consistent with the main purpose of the HSA, which is to render animals insensible to pain before slaughter. The change will not require swine to be asphyxiated by CO_2 before bleeding, but will permit exposure to concentrations of the gas for a sufficient amount of time for death to occur. In addition, the requirement for a suitable exhaust system (9 CFR 313.5 (b)(3)) has been amended to more accurately state the system's purpose, which is, in case of equipment breakdown, to prevent both nonuniform carbon dioxide concentrations in the gas tunnel and leakage of carbon dioxide gas into the ambient air of the establishment.

List of Subjects in 9 CFR Part 313

Humane slaughter of livestock, Meat inspection.

For the reasons set out in the preamble, 9 CFR part 313 of the Federal meat inspection regulations is amended as follows:

PART 313—HUMANE SLAUGHTER OF LIVESTOCK

1. The authority citation for part 313 continues to read as follows:

Authority: 7 U.S.C. 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Paragraph (a)(1) of § 313.5 is amended by adding a new last sentence; paragraphs (a)(3), (b)(1)(i), and the last sentence of paragraph (b)(3) are revised to read as follows:

§ 313.5 Chemical; carbon dioxide.

* * * * *

(a) * * *

(1) * * * In swine, carbon dioxide may be administered to induce death in the animals before they are shackled, hoisted, thrown, cast, or cut.

(2) * * *

(3) On emerging from the carbon dioxide tunnel, the animals shall be in a state of surgical anaesthesia and shall remain in this condition throughout shackling, sticking, and bleeding, except for swine in which death has been induced by the administration of carbon dioxide. Asphyxia or death from any cause shall not be produced in animals before bleeding, except for swine in which death has been induced by the administration of carbon dioxide.

(b) * * *

(1) * * *

(i) The carbon dioxide gas shall be administered in a tunnel which is designed to permit the effective exposure of the animal. Two types of tunnels, based on the same principle, are in common use for carbon dioxide anesthesia. They are the "U" type tunnel and the "Straight Line" type tunnel, and are based on the principle that carbon dioxide gas has a higher specific gravity than air. The tunnels are open at both ends for entry and exit of animals and have a depressed central section. Anesthetizing, or, in the case of swine, death-inducing, carbon dioxide concentrations are maintained in the central sections of the tunnels. Effective anaesthetization is produced in these central sections. Animals are driven from holding pens through pathways constructed of large-diameter pipe or smooth metal and onto continuous conveyor devices that move the animals through the tunnels. The animals are either compartmentalized on the conveyors by mechanical impellers synchronized with the conveyor or they are otherwise prevented from crowding. While impellers are used to compartmentalize the animals, mechanically or manually operated gates are used to move the animals onto the conveyors. Surgically anaesthetized animals, or killed swine, are moved out of the tunnels by the same continuous conveyors that moved them into and through the carbon dioxide gas.

(2) * * *

(3) * * * An exhaust system must be provided so that, in case of equipment failure, non-uniform carbon dioxide concentrations in the gas tunnel or contamination of the ambient air of the establishment will be prevented.

Done at Washington, DC, on April 19, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–10035 Filed 4–25–94; 8:45 am]

BILLING CODE 3410–DM–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Update of FOIA Fee Schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations.

EFFECTIVE DATE: May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004–2901, (202) 208–6447.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991 the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule updates were published in the **Federal Register** and went into effect, most recently, on May 1, 1993. 58 FR 21241.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA request:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or Review Charge.	$43 per hour.
Copy Charge (paper) (8.5" x 11").	$.04 per page or generally available commercial rate (approximately $.07 per page).
Copy Charge (3.5" diskette).	$5.00 per diskette.
Copy Charge (audio cassette).	$3.00 per cassette.
Duplication of Video ..	$25.00 per video; $16.50 for each additional video.
Copy Charge for large documents (e.g., maps, diagrams).	Actual commercial rates.

