

the proposed exceptions. The Board also has clarified, consistent with the Comptroller's interpretation of 12 U.S.C. 84, that a member bank is required to obtain a perfected security interest in United States obligations or other obligations fully guaranteed as to principal and interest by the United States in order for this exception to be effective.

Twenty-one of the commenters proposed other or further exceptions. These comments presented a variety of proposals, including, among others, the adoption of one or more additional exceptions to the lending limits found in 12 U.S.C. 84, the adoption of certain exceptions not found in 12 U.S.C. 84, and the adoption of exemptions that would reduce or eliminate the additional regulatory restrictions imposed on extension of credit by a member bank to its executive officers.<sup>2</sup> These proposals will be considered by the Board in the near future. However, the Board has decided not to address these proposals at this time in order not to delay the adoption of a final rule concerning the 3 exceptions proposed by the Board.

#### Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board hereby certifies that the final rule will not have a significant adverse effect on a substantial number of small institutions. The final rule should relieve the regulatory burden on all member banks, regardless of size, and will increase the ability of small member banks to make loans and other extensions of credit that pose little or no risk of loss to them, and to attract and retain outside directors to whom such loans may be made in the same manner and to the same extent as they may be made to persons who are not insiders of the member bank.

#### List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and record keeping requirements.

For the reasons set forth in the preamble, the Board amends title 12 of the Code of Federal Regulations, part 215, subpart A, as follows:

<sup>2</sup> These provisions appear in 12 CFR 215.5 of Regulation O, and have been adopted pursuant to section 22(g) of the Act, 12 U.S.C. 375a. The subject matter of these comments is outside the scope of the current rulemaking, but will be considered in connection with future rulemaking by the Board concerning Regulation O.

### PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 248(i), 375a, 375b(7), 1817(k)(3) and 1972(2)(F)(vi), Pub. L. 102-550, 106 Stat. 3895 (1992).

#### Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.4 is amended by adding a new paragraph (d)(3) to read as follows:

##### § 215.4 General prohibitions.

\* \* \* \* \*

(d) \* \* \*

(3) *Exceptions.* The general limit specified in paragraph (d)(1) of this section does not apply to the following:

(i) Extensions of credit secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(ii) Extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;

(iii) Extensions of credit secured by a perfected security interest in a segregated deposit account in the lending bank; or

(iv) The exceptions in this paragraph (d)(3) apply only to the amount of such extensions of credit that are secured in the manner described herein.

By order of the Board of Governors of the Federal Reserve System, April 27, 1993.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 93-10431 Filed 5-3-93; 8:45 am]

BILLING CODE 8210-01-M

### 12 CFR Part 265

[Docket No. R-0799]

#### Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority in order to delegate to the Secretary of the Board, and to repeal with respect to

the General Counsel of the Board acting with the concurrence of the Director of the Division of Banking Supervision and Regulation, the authority to approve certain transactions requiring the approval of the Board pursuant to section 5(d)(3) of the Federal Deposit Insurance Act (FDI Act). This amendment will align the Board's procedures for approving "Oakar" transactions with those procedures used to approve other types of applications involving a director interlock with a Federal Reserve Bank.

EFFECTIVE DATE: The amendments to part 265 of the Board's Rules are effective May 3, 1993.

FOR FURTHER INFORMATION CONTACT: Terence F. Browne, Senior Attorney (202/452-3707); or Timothy J. Byrne, Attorney (202/452-3565), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

#### SUPPLEMENTARY INFORMATION:

Section 5(d)(3) of the FDI Act,<sup>1</sup> otherwise known as the "Oakar" Amendment, authorizes the merger of Savings Association Insurance Fund (SAIF) member institutions with Bank Insurance Fund (BIF) institutions, subject to certain conditions. This provision requires the prior approval of the Board to engage in an Oakar transaction when the acquiring or resulting institution is a state-chartered bank that is a member of the Federal Reserve System, or when the resulting or acquiring institution is a BIF member bank subsidiary of a bank holding company.<sup>2</sup>

In October 1989, the Board delegated authority to the Director of the Division of Banking Supervision and Regulation and the General Counsel to approve jointly those Oakar transactions involving failing or failed thrift institutions. The purpose of that action was to allow the Board to react quickly to emergency situations that were being resolved by the Resolution Trust Corporation and involved Oakar applications to the Board.

In early 1991, as the processing of Oakar transactions became more routine, the Board delegated authority to the Reserve Banks to approve Oakar transactions.<sup>3</sup> Currently, the Reserve

<sup>1</sup> 12 U.S.C. 1815(d)(3), as amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, section 501, 105 Stat. 2236, 2388-2392 (1991)).

<sup>2</sup> See 12 U.S.C. 1815(d)(3)(A)(i) and (E)(i).

<sup>3</sup> 56 FR 8687 (1991)



Banks approve all Oakar applications except applications involving substantive issues that are considered by the Board, and applications in which a Reserve Bank has concluded that "because of unusual considerations, or for other good cause, it should not take action."<sup>4</sup> Because Oakar transactions have become more common, the Reserve Banks conclude that they should not take action on an Oakar application only when there is a director interlock between a Reserve Bank or branch and the applicant. In these cases, the Director of the Division of Banking Supervision and Regulation and the General Counsel jointly approve the application.

In contrast, most of the bank holding company applications involving an interlock between an applicant and a Reserve Bank or branch are approved by the Secretary of the Board.<sup>5</sup> In Oakar applications as well as other applications made to the Board, the applications are subject to the same level of review, and the Secretary receives a memo explaining the transactions and setting forth the recommendation of the appropriate Staff members. However, the current process for approving an Oakar application having a director interlock involves more steps than is required when the Secretary of the Board approves a bank holding company application involving a director interlock, and this Oakar approval process can be burdensome and time-consuming.

In order to align the Board's procedures for approving Oakar transactions with those procedures used to approve other types of applications involving a director interlock with a Reserve Bank, and in an effort to streamline the Oakar applications process, the Board is amending its Rules Regarding Delegation of Authority to authorize the Secretary of the Board to approve Oakar transactions. This amendment will reduce the regulatory burden associated with the Oakar application process without reducing the level of Federal Reserve System analysis of Oakar transactions.

#### Final Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities. The amendments would reduce regulatory burdens imposed by

Regulation Y and the Board's Rules Regarding Delegation of Authority and have no particular adverse effect on other entities.

#### Effective Date

The provisions of the Administrative Procedures Act (APA) (5 U.S.C. 553) relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of these amendments because the changes to be effected are procedural in nature and do not constitute a substantive rule subject to the requirements of that section. The APA grants a specific exemption from its requirements relating to notice, public participation and the deferred effective date in these instances (12 U.S.C. 553(b)(3)(A)).

#### Final Paperwork Reduction Act Analysis

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes.

#### List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies).

For the reasons set forth in the preamble, the Board is amending title 12 of the Code of Federal Regulations, part 265, as follows:

#### PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 is revised to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

2. Section 265.5 is amended by adding paragraph (c)(3) to read as follows:

#### § 265.5 Functions delegated to Secretary of the Board.

\* \* \* \* \*

(c) \*\*\*

(3) *Application approval under section 5(d)(3) of the FDI Act.* To approve applications pursuant to section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)), in those cases in which the appropriate Federal Reserve Bank concludes that, because of unusual considerations, or for other good cause, it should not take action.

3. In § 265.6, paragraph (c)(5) is removed.

4. In § 265.7, paragraph (c)(5) is removed, and paragraph (c)(6) is redesignated as paragraph (c)(5).

By order of the Board of Governors of the Federal Reserve System, April 28, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-10467 Filed 5-3-93; 8:45 am]

BILLING CODE 6210-01-F

#### SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 230, 239, 240 and 249

[Release Nos. 33-6996; 34-32231]

RIN 3235-AF63

#### Additional Small Business Initiatives

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

**SUMMARY:** The Securities and Exchange Commission ("Commission") today adopted additional revisions to its rules and forms to facilitate financings by small business issuers under the Securities Act of 1933 and their compliance with the reporting requirements under the Securities Exchange Act of 1934. These actions, which ease the entry of small businesses into the public markets, include transitional registration forms, reporting forms, proxy statement and annual report to security holders requirements for small business issuers that have not registered more than \$10 million of securities in any 12-month period (other than securities registered on Form S-8), amendments to small business issuer financial statement requirements and revisions to the information requirements of Regulation D.

Rule 254 is amended to provide that a written "test the waters" solicitation document complying with Regulation A will not constitute a "prospectus."

**EFFECTIVE DATE:** June 3, 1993. Issuers wishing to comply with these rule and form changes prior to the effective date may do so.

**FOR FURTHER INFORMATION CONTACT:** Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. With respect to the transitional registration and reporting forms, Martin Dunn (202-272-2573) or Richard Wulff (202-272-2644); and with respect to financial statement requirements, Teresa Iannaconi (202-272-2553).

