of newly redesignated paragraph (a)(7), revise the phrase "in paragraph (a) (1), (2), (3) and (4)" to read "in paragraph (a) (1), (2), (3), and (5)"; revising the introductory text to paragraph (b); revising paragraphs (b)(1)

and (b)(2); adding new paragraph (b)(5); revising paragraph (c)(2) and the first sentence of paragraph (c)(3) to read as follows:

§ 239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

(a) Registrant requirements.

Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of securities offered in the transactions specified in paragraph (b) of this section:

(3) The registrant:

(i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and

(4) The provisions of paragraphs (a)(2) and (a)(3)(i) of this section do not apply to any registered offerings of investment grade asset-backed securities as defined in paragraph (b)(5) of this section.

(b) Transaction requirements.

Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) *Primary and secondary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; provided that the aggregate market value of the voting stock held by non-affiliates of the registrant is \$75 million or more.

Instruction

The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. See the definition of affiliate in Securities Act Rule 405 (§ 230.405 of this chapter).

(2) *Primary offerings of non-convertible investment grade securities.* Non-convertible securities to be offered for cash by or on behalf of a registrant,

provided such securities at the time of sale are investment grade securities, as defined below. A non-convertible security is an investment grade security if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (§ 240.15c3-1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

(5) *Offerings of investment grade asset-backed securities.* Asset-backed securities to be offered for cash, provided the securities are investment grade securities, as defined in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities). For purposes of this Form, the term "asset-backed security" means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(c) * * *

(2) The parent of the registrant-subscriber meets the Registrant Requirements and the conditions of Transaction Requirement in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities) are met; or

(3) The parent of the registrant-subscriber meets the Registrant Requirements and the applicable Transaction Requirement, and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities. * * *

§ 239.13 [Amended]

8. By amending Form S-3 (§ 239.13) by revising the introductory text to paragraph A. and paragraph A.3.(a); redesignating paragraphs A.4. through A.6. as paragraphs A.5. through A.7.; adding new paragraph A.4. and in the introductory text of newly redesignated paragraph A.7. revise the phrase "conditions 1., 2., 3., and 4.," to read "conditions 1., 2., 3., and 5.," of General Instruction I; revising the introductory text to paragraph B. and paragraphs B.1.

and B.2. and adding new paragraph B.5 to General Instruction I; revising paragraph C.2. and the first sentence of paragraph C.3. of General Instruction I; adding new paragraph D to General Instruction II; removing the first four sentences of General Instruction III and adding the following two sentences; and revising Instruction 3. to the Signatures to read as follows:

Note: Form S-3 does not appear in the Code of Federal Regulations.

Form S-3

General Instructions

1. **A. Registrant Requirements.** Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of securities offered in the transactions specified in I.B. below:

3. The registrant:
(a) has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and

4. The provisions of paragraphs A.2. and A.3.(a) above do not apply to any registered offerings of investment grade asset-backed securities as defined in I.B.5. below.

B. **Transaction Requirements.** Security offerings meeting any of the following conditions and made by a registrant meeting the Registrant Requirements specified in I.A. above may be registered on this Form:

1. **Primary Offerings by Certain Registrants.** Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; Provided that the aggregate market value of the voting stock held by non-affiliates of the registrant is \$75 million or more.

Instruction. The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

2. **Primary Offerings of Non-convertible Investment Grade Securities.** Non-convertible securities to be offered for cash by or on behalf of a registrant, provided such securities at the time of sale are "investment grade securities," as defined below. A non-convertible security is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities

Exchange Act of 1934 (§ 240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

5. **Offerings of Investment Grade Asset-backed Securities.** Asset-backed securities to be offered for cash, provided the securities are "investment grade securities," as defined in I.B.2. above (Primary Offerings of Non-convertible Investment Grade Securities). For purposes of this Form, the term "asset-backed security" means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders.

2. The parent of the registrant-subsubsidiary meets the Registrant Requirements and the conditions of Transaction Requirement B.2. (Primary Offerings of Non-convertible Investment Grade Securities) are met; or
3. The parent of the registrant-subsubsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

D. Where two or more classes of securities being registered on this Form pursuant to General Instruction I.B.1. or I.B.2., are to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(x), § 230.457(o) under the Securities Act permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price.

A registration statement on this Form S-3 relating solely to securities offered pursuant to a dividend or interest reinvestment plan will become effective automatically (rule 462, § 230.462 of this chapter) upon filing (Rule 456, § 230.456 of this chapter). Post-effective amendments of such a registration statement on this Form shall become effective upon filing (rule 464, § 230.464 of this chapter).