Dated: April 21, 1994.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 94–10069 Filed 4–25–94; 8:45 am]

BILLING CODE 6820–KD–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 604, 605, 611, and 615

RIN 3052–AB41

Miscellaneous Technical Changes

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration Board (Board) adopts, as final regulations, technical amendments to certain regulations relating to the organization and responsibilities of the Farm Credit Administration (FCA) and other technical revisions. The objective of this action is to reflect changes in the FCA organization and to update a statutory citation and a mailing address.

EFFECTIVE DATE: These regulations shall become effective on the expiration of 30 days after this publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:
John J. Hays, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444;

or

Frances A. Pedersen, Senior Attorney, Administrative Law and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The amended regulations, described in detail below, reflect changes in the FCA organizational structure and revise a statutory citation and a mailing address.

The amendments pertaining to the FCA organizational structure include the following:

(1) Adding a Chief Operating Officer and an Office of Secondary Market Oversight to the FCA organizational structure;

(2) Revising the name of the Office of Regulatory Enforcement to read Office of Special Supervision and Corporate Affairs; and

(3) Revising the descriptions of office responsibilities within the FCA.

The amendments that do not relate to agency organization include:

(1) Revising a statutory citation regarding the transfer of funds and equities between Farm Credit System (System) institutions, to reflect amendments to the Farm Credit Act of 1971; and

(2) Updating the mailing address of the Federal Farm Credit Banks Funding Corporation to reflect its move from New York to New Jersey.

In acting on the regulations, the Board determined that notice and public comment are neither required nor necessary. Section 553(b)(A) of title 5 of the United States Code provides that the notice and comment requirements do not apply to rules of agency organization, procedure, or practice; thus, no notice is required for regulations relating to the FCA internal organization. In addition, 5 U.S.C. 553(b)(B) provides that notice and comment requirements do not apply when the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Because the amendments other than those that relate to agency organization are not substantive changes to the regulations, involving only technical revisions to a statutory citation and a mailing address, the Board finds that notice and public comment are unnecessary and contrary to the public interest. Therefore, the Board finds for good cause that public participation in the promulgation of these regulations is not required, and these regulations are hereby published in final form.

List of Subjects

12 CFR Part 600

Organization and functions (Government agencies).

12 CFR Part 604

Sunshine Act.

12 CFR Part 605

Classified information.

12 CFR Part 611

Agriculture, Banks, Banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, parts 600, 604, 605, 611, and 615 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

PART 600—ORGANIZATION AND FUNCTIONS

1. The authority citation for part 600 is revised to read as follows:

Authority: Secs. 5.7, 5.8, 5.9, 5.10, 5.11, 5.17, 8.11 of the Farm Credit Act; 12 U.S.C. 2241, 2242, 2243, 2244, 2245, 2252, 2279aa-11.

Subpart A—Farm Credit Administration

§ 600.1 [Amended]

2. Section 600.1 is amended by adding the number "6," after the word "January" in the third sentence and by adding the words "; Pub. L. 102-237, December 13, 1991; Pub. L. 102-552, October 28, 1992" at the end of the third sentence.

3. Section 600.4 is amended by revising paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

§ 600.4 Chairman of the Farm Credit Administration Board.

(a) * * *

(b) The Chairman has the authority to appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration, including the appointment of a Secretary to the Board and noncareer Office Directors. The Board has the authority to approve the appointment by the Chairman of a Chief Operating Officer and career Office Directors. Each Board member has the authority to appoint personnel employed regularly and full-time in his or her immediate office. The Chairman may not delegate powers specifically reserved to the Chairman by the Act without the approval of the Board. In carrying out authorities and responsibilities, the Chairman is governed by general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make.

(c) The Chairman as Chief Executive Officer is responsible for overseeing the agency's equal employment opportunity programs. An Equal Employment Opportunity Manager reports directly to the Chairman as Chief Executive Officer.