**SUPPLEMENTARY INFORMATION:** The Commission today adopted new registration statement Form SB-1,<sup>1</sup> as

<sup>1</sup> 17 CFR 239.9.

<sup>4</sup> 12 CFR 265.6(c)(5), 7(c)(5).

<sup>5</sup> See 12 CFR 265.5(c)(2).



well as amendments to Forms 1-A,<sup>2</sup> S-2,<sup>3</sup> S-4,<sup>4</sup> 10-SB,<sup>5</sup> 10-KSB<sup>6</sup> and 10-QSB,<sup>7</sup> Schedule 14A<sup>8</sup> and the annual report requirements of Rules 14a-3<sup>9</sup> and 14c-3.<sup>10</sup> These actions provide transitional disclosure requirements for qualifying small business issuers under the Securities Act of 1933 ("Securities Act")<sup>11</sup> and the Securities Exchange Act of 1934 ("Exchange Act").<sup>12</sup>

The Commission also adopted revisions to the financial statement requirements for small business issuers, found in Item 310<sup>13</sup> of Regulation S-B.<sup>14</sup> Amendments to Rule 254<sup>15</sup> of Regulation A<sup>16</sup> and Rule 502<sup>17</sup> of Regulation D<sup>18</sup> under the Securities Act also were adopted.

### I. Executive Summary and Background

In August 1992, the Commission adopted its Small Business Initiatives to facilitate the access of small business issuers to the public markets.<sup>19</sup> That action revised the structure and operation of Regulation A and Rule 504<sup>20</sup> of Regulation D and created an integrated registration and reporting system for small business issuers.<sup>21</sup> Based on comments and suggestions received in response to its Small Business Initiatives, the Commission proposed additional measures to ease small business capital raising and transition from non-reporting to reporting status.<sup>22</sup> The Commission today is adopting a number of these additional measures in substantially the

manner in which they were proposed.<sup>23</sup> The Commission is not adopting the changes to the Regulation D audited financial statement requirements it proposed. The Commission will explore such revisions with state securities administrators to maintain the federal-state coordination of the Uniform Limited Offering Exemption.

As adopted, new registration statement Form SB-1 permits transitional small business issuers to register securities under the Securities Act using the Regulation A model of disclosure with two years of audited financial statements. Further, as a result of the actions taken today, a small business issuer may enter the Exchange Act reporting system using a Form 10-SB consisting of Regulation A disclosure with audited financial statements. Form 10-SB requires two years of audited financial statements, except that audited statements need be provided only for the most recent fiscal year if the earlier year's audited statements are not otherwise available. Transitional small business issuers are permitted to meet their Exchange Act reporting requirements using the Regulation A model of disclosure until such time as they (1) register more than \$10 million of securities in a continuous 12-month period (excluding offerings registered on Form S-8), (2) elect to graduate to a non-transitional disclosure system, or (3) are no longer small business issuers.

Rules 14a-3 and 14c-3 have been amended to require transitional small business issuers to provide to security holders only the financial statements required in their most recent Form 10-KSB. The inclusion of additional information in the annual report to security holders will not cause the issuer to be ineligible for the transitional disclosure forms.

Transitional small business issuers may also use new optional disclosure formats in Schedule 14A. Eligible small business issuers which elect not to respond to these modified disclosure

requirements may continue to use the transitional disclosure forms.

Two refinements to the financial statement requirements for small business issuers are adopted. The first revision provides an automatic waiver of some or all of the requirements for audited financial statements of specified significant acquired businesses, where such financial statements are not otherwise available. The other revision permits small business issuers to proceed with initial registered offerings in the first quarter of their fiscal years on the same basis as offerings by reporting companies.

As amended, the narrative information requirements in Rule 502 of Regulation D permit eligible non-reporting issuers to provide the same kind of information as required in Part II of Form 1-A.

With respect to the Regulation A "test the waters" procedures, the Commission has adopted the proposed revision to Rule 254, which provides that a written "test the waters" document complying with Regulation A is not a prospectus.

### II. Transitional Disclosure Requirements for Small Business Issuers

#### A. Transitional Exchange Act Registration and Reporting

In light of the favorable comment received concerning the Regulation A question-and-answer disclosure format, the Commission is allowing small business issuers to make the transition from a non-reporting to an Exchange Act reporting company using the disclosures permitted under Regulation A, so long as audited financial statements for the issuer's last two fiscal years are provided. The Exchange Act registration statement may include audited financial statements for only the most recent fiscal year, where audited financial statements for the earlier fiscal year are not otherwise available.

The transitional reporting forms are being adopted substantially as proposed. Under the proposal, however, the transitional reporting forms would not have been available to any issuer that registered under the Securities Act more than \$5 million (other than pursuant to employee benefit plans or dividend reinvestment plans) in any fiscal year. This ceiling has been raised to \$10 million in any continuous 12-month period in response to commenters which expressed the view that increasing the offering ceiling beyond the Regulation A ceiling would increase the utility of the transitional forms. In addition, as adopted, securities registered under dividend

<sup>2</sup> 17 CFR 239.90.

<sup>3</sup> 17 CFR 239.12.

<sup>4</sup> 17 CFR 239.25.

<sup>5</sup> 17 CFR 249.210b.

<sup>6</sup> 17 CFR 249.310b.

<sup>7</sup> 17 CFR 249.308b.

<sup>8</sup> 17 CFR 240.14a-101.

<sup>9</sup> 17 CFR 240.14a-3.

<sup>10</sup> 17 CFR 240.14c-3.

<sup>11</sup> 15 U.S.C. 77a et seq.

<sup>12</sup> 15 U.S.C. 78a et seq.

<sup>13</sup> 17 CFR 228.310.

<sup>14</sup> 17 CFR 228.10-702.

<sup>15</sup> 17 CFR 230.254.

<sup>16</sup> 17 CFR 230.251-263.

<sup>17</sup> 17 CFR 230.502.

<sup>18</sup> 17 CFR 230.501-508.

<sup>19</sup> See Securities Act Release No. 33-6949 (57 FR 36442) (August 13, 1992).

<sup>20</sup> 17 CFR 230.504.

<sup>21</sup> A "small business issuer" is defined as an entity: (1) With revenues of less than \$25,000,000 for its most recent fiscal year; (2) which is a U.S. or Canadian issuer; (3) which is not an investment company; and (4) which is not a majority-owned subsidiary of a non-"small business issuer," provided that an issuer does not qualify if its public float (the aggregate market value of the issuer's outstanding voting securities held by non-affiliates) is \$25,000,000 or more. See Securities Act Rule 405 (17 CFR 230.405); Exchange Act Rule 12b-2 (17 CFR 240.12b-2).

<sup>22</sup> See Securities Act Release No. 33-6950 (57 FR 36502) (August 13, 1992).

<sup>23</sup> The Commission proposed revisions to the definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act (5 U.S.C. 600 et seq.) to incorporate the definition of small business issuer used for the small business integrated disclosure system. Amendments were proposed with respect to Securities Act Rule 157(a) (17 CFR 230.157), Exchange Act Rule 0-10(a) (17 CFR 240.0-10), and Rule 0-7 (17 CFR 260.0-7) under the Trust Indenture Act of 1939 ("Trust Indenture Act"), 15 U.S.C. 77aaa et seq. After these revisions were proposed, the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102-366) imposed additional procedural requirements for the modification of these definitions. Accordingly, the Commission is not revising these definitions at this time.



reinvestment plans are not excluded from the calculation.<sup>24</sup>

Small business issuers required to file Exchange Act reports<sup>25</sup> may use the transitional disclosure forms until they (1) register more than \$10 million under the Securities Act in any continuous 12-month period (other than securities registered on Form S-8), (2) elect to file on a non-transitional disclosure document, or (3) no longer meet the definition of small business issuer. Non-transitional disclosure documents include: (1) Securities Act registration statement forms other than Forms SB-1, S-3 (if the issuer incorporates by reference transitional Exchange Act reports), S-8 and S-4 (if the issuer uses the transitional disclosure format in that form); (2) Exchange Act periodic reporting Forms 10-K and 10-Q; (3) Exchange Act registration statement Form 10; and (4) reports or registration statements on Forms 10-KSB, 10-QSB or 10-SB that do not use the transitional disclosure document format.<sup>26</sup> A reporting company may not return to the transitional disclosure forms.

Instructions setting forth the disclosure that transitional small business issuers may elect have been added to Forms 10-SB, 10-KSB and 10-QSB. In addition, the cover pages of Forms 10-KSB and 10-QSB have been revised to require that a small business issuer indicate its use of the transitional disclosure alternatives in those forms.

The transitional disclosure requirements mirror the disclosure models currently included as Model A (the question-and-answer disclosure format) and Model B (the line-item disclosure format) in Form 1-A under Regulation A. These disclosure requirements have been modified where necessary to reflect their use in continuous reporting documents.