Signatures

Instructions

3. Where eligibility for use of the Form is based on the assignment of a security rating pursuant to Transaction Requirements B.2. or

B.5., the registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the security rating requirement will be met by the time of sale.

§ 239.25 [Amended]

9. By amending the General Instructions to Form S-4 (§ 239.25) by adding new paragraph J. to read as follows:

Note: Form S-4 does not appear in the Code of Federal Regulations.

Form S-4

General Instructions

J. Where two or more classes of securities being registered on this Form pursuant to General Instruction H. are to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(viii), § 230.457(o) under the Securities Act permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" Table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify by each class information as to the amount to be registered, proposed maximum offering price per unit, and proposed maximum aggregate offering price.

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

10. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77ssa, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78l(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

11. By amending § 240.12b-23 by revising paragraph (a)(3) to read as follows:

§ 240.12b-23 Incorporation by reference.

(a) (3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statement, shall be filed as an exhibit to the statement or report, except that:

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10-K and Form 10-KSB (§ 249.310 and § 249.310b); and

(ii) a form of prospectus filed pursuant to § 230.424(b) incorporated by reference

in response to Item 1 of Form 8-A
[§ 249.208a] need not be filed as an
exhibit.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 78a, *et seq.*, unless
otherwise noted.

§ 249.208a [Amended]

13. By amending Form 8-A
[§ 249.208a] by revising the instruction
to Item 1 to read as follows:

Note: Form 8-A does not appear in the
Code of Federal Regulations.

Form 8-A

Item 1. * * *

Instruction. If a description of the securities
comparable to that required here is contained
in any prior filing with the Commission, such
description may be incorporated by reference
to such other filing in answer to this item. If
such description will be included in a form of
prospectus subsequently filed by the
registrant pursuant to rule 424(b) under the
Securities Act [§ 230.424(b) of this chapter],
this registration statement shall state that
such prospectus shall be deemed to be
incorporated by reference into the
registration statement. If the securities are to
be registered on a national securities
exchange and the description has not
previously been filed with such exchange,
copies of the description shall be filed with
copies of the application filed with the
exchange.

Dated: October 22, 1992.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-26129 Filed 10-28-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

Annual User Fee for Customs Broker Permit

AGENCY: Customs Service,
Department of the Treasury.

ACTION: Notice of due date for broker
user fee.

SUMMARY: This is to advise Customs
brokers that for 1993 the annual user fee
of \$125 that is assessed for each permit
held by an individual, partnership,
association or corporate broker is due
by January 15, 1993. This announcement
is being published to comply with the
Tax Reform Act of 1986.

DATES: Due date for fee: January 15,
1993.

FOR FURTHER INFORMATION CONTACT:
Robert W. Page, Chief, Entry
Compliance Branch (202), 927-0380.

SUPPLEMENTARY INFORMATION: Section
13031 of the Consolidated Omnibus
Budget Reconciliation Act of 1985 (Pub.
L. 99-272) established that an annual
user fee of \$125 is to be assessed for
each Customs broker permit held by an
individual, partnership, association or
corporation. This fee is set forth in the
Customs Regulations in § 111.96 19 CFR
111.96).

Section 111.96, Customs Regulations,
provides that the fee is payable for each
calendar year in each district where a
broker has a permit to do business by
the due date which will be published in
the *Federal Register* annually.

Section 1893 of the Tax Reform Act of
1986 (Pub. L. 99-514), provides that
notices of the date on which payment is
due of the user fee for each broker
permit shall be published by the
Secretary of the Treasury in the *Federal
Register* by no later than 60 days before
such due date. This document notifies
brokers that for 1993 the due date for
payment of the user fee is January 15,

1993. It is expected that annual user fees
for brokers for subsequent years will be
due on or about the fifteenth of January
each year. This is a change from the
previous date of on or about the first.

Dated: October 21, 1992.

Michael H. Lane,
Acting Commissioner of Customs.

[FR Doc. 92-26250 Filed 10-28-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 91F-0342]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration,
HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug
Administration (FDA) is amending the
food additive regulations to provide for
the safe use of 2,2'-methylenebis(4-
methyl-6-tert-butylphenol) monoacrylate
as a stabilizer for adhesives and
pressure-sensitive adhesives intended
for use in food-contact applications.
This action is in response to a petition
filed by Ciba-Geigy Corp.

DATES: Effective October 29, 1992;
written objections and requests for a
hearing by November 30, 1992.

ADDRESSES: Written objections may be
sent to the Dockets Management Branch
(HFA-305), Food and Drug
Administration, rm. 1-23, 12420
Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Vir Anand, Center for Food Safety and
Applied Nutrition (HFF-335), Food and
Drug Administration, 200 C St. SW.,
Washington, DC 20204, 202-254-9500.