(d) The Chairman, as head of the agency, has general supervisory authority over the Inspector General. The Inspector General has the authority to select, appoint, and employ such officers and employees as may be necessary to carry out the functions, powers, and duties of the Office of Inspector General. The Inspector General is also authorized to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and private persons, and to obtain the temporary or intermittent services of experts or consultants or an organization of any such professionals. In exercising these authorities, the Inspector General is subject to applicable statutory and regulatory constraints, as well as agency and governmentwide administrative and budgetary limitations.

4. Section 600.5 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (b), (d), and (e); adding new paragraphs (a) and (c); and revising newly redesignated paragraphs (b) and (d) to read as follows:

§ 600.5 Organization of the Farm Credit Administration.

(a) *Chief Operating Officer.* The Chief Operating Officer (COO) reports to and is subject to the direction of the Chief Executive Officer (CEO) concerning administrative matters and to the Board regarding general planning and policy matters, budgetary issues, rulemaking issues, and other matters for which the Board is responsible. Within this context, the COO has responsibility for planning, organizing, directing, coordinating, and controlling agency operations.

(b) *Office Directors.* Each Office of the Farm Credit Administration is headed by a Director. The Director of the Office of Congressional and Public Affairs reports to the CEO. The Director of the Office of Secondary Market Oversight reports to the CEO on administrative matters and to the Board concerning general policy and rulemaking issues. The Directors of the Offices of Examination, Special Supervision and Corporate Affairs, and Resources Management report to the COO. The General Counsel reports to the COO on administrative matters and to the Board on matters of agency policy. Each Office Director may, with the approval of the CEO or COO, as appropriate, establish and fix the responsibilities of the divisions and such other units as the Director deems necessary for the efficient functioning of the Office.

(c) *Inspector General.* The Inspector General reports directly to the Chairman.

(d) *Offices and functions*—(1) *Office of Examination.* The Office of Examination plans and conducts examinations of System institutions and other institutions as required by law; prepares and issues reports of examination summarizing examination findings; recommends corrective action as appropriate; coordinates the agency's preparation of rules and regulations; and oversees compliance with the borrower rights provisions of the Act and agency regulations. The Office of Examination recommends formal administrative action to correct deficiencies when System institutions are found to be operating in an unsafe or unsound manner or are in violation of law or regulation. The Office Director prepares examination schedules for approval by the Board and advises the Board on matters affecting policy, regulation, and legislation relating to examination activities. The Director, Office of Examination, is the Chief Examiner of the Farm Credit Administration.

(2) *Office of Special Supervision and Corporate Affairs.* The Office of Special Supervision and Corporate Affairs (OSSCA) makes recommendations to the Board regarding corporate restructuring activities, charter changes among System institutions, related activities required by law or regulation, the initiation of enforcement actions against System institutions as provided in part C of title V of the Act, and the termination of enforcement actions. The OSSCA prepares, delivers, and oversees compliance with enforcement documents. It monitors, analyzes, and forecasts the economic, financial, and policy environment in which System institutions operate, including the risk to which those institutions are exposed; provides analytical expertise for policy matters, strategic planning, and regulation development; and oversees receiverships that were appointed prior to January 6, 1993.

(3) *Office of Resources Management.* The Office of Resources Management provides agency administrative management for the agency budget, accounting, human resources, training, procurement, electronic data processing, document processing, property, supply, facilities, records and other administrative services. The Chairman and the Board members have delegated to the Chief of the Human Resources Division the authority to serve as appointing officer, including the authority to classify or place positions in the appropriate pay plan and pay ranges.

(4) *Office of General Counsel.* The Office of General Counsel provides legal advice and services to the Board, the Chairman, and the agency staff. The Office interprets the Farm Credit Act of 1971, as amended, and other applicable laws; participates in the preparation of agency rules and regulations; and represents the agency in litigation, in enforcement proceedings brought by the agency, and in proceedings before other administrative bodies. The Office of General Counsel also has the responsibility to ensure that the agency meets all statutory and regulatory ethics requirements. The Director, Office of General Counsel, is the General Counsel of the Farm Credit Administration.