As proposed, transitional small business issuers would not have been required to provide the management's discussion and analysis of financial condition and results of operations ("MD&A") in their quarterly reports. In response to public comment, transitional small business issuers are

required to update the information in their most recent Form 10-KSB which corresponds with the MD&A disclosure requirements of Regulation S-B. Specifically, the Form 10-QSB filed by a transitional small business issuer relying upon the question-and-answer format in its Form 10-KSB will be required to include updated responses to the MD&A disclosure required by Questions 47-50 in Model A of Form 1-A. The Form 10-QSB of a transitional small business issuer relying upon the line-item format in its Form 10-KSB will be required to include an updated response to the business plan disclosure required by Item 6(a)(3)(i) in Model B of Form 1-A.

#### B. Form SB-1

Small business issuers eligible to use the transitional disclosure provisions under the Exchange Act may register offerings of securities under the Securities Act using new Form SB-1. Form SB-1 may be used to register securities offerings of up to \$10 million in any continuous 12-month period. The alternative disclosure requirements and format parallel those of Model A and Model B of Form 1-A of Regulation A. Audited financial statements for the issuer's two most recent fiscal years are required.

Form SB-1 is available to any non-reporting small business issuer or any reporting small business issuer eligible to use the transitional format in Form 10-KSB, provided—in both instances—that the issuer has not registered more than a total of \$10 million of securities in the last 12-month period. In determining whether a small business issuer has not registered more than \$10 million during the 12-month period, the amount being registered on the Form SB-1 would be added to previous registered offerings in that period (excluding securities registered on Form S-8).

#### C. Narrative Disclosure Requirements for Transitional Small Business Issuers

The basic narrative disclosure required of transitional small business issuers is the same as that currently required by Form 1-A under Regulation A. Accordingly, small business issuers eligible to use the transitional reporting scheme now have the choice of two alternative narrative disclosure formats: (1) The question-and-answer format contained in Offering Circular Model A of Form 1-A; or (2) the line-item disclosure model contained in Offering Circular Model B of Form 1-A.

Form SB-1 includes additional disclosure items necessary in registration statements under the

Securities Act. The following disclosure items have been added: (1) The undertakings contained in Item 512 of Regulation S-B;<sup>27</sup> (2) the inside front and outside back cover page of prospectus requirements of Item 502 of Regulation S-B;<sup>28</sup> (3) in the question-and-answer format (Model A of Form 1-A), the selling security holders information requirements of Item 507 of Regulation S-B;<sup>29</sup> (4) the disclosure requirements (Items 510 and 702 of Regulation S-B) concerning the Commission's position on indemnification;<sup>30</sup> (5) the disclosure requirements of Item 509 of Regulation S-B regarding relationships with experts and counsel;<sup>31</sup> and (6) in the traditional Regulation A line-item format (Model B of Form 1-A), the disclosure requirements of Item 103 of Regulation S-B regarding legal proceedings.<sup>32</sup> Further, instructions have been added to Form SB-1 stating that, in lieu of the "Cover Page" requirements of Model A and Model B of Form 1-A, the information required by Item 501 of Regulation S-B<sup>33</sup> should be included.

#### D. Financial Statement Requirements for Transitional Small Business Issuers

As adopted today, small business issuers using the transitional disclosure requirements of Exchange Act Forms 10-SB and 10-KSB are required to include the same financial information required by Part F/S of Form 1-A, except that audited financial statements are required.<sup>34</sup> An initial registration statement on Form 10-SB is required to contain audited financial statements for the issuer's two most recent fiscal years, except that audited financial statements for only the most recent fiscal year are sufficient if audited statements for the preceding year are not otherwise available. Subsequent Form 10-KSB filings, as well as offerings registered on Form SB-1, must include audited financial statements for the two most recent fiscal years.

#### E. Annual Report to Security Holders and Proxy Requirements

Revisions to the rules regarding the annual report to security holders are

<sup>24</sup> This reflects the increased offering ceiling and the increasing use of dividend reinvestment plans to offer securities other than through the reinvestment of dividends.

<sup>25</sup> The requirement may arise either pursuant to section 13 (15 U.S.C. 78m) or 15(d) (15 U.S.C. 78o(d)) of the Exchange Act.

<sup>26</sup> Proxy and information statements by transitional small business issuers which do not rely upon the transitional disclosure formats will be considered transitional disclosure documents. Similarly, transitional small business issuers which include information in addition to the financial statements required by Rule 14a-3 or 14c-3 will be considered transitional disclosure documents.

<sup>27</sup> 17 CFR 228.512.

<sup>28</sup> 17 CFR 228.502.

<sup>29</sup> 17 CFR 228.507. Information regarding selling security holders is required in the line-item format in Model B of Form 1-A under Regulation A.

<sup>30</sup> 17 CFR 228.510 and 702.

<sup>31</sup> 17 CFR 228.509.

<sup>32</sup> 17 CFR 228.103.

<sup>33</sup> 17 CFR 228.501.

<sup>34</sup> Issuers using the transitional disclosure formats of Forms 10-SB and 10-KSB are required to furnish the information required by Item 310 of Regulation S-B.



adopted as proposed. As amended, Rule 14a-3 and Rule 14c-3 require small business issuers using the transitional reporting requirements for their most recent annual report on Form 10-KSB to provide to security holders only the financial statements contained in that Form 10-KSB. In response to public comment, notes have been added to Rules 14a-3 and 14c-3 which make clear that the inclusion of additional information, including information required of non-transitional small business issuers, in the annual report to security holders will not cause the issuer to be ineligible for the transitional disclosure forms.

The Commission also has adopted optional proxy statement disclosure formats for transitional small business issuers. These optional disclosure formats include instructions to Schedule 14A which reference the transitional disclosure forms.<sup>35</sup> Eligible small business issuers which elect to comply with the non-transitional Schedule 14A requirements may continue to use the transitional disclosure forms.

#### F. Other Securities Act Forms

As adopted, a transitional small business issuer is permitted to use the transitional disclosure requirements applicable to its Exchange Act reports for purposes of Forms S-3,<sup>36</sup> S-4 and S-8. In contrast to employee benefit plan offerings registered on Form S-8, registered offerings on Forms S-3<sup>37</sup> and S-4 by transitional small business issuers are subject to, and included in, the calculation of the \$10 million ceiling.<sup>38</sup> Transitional small business issuers filing a registration statement on Form S-3 may use their transitional Exchange Act reports for purposes of the historical and future incorporation by reference permitted in Form S-3. Form

S-4 also has been amended to refer to the alternative disclosure formats for transitional small business issuers.

#### III. Small Business Integrated Disclosure System—Financial Statements

##### A. Amendment of Rules Applicable to Financial Statements of Significant Acquired Businesses

Registration statements, certain proxy materials and periodic reports on Form 8-K are required to include financial statements of acquired businesses for periods of one or two years based on the significance of the acquisition. Significance of an acquisition is measured by a comparison of the registrant's income and assets to the income and assets of the acquiree as well as the relationship of the acquisition price to the registrant's total assets. If the highest level of significance exceeds 10% but does not exceed 20%, one year of audited financial statements are required. If the significance exceeds 20%, two years are required.

As a result of this test, the acquisition of a business that would not be sizeable enough to require Exchange Act registration would result in the acquired company having to provide audited financial statements. For example, a small business with total assets of \$25 million would be required to obtain audited financial statements of an acquiree with total assets of any amount over \$2.5 million. The effort and cost of obtaining audited historical financial statements of relatively small acquisitions by small businesses is disproportionately greater than for larger businesses.

The Commission is adopting, as proposed, amendments to Item 310(c) of Regulation S-B which provide, in certain circumstances, an automatic waiver of one year of the audited financial statements otherwise required to be provided in connection with the acquisition of a significant acquired business.<sup>39</sup>

As amended, Item 310(c)(3) of Regulation S-B provides that, where audited financial statements are not otherwise available, audited financial statements would be automatically waived if the significance of the acquired business does not exceed 20%, and the earlier of the two years of required financial statements would be waived where significance does not exceed 40%. In either case, where unaudited financial statements are

available, they would be required. Where a small business issuer relies on such an automatic waiver, the pro forma financial information included in a Form 8-K filed to report the acquisition may not be used as the basis for measuring the significance of later acquisitions as otherwise provided by Item 310(c)(5) of Regulation S-B.

Commenters on the proposal pointed out the need to address those acquisitions by small businesses experiencing marginal or break-even operations. In such cases, the net income test will result in every acquisition being significant regardless of size. Commenters suggested that, in such cases, operational significance would be better measured in terms of revenues rather than net income.

As in other circumstances, small business issuers may apply for a waiver of financial statement requirements. In light of the point raised by commenters, small business issuers that have marginal or break-even levels of net income and that can show that revenues of the acquired business do not exceed 10% of the acquiring company's revenues for the last fiscal year, upon written request, likely will be given a waiver of the requirement to provide any financial statements which would be required solely as a result of the application of the net income significance test.