(5) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs coordinates and disseminates all communication by the agency with the Congress and plans and implements all public communications. The Office is the first source of information to the Farm Credit System and borrowers concerning the Farm Credit Administration and provides other representational services for the Board and the agency to the public.

(6) *Office of Inspector General.* The Office of Inspector General is an independent office established by the Inspector General Act Amendments of 1988 to:

(i) Conduct and supervise audits and investigations relating to the programs and operations of the Farm Credit Administration;

(ii) Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of the Farm Credit Administration's programs and operations;

(iii) Prevent and detect fraud and abuse in the Farm Credit Administration's programs and operations; and

(iv) Provide a means to keep the Chairman and Congress fully and currently informed about problems and deficiencies relating to the Farm Credit Administration's programs and operations and the necessity for, and progress of, corrective actions.

(7) *Office of Secondary Market Oversight.* The Office of Secondary Market Oversight, a separate office within the Farm Credit Administration pursuant to section 8.11 of the Act, provides for:

(i) The examination of the Federal Agricultural Mortgage Corporation and its affiliates; and

(ii) The general supervision of the safe and sound performance of the powers, functions, and duties vested in the Federal Agricultural Mortgage Corporation and its affiliates.

* * * * *

Subpart B—Rules and Procedures for Service Upon the Farm Credit Administration

§ 600.10 [Amended]

5. Section 600.10 is amended by removing the words "Associate General Counsel, Litigation and Enforcement," and adding, in their place, the words "General Counsel" in paragraph (c).

PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

6. The authority citation for part 604 is revised to read as follows:

Authority: Secs. 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2252.

§ 604.440 [Amended]

7. Section 604.440 is amended by removing the words "Director, Office of Administration" and adding, in their place, the words "Secretary to the Board".

PART 605—INFORMATION

8. The authority citation for part 605 is revised to read as follows:

Authority: Secs. 5.9, 5.12, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2246, 2252.

§ 605.502 [Amended]

9. Section 605.502 is amended by removing the words "Field Division" from paragraph (f) and adding, in their place, the words "a Field Office".

PART 611—ORGANIZATION

10. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart H—Rules for Inter-System Fund Transfers

§ 611.1130 [Amended]

11. Section 611.1130 is amended by removing the reference "5.18(11)" from paragraph (a) and adding, in its place, the reference "5.17(a)(6)."

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

12. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart O—Issuance of Farm Credit Securities

§ 615.5495 [Amended]

13. Section 615.5495 is amended by removing the words "90 William Street, New York, NY 10038" from paragraph (b) and adding, in their place, the words "10 Exchange Place, Suite 1401, Jersey City, NJ 07302".

Dated: April 18, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–9922 Filed 4–25–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–50–AD; Amendment 39–8899; AD 94–09–10]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 757 series airplanes. This action requires revising the Non-Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include procedures that will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss. This amendment is prompted by reports that flight crew procedures related to fuel system leaks are not defined adequately in the FAA-approved AFM for these airplanes. The actions specified in this AD are intended to ensure that the flight crew is advised of the potential hazard related to fuel exhaustion due to undetected leakage, and the procedures necessary to address it.

DATES: Effective May 11, 1994.

Comments for inclusion in the Rules Docket must be received on or before June 27, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–50–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Tamra J. Elkins, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2669; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: Several in-service incidents have occurred on Model 757 series airplanes in which an engine fuel line has fractured and a significant fuel leak has occurred. These fuel leaks have occurred at locations within the engine fuel system upstream of the fuel flow transmitter. Under these circumstances, sufficient fuel may still be supplied to the engine, and the engine may operate normally. In these instances, the flight crew would receive no indication of abnormal fuel flow (i.e., fuel leakage) from the fuel flow meter. If the flight crew fails to detect a fuel leak, appropriate action would not be taken to prevent further fuel loss. This condition, if not corrected, could result in fuel exhaustion due to undetected fuel leakage.

In light of this information, the FAA finds that certain procedures should be included in the FAA-approved Airplane Flight Manual (AFM) for Model 757 series airplanes to enable the flight crew to detect fuel system leaks and to take appropriate action. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 757 series airplanes of the same type design, this AD is being issued to ensure that flight crews are advised of the potential hazard related to a significantly reduced or exhausted airplane fuel supply, and of the procedures to address it. This AD requires revising the Non-Normal Procedures Section of the AFM to include procedures that will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–50–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–09–10 Boeing: Amendment 39–8899. Docket 94–NM–50–AD.

Applicability: All Model 757 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the potential hazard associated with fuel exhaustion due to undetected fuel leakage, and of the procedures necessary to address it, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Non-Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss. This may be accomplished by inserting a copy of this AD in the AFM.

"Flight Management Computer (FMC) Message Fuel QTY Error or Fuel Disagree

Compare the Fuel Quantity Indicating System (FQIS) total fuel quantity and the FMC calculated fuel remaining (based on fuel flow) with estimated fuel usage data.

If a fuel leak is suspected, close the crossfeed valve and turn off the center fuel pumps. Watch for any unusual decrease in fuel tank quantity and/or a fuel imbalance to determine if fuel is being lost.

If an engine fuel leak is confirmed (either visually or by cockpit indications), shut down the affected engine to stop the leak and retain fuel. After shutdown, fuel from the remaining center, left, and right main tanks may be used for the operating engine. Use FQIS to determine fuel remaining."

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

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(d) This amendment becomes effective on May 11, 1994.

Issued in Renton, Washington, on April 20, 1994.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–9989 Filed 4–25–94; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239 and 249

[Release Nos. 33–7053; 34–33918, International Series Release No 653, File No. S7–30–93]

RIN 3235–AF83

Simplification of Registration and Reporting Requirements for Foreign Companies; Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is announcing the adoption of a rule and amendments to rules and forms to streamline registration and reporting requirements for foreign companies by expanding the universe of foreign issuers eligible to use short-form and shelf registration under the Securities Act of 1933 (the "Securities Act"); streamlining financial statement reconciliation and financial schedule requirements; and expanding safe harbor protection for analyst reports with respect to sizeable foreign companies publicly traded offshore. In addition, the Commission is providing a new safe harbor for certain company announcements regarding exempt offerings or unregistered offshore offerings.

EFFECTIVE DATE: April 26, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Folsom Kinsey or Annemarie Tierney, (202) 272–3246, Office of International Corporate Finance, Division of Corporation Finance, or, with respect to accounting matters, Wayne E. Carnall, (202) 272–2553, Office of the Chief Accountant, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to the following rules and forms under the Securities Act of 1933:[1] Form F–1,[2]

[1] 15 U.S.C. 77a *et seq.*

[2] 17 CFR 239.31.

Form F–2,[3] Form F–3,[4] Form F–4,[5] Rule 135,[6] Rule 139,[7] Rule 457,[8] Rule 462,[9] Rule 475a,[10] Rule 477,[11] Rule 902 of Regulation S,[12] Rule 502(c) of Regulation D[13] and Item 512 of Regulation S-K.[14] In addition, the Commission is adopting new Rule 135c[15] under the Securities Act and amendments to Form 20–F[16] under the Securities Exchange Act of 1934 (the "Exchange Act").[17]

I. Introduction

The Commission today is adopting a number of initiatives designed to streamline the registration and reporting process for foreign companies accessing the U.S. public securities markets. In companion releases, the Commission is proposing additional initiatives to further this goal.[18] The rule and amendments adopted today were proposed by the Commission on November 3, 1993.[19] In most respects, the rule and amendments are being adopted substantially as proposed.

Most of the comment letters received regarding the proposals were generally supportive of the Commission's efforts to reduce the registration and reporting burdens on foreign companies.[20] A number of commenters suggested modifications to the proposals, a number of which have been incorporated into the provisions being adopted.

These provisions are part of the ongoing efforts of the Commission to ease the transition of foreign companies into the U.S. disclosure system, enhance the efficiencies of the registration and reporting processes and lower costs of compliance, where consistent with investor protection.