##### B. Amendment to Rule Applicable to Age of Small Business IPO Audited Financial Statements

The Commission is adopting as proposed the amendment to Item 310(g) of Regulation S-B which governs the age of financial statements in registration statements for initial registered offerings by small business issuers. The amendment will permit small business issuers to commence an initial public offering of securities throughout the 90-day period subsequent to the end of the most recent fiscal year without providing the audited historical financial statements for that fiscal year subject to the same conditions applicable to reporting companies.<sup>40</sup>

<sup>40</sup> Other conditions which must be met by all registrants in order to be eligible for the extended update are: (1) All Exchange Act reports must have been filed; (2) for the most recent fiscal year for which audited financial statements are not yet available, the small business issuer reasonably and in good faith expects to report income from continuing operations before taxes; and (3) for at least one of the two fiscal years immediately preceding the most recent fiscal year, the small business issuer reported income from continuing operations before taxes.

<sup>35</sup> As Schedule 14C (17 CFR 240.14c-101) specifically references the disclosure items of Schedule 14A, these amendments will apply equally to information statements on Schedule 14C.

<sup>36</sup> 17 CFR 239.13.

<sup>37</sup> Small business issuers could use Form S-3 for the following types of offerings if the applicable transaction requirements of that form are met: (1) Primary offerings of non-convertible and asset-backed investment grade securities; (2) secondary offerings by selling security holders if securities of the same class are listed and registered on a national securities exchange or quoted on NASDAQ; and (3) securities to be offered upon the exercise of outstanding warrants or rights, pursuant to a dividend reinvestment plan, or the conversion of outstanding securities.

<sup>38</sup> Issuers (other than transitional small business issuers) registering securities on Form S-4 in connection with the acquisition of a transitional small business issuer may use the transitional disclosure requirements of Form SB-1 in providing the required information regarding the company to be acquired.

<sup>39</sup> In addition, Part F/S of Form 1-A is being amended to conform the requirements for financial statements of significant acquired businesses in Regulation A transactions.



#### IV. Regulation A—"Test the Waters" Document

Rule 254 has been amended as proposed to provide that, subject to specified conditions, any written "test the waters" material under the Securities Act is not a "prospectus" as defined in section 2(10)<sup>41</sup> of the Securities Act once it is submitted to Commission, provided that it contains the information required by Rule 254.<sup>42</sup> The treatment of the written test the waters document in Rule 254(e) is analogous to that provided for advertising of registered offerings pursuant to Securities Act Rule 134.<sup>43</sup> The anti-fraud provisions of the federal securities laws, however, continue to apply to any written "test the waters" material.<sup>44</sup> Also, any test the waters activity would be an "offer" as defined in section 2(3)<sup>45</sup> under the Securities Act.<sup>46</sup>

#### V. Revisions to Regulation D Information Requirements

The general conditions that must be met in an offering under Regulation D are set forth in Rule 502. Historically, the information required to be delivered to non-accredited investors in connection with offerings under Rules 505 or 506 depended upon the dollar amount offered. In its Small Business Initiative, however, the Commission replaced Form S-18 with Form SB-2<sup>47</sup> and shifted the eligibility criteria for streamlined offering documents from the amount being offered to the size of the issuer. The non-financial statement requirements of Rule 502 have been amended to reflect this revised eligibility criteria.

<sup>41</sup> 15 U.S.C. 77(b)(10).

<sup>42</sup> Rule 254(b)(2) requires that the test the waters materials contain the following information (i) a statement that no money or other consideration is being solicited, and, if sent in response, will not be accepted; (ii) a statement that no sales of the securities will be made or commitment to purchase accepted until delivery of an offering circular that includes complete information about the issuer and the offering; (iii) a statement that an indication of interest made by a prospective investor involves no obligation or commitment of any kind; and (iv) identification of the chief executive officer of the issuer and a brief, general identification of the issuer's business and products.

<sup>43</sup> 17 CFR 230.134.

<sup>44</sup> Section 17(a) of the Securities Act (15 U.S.C. 77q(a)) and section 10(b) of the Exchange Act (15 U.S.C. 78j(b)).

<sup>45</sup> 15 U.S.C. 77b(3).

<sup>46</sup> The revision to Rule 254 does not affect the status of oral test the waters activity as "oral communications" for purposes of section 12(2) of the Securities Act (15 U.S.C. 77d(2)).

<sup>47</sup> 17 CFR 239.10.

#### A. Non-financial Statement Requirements

As amended today, the non-financial statement informational requirements in Rule 502 depend upon the issuer's eligibility to use a particular registration statement form or Regulation A. The dollar amount of the particular offering is no longer determinative. Thus, non-reporting issuers conducting Regulation D offerings are required to provide the same kind of information as is required in Part I of a Securities Act registration statement form that the issuer would be entitled to use. Non-reporting issuers eligible to use Regulation A have the option of providing the same kind of information as required in Part II of Form 1-A. No substantive changes are made with respect to the non-financial statement requirements for reporting issuers, other than specifying that the disclosure contained in Form SB-1 may be provided by issuers eligible to use that form.

#### B. Financial Statement Requirements

The proposal to amend the Regulation D financial statement requirements has not been adopted. The Commission will continue to explore with state securities administrators what revisions would be appropriate to maintain the federal-state coordination of the Uniform Limited Offering Exemption.

#### VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act,<sup>48</sup> regarding the rules and forms adopted today. This analysis indicates that the revisions should aid small businesses in their efforts to raise capital while being consistent with the protection of investors.

The analysis notes that small businesses seeking to register their securities and become reporting issuers will benefit from the transitional disclosure alternatives in Form SB-1 and the Exchange Act reporting forms.

The analysis also notes that the new provision specifying that written "test the waters" materials complying with Regulation A are not prospectuses under section 2(10) of the Securities Act would benefit small businesses by specifying the application of the statute.

The amendments are designed to minimize costs but do not sacrifice the important concerns of investors. A copy of the Final Regulatory Flexibility Act Analysis may be obtained from Twanna M. Young, Office of Small Business Policy, Division of Corporation Finance,

<sup>48</sup> See 5 U.S.C. 604.

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

#### VII. Cost-Benefit Analysis

No specific empirical data was submitted in response to the Commission's invitation to provide information on the costs and benefits of the proposed revisions. However, the vast majority of the public commenters were of the view that the proposals, if adopted, would work some cost savings to issuers that chose the new procedures; and, further, that investors would have adequate safeguards under the new forms.

#### VIII. Certain Other Findings

As required by section 23(a) of the Exchange Act,<sup>49</sup> the Commission has specifically considered the impact that these rulemaking actions would have on competition and has concluded that they would not impose a significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### IX. Effective Date

The rules and forms adopted today are effective June 3, 1993. Issuers wishing to comply with these rule and form changes prior to the effective date may do so.

#### X. Statutory Basis, Text of Proposals and Authority

The amendments to the Commission's rules and forms are being adopted pursuant to sections 2, 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act and sections 12, 13, 15(d), 16(a) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

#### Text of Rule and Form Proposals

1. For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

#### PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 78ll, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

<sup>49</sup> 15 U.S.C. 78w(a).



2. Amend § 228.310 by revising paragraphs (c)(3)(i) and (c)(3)(ii); by removing paragraph (c)(3)(iv); by adding one sentence to the end of paragraph (c)(5); and by revising paragraph (g)(2)(i) to read as follows:

**§ 228.310 (Item 310) Financial Statements.**

(c) *Financial statements of businesses acquired or to be acquired.* \* \* \*

(3)(i) Financial statements shall be furnished for the periods prior to the date of acquisition, for the same periods for which the small business issuer is required to furnish financial statements. The financial statements covering fiscal years shall be audited.

(ii) If none of the conditions in the definitions of significant subsidiary in paragraph (c)(2) of this Item exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(5) \* \* \* Notwithstanding the above, if a Form 8-K (§ 249.308 of this chapter) was filed to report a significant acquisition but audited financial statements were not furnished pursuant to the automatic waiver provisions of paragraph (c)(3) of this Item, the determination of significance may not be made using the pro forma amounts for the latest fiscal year; however, upon written request from the issuer, the Commission will consider permitting the use of previously filed pro forma financial information as the basis for measurement for the significance tests.

(g) *Age of Financial Statements.*

(2) \* \* \*

(i) If the small business issuer is a reporting company, all reports due must have been filed;

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

3. The authority citation for part 230 continues to read, in part, as follows:

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

By adding paragraph (e) to § 230.254 to read as follows:

**§ 230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.**

(e) Written solicitation of interest materials submitted to the Commission and otherwise in compliance with this section shall not be deemed to be a prospectus as defined in section 2(10) of the Securities Act (15 U.S.C. 77b(10)).

5-8. By revising paragraphs (b)(2)(i) and (ii)(B) of § 230.502 to read as follows:

**§ 230.502 General conditions to be met.**

(b) \* \* \*  
(2) \* \* \* (i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser, to the extent material to an understanding of the issuer, its business and the securities being offered:

(A) *Non-financial statement information.* If the issuer is eligible to use Regulation A (§ 230.251-263), the same kind of information as would be required in Part II of Form 1-A (§ 239.90 of this chapter). If the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act on the form that the issuer would be entitled to use.

(B) *Financial statement information.*—(1) *Offerings up to \$2,000,000.* The information required in Item 310 of Regulation S-B (§ 228.310 of this chapter), except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(2) *Offerings up to \$7,500,000.* The financial statement information required in Form SB-2 (§ 239.10 of this chapter). If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial

statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of Federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(3) *Offerings over \$7,500,000.* The financial statement as would be required in a registration statement filed under the Act on the form that the issuer would be entitled to use. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of Federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(C) If the issuer is a foreign private issuer eligible to use Form 20-F (§ 249.220f of this chapter), the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)(2)(i) (B) (1), (2) or (3) of this section, as appropriate.

(ii) \* \* \*  
(B) The information contained in an annual report on Form 10-K (§ 249.310 of this chapter) or 10-KSB (§ 249.310b of this chapter) under the Exchange Act or in a registration statement on Form S-1 (§ 239.11 of this chapter), SB-1 (§ 239.9 of this chapter), SB-2 (§ 239.10 of this chapter) or S-11 (§ 239.18 of this chapter) under the Act or on Form 10 (§ 249.210 of this chapter) or Form 10-SB (§ 249.210b of this chapter) under the Exchange Act, whichever filing is the most recent required to be filed.

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77ss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79m, 79n, 79q, 79t,



80a08, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

\* \* \* \* \*

8. Section 239.9 is added to read as follows:

**§ 239.9 Form SB-1, optional form for the registration of securities to be sold to the public by certain small business issuers.**

Small business issuers, as defined in Rule 405 (17 CFR 230.405 of this

chapter), may use this form to register up to \$10,000,000 of securities to be sold for cash, if they have not registered more than \$10,000,000 in securities offerings in any continuous 12-month period, including the transaction being registered. In calculating the \$10,000,000 ceiling, issuers should include all offerings which were registered under the Securities Act,

other than any amounts registered on Form S-8 (§ 239.16b).

**Note:** The Text and Instructions of Form SB-1 will not appear in the Code of Federal Regulations.

BILLING CODE 8010-01-P



U.S. Securities and Exchange Commission  
Washington, D.C. 20549

Form SB-1

## OMB APPROVAL

OMB Number: xxxx-xxxx  
Expires: Approval Pending  
Estimated average burden  
hours per response.. 1.0

## REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Amendment No. \_\_\_\_)

(Name of small business issuer in its charter)

(State or jurisdiction of  
incorporation or organization)

(Primary Standard Industrial  
Classification Code Number)

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

(Address and telephone number of principal executive offices)

(Address of principal place of business or intended principal place of business)

(Name, address and telephone number of agent for service)

Approximate date of proposed sale to the public \_\_\_\_\_

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. [ ]

## CALCULATION OF REGISTRATION FEE

| Title of each<br>class of securities<br>to be registered | Dollar<br>Amount to be<br>registered | Proposed maximum<br>offering price<br>per unit | Proposed maximum<br>aggregate offering<br>price | Amount of<br>registration fee |
|----------------------------------------------------------|--------------------------------------|------------------------------------------------|-------------------------------------------------|-------------------------------|
|----------------------------------------------------------|--------------------------------------|------------------------------------------------|-------------------------------------------------|-------------------------------|

The following delaying amendment is optional, but see Rule 473 before omitting it: The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Disclosure alternative used (check one): Alternative 1 \_\_\_\_; Alternative 2 \_\_\_\_

BILLING CODE 8010-01-C



**General Instructions****A. Use of Form and Place of Filing**

1.(a) A "small business issuer," defined in Rule 405 of the Securities Act of 1933 (the "Securities Act") may use this form to register up to \$10,000,000 of securities to be sold for cash, if they have not registered more than \$10,000,000 in securities offerings in any continuous 12-month period, including the transaction being registered. In calculating the \$10,000,000 ceiling, issuers should include all offerings which were registered under the Securities Act, other than any amounts registered on Form S-8.

(b) A small business issuer may use this form until it (1) registers more than \$10 million under the Securities Act in any continuous 12-month period (other than securities registered on Form S-8), (2) elects to file on a non-transitional disclosure document (other than the proxy statement disclosure in Schedule 14A), or (3) no longer meets the definition of small business issuer. Non-transitional disclosure documents include: (1) Securities Act registration statement forms other than Forms SB-1, S-3 (if the issuer incorporates by reference transitional Exchange Act reports), S-8 and S-4 (if the issuer relies upon the transitional disclosure format in that form); (2) Exchange Act periodic reporting Forms 10-K and 10-Q; (3) Exchange Act registration statement Form 10; and (4) reports or registration statements on Forms 10-KSB, 10-QSB or 10-SB which do not use the transitional disclosure document format. A reporting company may not return to the transitional disclosure forms.

2. If the small business issuer is not a reporting company, it should file the registration statement in the regional office that is closest to its principal place of business or the Washington, DC office. However, no filing may be made in the Philadelphia regional office; small business issuers in that region should file in the Atlanta, New York or Washington, DC offices.

3. If the small business issuer is a reporting company or a holding company of a bank (see the definition of "bank" in section 12(i) of the Securities Exchange Act of 1934), it should file the registration statement in the Commission's Washington, DC headquarters.

4. Post-effective amendments should be filed with the office that declared the registration statement effective.

5. The Commission may refer processing to an office other than that where the filing was made.

**B. General Requirements**

1. In preparing a registration statement on this Form, reference should be made to the General Rules and Regulations under the Securities Act, particularly Regulation C which sets forth requirements for the preparation and filing of a registration statement such as paper type and size.

2. Issuers registering securities for the first time should be aware of Form SR and Rule 463 under the Securities Act concerning sales of registered securities and the use of proceeds. First-time issuers also should be aware of Exchange Act Rule 15c2-8

(§ 240.15c2-8), which requires broker-dealers to deliver a prospectus 48 hours before a sale of securities can be confirmed.

3. Issuers engaged in real estate, banking, insurance, oil and gas or mining activities should consult the Industry Guides in Item 801 of Regulation S-K (17 CFR 229.801). Real estate companies also should refer to Item 13 (Investment Policies of Registrant), Item 14 (Description of Real Estate), and Item 15 (Operating Data) of Form S-11 (17 CFR 239.18).

**C. Preparation and Filing of the Registration Statement**

Part I of this form, which relates to the content of certain information about the issuer, provides alternative disclosure formats. The registrant may elect either of these alternative formats.

**D. Financial Statement Requirements**

Regardless of the disclosure model used, all registrants shall furnish the financial statements required by Part F/S of this Form SB-1.

**E. Composition of Prospectus**

The information required by Part I and Part F/S of this registration statement shall comprise the prospectus.

**F. Cover Page of Registration Statement**

Issuers electing Alternative 1 should furnish the information required by Item 501 of Regulation S-B in lieu of the information required by Alternative 1 with respect to the cover page of the registration statement. Issuers electing Alternative 2 should furnish the information required by Item 501 of Regulation S-B in lieu of the information required by Item 1 of Alternative 2.

**G. Canadian Issuer—Consent of Service**

Canadian issuers eligible to use this Form should file as an exhibit to this registration statement a written irrevocable consent and power of attorney on Form F-X (§ 239.42 of this title).

**Part I—Narrative Information Required in Prospectus****Alternative 1**

Corporate issuers may elect to furnish the information required by Model A of Form 1-A, as well as the following information.

Item 1. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S-B.

Item 2. Significant Parties

List the full names and business and residential addresses, as applicable, for the following persons:

- (1) The issuer's directors;
- (2) The issuer's officers;
- (3) The issuer's general partners;
- (4) Record owners of 5 percent or more of any class of the issuer's equity securities;
- (5) Beneficial owners of 5 percent or more of any class of the issuer's equity securities;
- (6) Promoters of the issuer;
- (7) Affiliates of the issuer;
- (8) Counsel to the issuer with respect to the proposed offering;

(9) Each underwriter with respect to the proposed offering;

- (10) The underwriter's directors;
- (11) The underwriter's officers;
- (12) The underwriter's general partners; and
- (13) Counsel to the underwriter.

Item 3. Relationship with Issuer of Experts Named in Registration Statement

Furnish the information required by Item 509 of Regulation S-B, if applicable.

Item 4. Selling Security Holders

Furnish the information required by Item 507 of Regulation S-B, if applicable.

Item 5. Changes in and Disagreements with Accountants

Furnish the information required by Item 304 of Regulation S-B, if applicable.

Item 6. Disclosure of Commission position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S-B.