The new provisions further streamline the foreign issuer integrated disclosure system. This system already provides a number of accommodations to foreign practices and policies. These accommodations include:

- Interim reporting on the basis of home country regulatory and stock exchange practices; quarterly reports are not required from foreign issuers;
- Exemption from the proxy rules and Section 16 insider stock reports and short-swing profit recovery;
- Executive compensation disclosure requirements that allow disclosure of compensation for executives on an aggregate basis, if so reported in the issuer's home country; and
- Offering document financial statements that are required to be updated principally on a semi-annual, rather than quarterly, basis.

Additionally, to facilitate cross border offerings and stock market listings, the Commission staff has implemented procedures to review foreign issuers' disclosure documents in draft form on a non-public basis, if requested by the issuer. Recognizing the particular difficulties of co-ordinating time schedules for cross border offerings, the review process has been tailored to accommodate the special scheduling demands for such offerings. As reflected in the companion releasés, the Commission's efforts to address the special needs of foreign companies entering the U.S. public markets are ongoing and will continue, as consistent with investor protection.

II. Expanded Availability of Short-Form and Shelf Registration

The Commission is adopting revisions to its registration forms to extend to foreign issuers the benefits of short-form and shelf registration to the same extent available to domestic companies.

A. Short-Form Registration Statements

Under the amendments adopted today, the public float threshold for use of Form F–3 and full shelf registration is reduced from $300 million to $75 million and the reporting history requirement is reduced from 36 months to 12 months.[21] These are the same as the eligibility criteria applicable to domestic companies using Form S–3.

As proposed, Form F–3 would not have required that an annual or interim report have been filed or submitted to the Commission prior to first use of the Form. Despite the proposal's requirement that a foreign issuer have been subject to the Exchange Act reporting requirements for 12 months to be eligible to use Form F–3, it would have been possible for an eligible issuer to have filed no reports during that period.[22] As explained in the Proposing Release, foreign issuers, unlike domestic companies, are required to submit to the Commission under Form 6–K only those interim reports and other materials that the issuer prepares in accordance with home country or home market requirements or delivers to its securityholders. Moreover, unlike domestic companies using Form S–3, foreign companies registering on Form F–3 are not required to incorporate by reference all their reports on Form 6–K, but may chose which reports are incorporated. In light of these differences, as suggested by several commenters, the revisions to Form F–3 as adopted require that the company have filed at least one annual report prior to first use of the Form in order to ensure that information regarding the issuer is available to the market.[23]

B. Shelf Registration

The expanded eligibility for short-form registration on Form F–3 in turn will allow more foreign companies the full benefits of shelf registration.[24] Issuers eligible to register securities for primary offerings using short-form registration are able to offer those securities on a delayed or continuous basis under the Commission shelf registration procedures.[25] Through expanded Form F–3 eligibility, foreign issuers will be allowed the same financing flexibility and efficiency that domestic issuers have through Form S–3 eligibility.[26] In addition, as proposed, the unallocated shelf registration

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[3] 17 CFR 239.32.

[4] 17 CFR 239.33.

[5] 17 CFR 239.34.

[6] 17 CFR 230.135.

[7] 17 CFR 230.139.

[8] 17 CFR 230.457.

[9] 17 CFR 230.462.

[10] 17 CFR 230.475a.

[11] 17 CFR 230.477.

[12] 17 CFR 230.902.

[13] 17 CFR 230.502(c).

[14] 17 CFR 229.512.

[15] See 17 CFR 230.135c, being adopted today.

[16] 17 CFR 249.220f.

[17] 15 U.S.C. 78a *et seq.*

[18] See Securities Act Release Nos. 7054, 7055 and 7056 (April 19, 1994).

[19] Securities Act Release No. 7029 (Nov. 3, 1993) [58 FR 60307] (the "Proposing Release").

[20] Thirty-one comment letters on the proposal were received. Those letters and a summary of the comments are available for public inspection and copying in File No. S7–30–93 at the Commission's Public Reference Room in Washington, DC.