**Alternative 2**

Any issuer may elect to furnish the information required by Model B of Part II of Form 1-A, as well as the following information.

Item 1. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S-B.

Item 2. Significant Parties

List the full names and business and residential addresses, as applicable, for the following persons:

- (1) The issuer's directors;
- (2) The issuer's officers;
- (3) The issuer's general partners;
- (4) Record owners of 5 percent or more of any class of the issuer's equity securities;
- (5) Beneficial owners of 5 percent or more of any class of the issuer's equity securities;
- (6) Promoters of the issuer;
- (7) Affiliates of the issuer;
- (8) Counsel to the issuer with respect to the proposed offering;

(9) Each underwriter with respect to the proposed offering;

- (10) The underwriter's directors;
- (11) The underwriter's officers;
- (12) The underwriter's general partners; and
- (13) Counsel to the underwriter.

Item 3. Relationship with Issuer of Experts Named in Registration Statement

Furnish the information required by Item 509 of Regulation S-B, if applicable.

Item 4. Legal Proceedings

Furnish the information required by Item 103 of Regulation S-B.

Item 5. Changes in and Disagreements with Accountants

Furnish the information required by Item 304 of Regulation S-B, if applicable.

Item 6. Disclosure of Commission position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S-B.



**Part F/S—Financial Information Required in Prospectus**

Furnish the information required by Item 310 of Regulation S-B.

**Part II—Information Not Required in Prospectus****Item 1. Indemnification of Directors and Officers**

Furnish the information required by Item 702 of Regulation S-B.

**Item 2. Other Expenses of Issuance and Distribution**

Furnish the information required by Item 511 of Regulation S-B.

**Item 3. Undertakings**

Furnish the undertakings required by Item 512 of Regulation S-B.

**Item 4. Unregistered Securities Issued or Sold Within One Year**

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of this Form SB-1, state:

- (1) The name of such issuer;
- (2) The title and amount of securities issued;

(3) The aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof;

(4) The names and identities of the persons to whom the securities were issued.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within one year prior to the filing of this Form SB-1 by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in subsections (1) through (4) of paragraph (a).

(c) Indicate the section of the Securities Act or Commission rule or regulation relied upon for exemption from the registration requirements of such Act and state briefly the facts relied upon for such exemption.

**Item 5. Index to Exhibits**

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it in Part III of Form 1-A or Item 2, below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form SB-1.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

**Instructions:**

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer

shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 411(d) of Regulation C shall be followed.

**Item 6. Description of Exhibits**

As appropriate, the issuer should file as exhibits those documents required to be filed under Part III of Form 1-A. Part III of Form 1-A lists 10 exhibits. The registrant also shall file:

(11) *Opinion re legality*—An opinion of counsel as to the legality of the securities covered by the Registration Statement, indicating whether they will, when sold, be legally issued, fully paid and non-assessable, and if debt securities, whether they will be binding obligations of the issuer.

(12) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

(13) *Form F-X*—Canadian issuers shall file a written irrevocable consent and power of attorney on Form F-X.

**Signatures**

In accordance with 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 of filing on Form SB-1 and authorized this registration statement to be signed on its behalf by the undersigned, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_.

(Registrant) \_\_\_\_\_  
By (Signature and Title) \_\_\_\_\_

In accordance with the requirements of the Securities Act of 1933, this registration statement was signed by the following persons in the capacities and on the dates stated.

(Signature) \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Date) \_\_\_\_\_

**Instructions for signatures.**

(1) Who must sign: The small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation.

(2) Beneath each signature, type or print the name of each signatory. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. See Rule 402 of Regulation C concerning manual signatures and Item 601 of Regulation S-B concerning signatures by powers of attorney.

9. Form S-2 (§ 239.12) is amended by adding Paragraph D to General Instruction II to read as follows:

**Note:** The text of Form S-2 will not appear in the Code of Federal Regulations.

**Form S-2**

\* \* \* \* \*

**General Instruction**

\* \* \* \* \*

**II. Application of General Rules and Regulations**

\* \* \* \* \*

D. A "small business issuer," as defined in Rule 405 (17 CFR 230.405), that provided the "Information Required in Annual Report of Transitional Small Business Issuers" in its most recent annual report on Form 10-KSB is not eligible for use of this Form S-2.

10. Form S-4 (§ 239.25) is amended by adding Paragraph 4 to General Instruction D to read as follows:

**Note:** The text of Form S-4 will not appear in the Code of Federal Regulations.

**Form S-4**

\* \* \* \* \*

**General Instructions**

\* \* \* \* \*

**D. Application of General Rules and Regulations**

\* \* \* \* \*

4. (a) Registrants and Companies to be Acquired that are eligible to use Form SB-1 may rely upon Part (b) or (c), as applicable, of this instruction in lieu of the narrative disclosure items set forth in this Form. These Registrants and Companies to be Acquired should look to Part F/S of Form SB-1 with respect to their financial statement requirements.

(b) Registrants and Companies to be Acquired which relied upon Alternative 1 in their most recent Form 10-KSB:

(i) Part 1.A.—furnish the information required by Part 1.A. of this Form;

(ii) Part 1.B.—in lieu of the information required in Item 14, furnish the information required in (a) Questions 3, 4, 11, 43 and 47-50 of Model A of Form 1-A, and (b) Item 14(d) and 14(i) of this Form;

(iii) Part 1.C.—in lieu of the information required in Item 17, furnish the information required in (a) Item 17(a), 17(b)(1), 17(b)(2), 17(b)(6), 17(b)(7) and 17(b)(8) of this Form, and (b) Questions 4, 11 and 47-50 of Model A of Form 1-A;

(iv) Part 1.D.—(1) in lieu of providing the information required in Item 18, furnish the information required in (a) Items 18(a)(1)—18(a)(6) and (b) Questions 29-36 and 39-42 of Model A of Form 1-A; and (2) in lieu of providing the information required in Item 19(a), furnish the information required in (a) Items 19(a)(1)—19(a)(6) of this Form and Questions 29-36 and 39-42 of Model A of Form 1-A; (3) in lieu of providing the information required in Item 19(b), furnish the information required in (a) Items 19(a)(4)—19(a)(6) of this Form and Questions 29-36 and 39-42 of Model A of Form 1-A.

(v) Part II—in lieu of the exhibits required by Item 21(a) and 21(b), furnish the exhibits required in Part II of Form SB-1.

(c) Registrants and Companies to be Acquired which relied upon Alternative 2 in their most recent Form 10-KSB:

(i) Part 1.A.—furnish the information required by Part 1.A. of this Form;

(ii) Part 1.B.—in lieu of the information required in Item 14, furnish the information



required in (a) Items 6 and 7 of Model B of Form 1-A, and (b) Items 14(c), (d), and (i) of this Form;

(iii) Part 1.C.—in lieu of the information required in Item 17, furnish the information required in (a) Item 17(a), 17(b)(1), 17(b)(2), 17(b)(6), 17(b)(7) and 17(b)(8) of this Form, and (b) Item 6(a)(3)(i) of Model B of Form 1-A;

(iv) Part 1.D.—(1) in lieu of providing the information required in Item 18, furnish the information required in (a) Items 18(a)(1)—18(a)(6) and (b) Items 8, 9 and 11 of Model B of Form 1-A; (2) in lieu of providing the information required in Item 19(a), furnish the information required in (a) Items 19(a)(1)—19(a)(6) of this Form and Items 8, 9 and 11 of Model B of Form 1-A; and (3) in lieu of providing the information required in Item 19(b), furnish the information required in (a) Items 19(a)(4)—19(a)(6) of this Form and Questions Items 8, 9 and 11 of Model B of Form 1-A.

(v) Part II—in lieu of the exhibits required by Item 21(a) and 21(b), furnish the exhibits required in Part II of Form SB-1.

11. Form 1-A (§ 239.90) is amended by revising paragraph (3)(c)(iv) of Part F/S to read as follows:

Note: The text of Form 1-A does not appear in the Code of Federal Regulations.

#### Form 1-A—Regulation A Offering Statement Under the Securities Act of 1933

#### Part II—Offering Circular

#### Part F/S

(3) Financial Statements of Businesses Acquired or to be Acquired.

- (c)(i) \* \* \*
- (ii) \* \* \*
- (iii) \* \* \*

(iv) If none of the conditions in the definitions of significant subsidiary in Rule 405 exceeds 40%, income statements of the acquired business for only the most recent fiscal year and interim period need be filed, unless such statements are readily available.

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

12. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78l(d), 79q, 9t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

13. By revising the Note following the introductory text of paragraph (b) of § 240.14a–3 to read as follows:

#### § 240.14a–3 Information to be furnished to security holders.

(b) \* \* \*

Note to Small Business Issuers—A “small business issuer,” defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2), shall refer to the disclosure items in Regulation S–B (§ 228.10–702 of this chapter) rather than Regulation S–K (§ 229.10–702 of this chapter). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10-KSB (§ 249.310b of this chapter) need not provide the information specified below. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10-KSB. The inclusion of additional information, including information required of non-transitional small business issuers, in the annual report to security holders will not cause the issuer to be ineligible for the transitional disclosure forms.

14. Amend § 240.14a–101 by adding Note G to read as follows:

#### § 249.14a–101 Schedule 14A. Information required in proxy statement.

Notes: \* \* \*

#### G. Special Note for Small Business Issuers

(1) Registrants and acquirers which meet the definition of “small business issuer” in Rule 12b–2 of the Exchange Act and filed their latest annual report in accordance with “Information Required in Annual Report of Transitional Small Business Issuers” in Form 10-KSB shall refer to this “Special Note for Small Business Issuers” with respect to the specified items in this Schedule. If paragraph G(2) or G(3), below, does not contain an alternative disclosure instruction, small business issuers should comply with the disclosure item in this schedule, as modified by Instruction F.

(2) Registrants and acquirers which relied upon Alternative 1 in their most recent Form 10-KSB may provide the following information (Questions numbers are in reference to Model A of Form 1-A): (a) Questions 37 and 38 instead of Item 6(d); (b) Question 43 instead of Item 7(a); (c) Questions 29–36 and 39 instead of Item 7(b); (d) Questions 40–42 instead of Item 8; (e) Questions 40–42 instead of Item 10; (f) the information required in Part F/S of Form 10-SB instead of the financial statement requirements of Items 13 or 14; (g) Questions 4, 11 and 47–50 instead of Item 13(a)(1)(3); (h) Question 3 instead of Item 14(b)(3)(i) (A) and (B); and (i) Questions 4, 11 and 47–50 instead of Item 14(b)(3)(i)(H).

(3) Registrants and acquirers which relied upon Alternative 2 in their most recent Form 10-KSB may provide the following

information (“Model B” refers to Model B of Form 1-A): (a) Item 10 of Model B instead of Item 6(d) of Schedule 14A; (b) Item 8(d) of Model B instead of Item 7(a) of Schedule 14A; (c) Items 8(a)–8(c) and Item 11 of Model B instead of Item 7(b) of Schedule 14A; (d) Item 9 of Model B instead of Item 8 of Schedule 14A; (e) Item 9 of Model B instead of Item 10 of Schedule 14A; (f) the information required in Part F/S of Form 10-SB instead of the financial statement requirements of Items 13 or 14 of Schedule 14A; (g) Item 6(a)(3)(i) of Model B instead of Item 13(a)(1)(3) of Schedule 14A; (h) Items 6 and 7 of Model B instead of Item 14(b)(3)(i)(A) and (B) of Schedule 14A; and (i) Item 6(a)(3)(i) of Model B instead of Item 14(b)(3)(i)(H) of Schedule 14A.

15. By adding the following Note after paragraph (a)(2) of § 240.14c–3 to read as follows:

#### § 240.14c–3 Annual Report to be Furnished Security Holders.

- (a) \* \* \*
- (2) \* \* \*

Note to Small Business Issuers—In responding to the disclosure items under paragraph (b) of Rule 14a–3, (§ 240.14a–3 of this chapter) a “small business issuer,” defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2), shall refer to the disclosure items in Regulation S–B (§ 228.10–702 of this chapter) rather than Regulation S–K (§ 229.10–702 of this chapter). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10-KSB (§ 249.310b of this chapter) need not provide the information required by paragraph (b) of Rule 14a–3. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10-KSB. The inclusion of additional information, including information required of non-transitional small business issuers, in the annual report to security holders will not cause the issuer to be ineligible for the transitional disclosure forms.

#### PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

Note: The following forms will not appear in the Code of Federal Regulations.

17. By adding General Instruction E to Form 10-SB (§ 249.210b) to read as follows:

Form 10-SB



\* \* \* \* \*

**General Instructions**

\* \* \* \* \*

**E. Alternative Disclosure Formats.**

Small business issuers which were not previously subject to the reporting requirements of section 13 or 15(d) of the Exchange Act may elect any one of the three alternative disclosure models of Part I. Regardless of the disclosure model used, all registrants shall also complete Parts II and III, and furnish the financial statements required by Part F/S. As Alternative 1 is not a "transitional disclosure format," those small business issuers electing Alternative 1 will not be eligible for use of the transitional disclosure formats in Forms 10-KSB, 10-QSB and SB-1.

18. By removing Items 1 through 15 under "Information Required in Registration Statement" of Form 10-SB (17 CFR 249.210b).

19. By adding Part I; Part II; Part F/S and Part III after "Information Required in Registration Statement" of Form 10-SB (17 CFR 249.210b):

**Form 10-SB**

\* \* \* \* \*

Information Required in Registration Statement

**PART I**

**Alternative 1**

Corporate issuers may elect to furnish the information required by Questions 1, 3, 4, 11, 14-20, 28-43, 45, and 47-50 of Model A of Form 1-A.

**Alternative 2**

Any issuer may elect to furnish the following information required by Items 6-12 of Model B of Form 1-A.

**Alternative 3**

Any issuer may elect to furnish the following information.

**Item 1. Description of Business.**

Furnish the information required by Item 101 of Regulation S-B.

**Item 2. Management's Discussion and Analysis or Plan of Operation.**

Furnish the information required by Item 303 of Regulation S-B.

**Item 3. Description of Property.**

Furnish the information required by Item 102 of Regulation S-B.

**Item 4. Security Ownership of Certain Beneficial Owners and Management.**

Furnish the information required by Item 403 of Regulation S-B.

**Item 5. Directors, Executive Officers, Promoters and Control Persons.**

Furnish the information required by Item 401 of Regulation S-B.

**Item 6. Executive Compensation.**

Furnish the information required by Item 402 of Regulation S-B.

**Item 7. Certain Relationships and Related Transactions.**

Furnish the information required by Item 404 of Regulation S-B.

**Item 8. Description of Securities.**

Furnish the information required by Item 202 of Regulation S-B.

**PART II**

**Item 1. Market Price of and Dividends on the Registrant's Common Equity and Other Shareholder Matters.**

Furnish the information required by Item 201 of Regulation S-B.

**Item 2. Legal Proceedings.**

If the registrant uses either Alternative 2 or Alternative 3 of this form, furnish the information required by Item 103 of Regulation S-B.

**Item 3. Changes in and Disagreements with Accountants.**

Furnish the information required by Item 304 of Regulation S-B.

**Item 4. Recent Sales of Unregistered Securities.**

Furnish the information required by Item 701 of Regulation S-B.

**Item 5. Indemnification of Directors and Officers.**

Furnish the information required by Item 702 of Regulation S-B.

**PART F/S**

Furnish the information required by Item 310 of Regulation S-B. However, if audited financial statements of the registrant and its predecessors and the financial statements required to be provided for any significant business acquired or to be acquired are not otherwise available for each of the two most recent fiscal years, only the financial statements for the latest fiscal year must be audited.

**PART III**

**Item 1. Index to Exhibits**

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it in Part III of Form 1-A or Item 2, below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 10-SB.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

**Instructions:**

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 12b-23 shall be followed.

**Item 2. Description of Exhibits**

As appropriate, the issuer should file those documents required to be filed as Exhibit Number 2, 3, 5, 6, and 7 in Part III of Form 1-A. The registrant also shall file:

(12) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

(13) *Form F-X*—Canadian issuers shall file a written irrevocable consent and power of attorney on Form F-X.

20. By adding the following at the end of the cover page of Form 10-QSB (§ 249.308b):

**Form 10-QSB**

\* \* \* \* \*

Transitional Small Business Disclosure Format (Check one): Yes ☐; No ☐

\* \* \* \* \*

21. Form 10-QSB (§ 249.308b) is amended by adding General Instruction H to read as follows:

\* \* \* \* \*

**General Instructions**

\* \* \* \* \*

H. In response to Item 8(a) of this Form 10-QSB, a small business issuer that is eligible to file the information required under "Information Required in Annual Report of Transitional Small Business Issuers" in its next required Form 10-KSB may include only those exhibits required by Part III of "Information Required in Annual Report of Transitional Small Business Issuers" of Form 10-KSB.

22. Form 10-QSB (§ 249.308b) is amended by adding the following instruction at the end of Item 2 of Part I—Financial Information:

\* \* \* \* \*

**PART I—FINANCIAL INFORMATION**

\* \* \* \* \*

**Item 2. Management's Discussion and Analysis or Plan of Operation**

\* \* \* \* \*

**Instructions for Transitional Small Business Issuers**

(1) Those transitional small business issuers which relied upon Alternative 1 under "Information Required in Annual Report of Transitional Small Business Issuers" in their most recent Form 10-KSB may, in lieu of the disclosure required by Item 303 of Regulation S-B, update the responses to Questions 47-50 in Model A of Form 1-A. This update should provide such information as will enable the reader to assess material changes since the end of the last fiscal year and for the comparable interim period in the preceding year.

(2) Those transitional small business issuers which relied upon Alternative 2 under "Information Required in Annual Report of Transitional Small Business



Issuers" in their most recent Form 10-KSB may, in lieu of the disclosure required by Item 303 of Regulation S-B, update the response to Item 6(a)(3)(i) to Model B of Form 1-A. This update should provide such information as will enable the reader to assess material changes since the end of the last fiscal year and for the comparable interim period in the preceding year.

23. By adding the following at the end of the cover page of Form 10-KSB (§ 249.310b):

**Form 10-KSB**

Transitional Small Business Disclosure Format (Check one):

Yes ☐; No ☐

24. By adding General Instruction H to Form 10-KSB (§ 249.310b) to read as follows:

**Form 10-KSB**

**General Instructions**

**H. Transitional Small Business Issuers.**

(a) In lieu of the disclosure requirements set forth under Parts I, II and III, a small business issuer that has not registered more than \$10,000,000 in securities offerings in any continuous 12-month period since it became subject to the reporting requirements of section 13 or 15(d) of the Exchange Act may include the information required under "Information Required in Annual Report of Transitional Small Business Issuers." In calculating the \$10,000,000 ceiling, issuers should include all offerings which were registered under the Securities Act, other than any amounts registered on Form S-8.

(b) A small business issuer may provide the information set forth under "Information Required in Annual Report of Transitional Small Business Issuers" until it (1) registers more than \$10 million under the Securities Act in any continuous 12-month period (other than securities registered on Form S-8), (2) elects to file on a non-transitional disclosure document (other than the proxy statement disclosure in Schedule 14A), or (3) no longer meets the definition of small business issuer. Non-transitional disclosure documents include: (1) Securities Act registration statement forms other than Forms SB-1, S-3 (if the issuer incorporates by reference transitional Exchange Act reports), S-8 and S-4 (if the issuer relies upon the transitional disclosure format in that form); (2) Exchange Act periodic reporting Forms 10-K and 10-Q; (3) Exchange Act registration statement Form 10; and (4) reports or registration statements on Forms 10-KSB, 10-QSB or 10-SB which do not use the transitional disclosure document format. A reporting company may not return to the transitional disclosure forms.

25. By adding Part I, Part II, Part F/S and Part III after Item 13 of Form 10-KSB (§ 249.310b) to read as follows:

**Form 10-KSB**

**Item 13**

**Information Required in Annual Report of Transitional Small Business Issuers**

**PART I**

**Note:** Regardless of the disclosure model used, all registrants shall furnish the financial statements required by Part F/S.

**Alternative 1**

Corporate issuers may elect to furnish the information required by Questions 1, 3, 4, 11, 28-43, 45, and 47-50 of Model A of Form 1-A, as well as the information in Parts II and III, below.

**Alternative 2**

Any issuer may elect to furnish the information required by Items 6-11 of Model B of Form 1-A, as well as the information required by Parts II and III, below.

**PART II**

**Item 1. Market Price of and Dividends on the Registrant's Common Equity and Other Shareholder Matters**

Furnish the information required by Item 201 of Regulation S-B.

**Item 2. Legal Proceedings**

If Alternative 2 is used, furnish the information required by Item 103 of Regulation S-B.

**Item 3. Changes in and Disagreements With Accountants**

Furnish the information required by Item 304 of Regulation S-B, if applicable.

**Item 4. Submission of Matters to a Vote of Security Holders**

If any matter was submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Rule 14a-11 of Regulation A under the Act) terminating any solicitation subject to Rule 14a-11, including the cost or anticipated cost to the registrant.

**Instructions to Item 4**

1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be

deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14A under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant published a report containing all of the information called for by this item, the item may be answered by reference to the information in that report.

**Item 5. Compliance With Section 16(a) of the Exchange Act**

Furnish the information required by Item 405 of Regulation S-B.

**Item 6. Reports on Form 8-K.**

State whether any reports on Form 8-K were filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of such reports.

**PART F/S**

Furnish the information required by Item 310(a) of Regulation S-B.

**PART III**

**Item 1. Index to Exhibits**

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it in Part III of Form 1-A or under Item 2, below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 10-KSB.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

**Instructions:**

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.



3. Procedurally, the techniques specified in Rule 12b-23 shall be followed.

#### Item 2. Description of Exhibits

As appropriate, the issuer should file those documents required to be filed as Exhibit Number 2, 3, 5, 6, and 7 in Part III of Form 1-A. The registrant also shall file:

(12) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

(13) *Form F-X*—Canadian issuers shall file a written irrevocable consent and power of attorney on Form F-X.

\* \* \* \* \*

By the Commission.

Dated: April 28, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-10365 Filed 5-3-93; 8:45 am]

BILLING CODE 5010-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 381

[Docket No. RM93-14-000]

#### Annual Update of Filing Fees

April 28, 1993.

AGENCY: Federal Energy Regulatory Commission.

**ACTION:** Notice of annual update of Commission filing fees.

**SUMMARY:** In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Payroll Utilization Reporting System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs, completions, and work time data for fiscal years 1987 through 1992.

**EFFECTIVE DATE:** June 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Olive J. Wallace, Office of the Executive Director, Associate Executive Director Financial Management and CFO, Federal Energy Regulatory Commission, 810 First Street, NE., suite 600, Washington, DC 20426 (202) 219-2903. **SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the

Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Issued April 28, 1993.

The Federal Energy Regulatory Commission (Commission), by its designee the Executive Director,<sup>1</sup> is issuing this notice to update filing fees the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to § 381.104 of the Commission's regulations, the Commission is establishing updated fees on the basis of the Commission's costs, completions, and work time data for fiscal years 1987 through 1992.<sup>2</sup> The adjusted fees announced in this notice are effective June 3, 1993. The new fee schedule is as follows:

#### Fees Applicable to the Natural Gas Policy Act:

|                                                                                   |       |
|-----------------------------------------------------------------------------------|-------|
| 1. Review of jurisdictional agency determinations (18 CFR 381.402) .....          | \$100 |
| 2. Petitions for rate approval pursuant to 284.123(b)(2) (18 CFR 381.403) .....   | 5,380 |
| 3. Initial or extension reports for Title III transactions (18 CFR 381.404) ..... | 110   |

#### Fees Applicable to General Activities:

|                                                                                                                       |        |
|-----------------------------------------------------------------------------------------------------------------------|--------|
| 1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act) (18 CFR 381.302) ..... | 10,810 |
| 2. Review of a Department of Energy Remedial order:                                                                   |        |

#### Amount in controversy

|                                            |        |
|--------------------------------------------|--------|
| \$0-9,999 (18 CFR 381.303(b)) .....        | 100    |
| \$10,000-29,999 (18 CFR 381.303(b)) .....  | 600    |
| \$30,000 or more (18 CFR 381.303(a)) ..... | 15,780 |

#### 3. Review of a Department of Energy denial of adjustment:

#### Amount in controversy

|                                                                                                 |       |
|-------------------------------------------------------------------------------------------------|-------|
| \$0-9,999 (18 CFR 381.304(b)) .....                                                             | 100   |
| \$10,000-29,999 (18 CFR 381.304(b)) .....                                                       | 600   |
| \$30,000 or more (18 CFR 381.304(a)) .....                                                      | 8,270 |
| 4. Written legal interpretations by the Office of the General Counsel (18 CFR 381.305(a)) ..... | 3,100 |

#### Fees Applicable to Natural Gas Pipelines:

|                                                                                    |       |
|------------------------------------------------------------------------------------|-------|
| 1. Pipeline certificate applications pursuant to 284.224 (18 CFR 381.207(b)) ..... | 1,000 |
|------------------------------------------------------------------------------------|-------|

#### Fees Applicable to Cogenerators and Small Power Producers:

|                                                                                                      |        |
|------------------------------------------------------------------------------------------------------|--------|
| 1. Certification of qualifying status as a small power production facility (18 CFR 381.505(a)) ..... | 9,300  |
| 2. Certification of qualifying status as a cogeneration facility (18 CFR 381.505(a)) .....           | 10,520 |
| 3. Applications for exempt wholesale generator status (18 CFR 381.801) .....                         | 1,000  |

#### Fees Applicable to the Public Utility Regulatory Policies Act of 1978:

|                                                            |        |
|------------------------------------------------------------|--------|
| 1. 5 Megawatt exemption application (18 CFR 381.601) ..... | 21,620 |
|------------------------------------------------------------|--------|

<sup>1</sup> 18 CFR 375.313(a).

<sup>2</sup> The formula for updating the filing fees was revised in Order No. 548, 58 FR 2968 (January 7, 1993); III FERC Stats. & Regs. ¶ 30,960 (1993).

Under the revised formula, the Commission averages six previous fiscal years' completions and work time data to determine the annual fee for a fee category.