[21] The amendments adopted today also reduce the public float test specified in form F–2 to $75 million, as proposed.

[22] Domestic issuers are permitted to use Form S–3 after being subject to reporting requirements for 12 months, regardless of whether they have filed an annual report. Unlike foreign issuers, however, domestic issuers are required to file quarterly reports and such reports would be incorporated by reference into the Form S–3 registration statement.

[23] This requirement has been added to the issuer eligibility criteria because of its applicability to all offerings registered on Form F–3.

[24] *See* revisions to Item 512(a)(1) of Regulation S–K (§ 229.512(a)(1)) that codify prior staff interpretations allowing foreign issuers to incorporate Exchange Act reports in order to update shelf registration statements to the same extent as domestic issuers. *See also* revisions to Item 512(a)(4) that allow Form F–3 issuers to incorporate Exchange Act reports in order to update financial statements and other information for shelf offerings in accordance with Rule 3–19 of Regulation S–X (§ 210.3–19) and Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)).

[25] Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x).

[26] Under a staff interpretation, foreign private issuers of asset-backed securities are eligible to use shelf registration regardless of whether such securities are registered on Form F–1, Form F–2 or Form F–3 or the issuer files on registration forms for domestic issuers. The registration statement would include disclosure appropriate for asset-backed securities, regardless of the form used.

process is being extended to foreign companies on the same basis as for domestic companies.[27] The unallocated shelf process will permit foreign private issuers registering on Form F–3 to use one registration statement to register debt, equity and other securities, without specifying the amount of each class of securities to be offered.[28]

C. Investment Grade Non-Convertible Securities

Form F–3 is amended as proposed to permit foreign issuers to use short-form registration for all investment grade non-convertible securities,[29] without regard to the size of issuers' public float.[30] These provisions parallel those applied to domestic companies. The amendments to Forms F–2 and F–3 also clarify that the investment grade rating must exist at the time of sale to the public, rather than at the time of effectiveness.

The amendments also expand the availability of short-form registration to all investment grade securities of majority-owned subsidiaries of foreign companies, which mirrors the treatment of domestic companies, as proposed.

D. Secondary Offerings, Rights Offers, Dividend or Interest Reinvestment Plans, Convertible Securities and Warrants

Previously, a public float test applied to all users of Form F–3. In the amendments adopted today, the Commission, as proposed, is eliminating the public float requirements for short-form registration in connection with secondary offerings and certain rights offers, dividend or interest reinvestment plans, conversion of convertible securities and exercise of warrants,[31] to parallel the requirements for domestic issuers.

For domestic issuers that do not have $75 million in public float, use of Form S–3 for rights offers, dividend or interest reinvestment plans, conversion of convertible securities and exercise of warrants is conditioned on delivery of information to subject security holders in the 12 months prior to registration.[32] The required information is contained in the issuer's proxy statement and annual report to securityholders prepared pursuant to the Commission's proxy rules.[33] Foreign private issuers are exempt from the proxy rules and thus would not have had reason to deliver such information to their securityholders.

Comment was requested concerning whether an information delivery condition should be applied to all or certain foreign issuers. Several commenters suggested that a foreign issuer with a public float below $75 million should be required to deliver information similar to that required of domestic issuers. In view of the requirement being adopted today that an issuer filing a registration statement on Form F–3 have filed at least one annual report under the Exchange Act and given foreign issuers' historic exemption from the proxy rules, including the annual report delivery requirement, the revisions to Form F–3 do not impose an information delivery requirement. Form F–3 requires an issuer to provide copies of its Form 20–F annual report to offerees upon request.[34] Thus, annual information will be available to investors.

III. Streamlining Reconciliation Requirements

A. Acceptance of Cash Flow Statements Prepared in Accordance With International Accounting Standards

The Commission is adopting as proposed, with certain clarifications, amendments to accept without reconciliation a cash flow statement prepared in accordance with International Accounting Standards No. 7, "Cash Flow Statements," as amended ("IAS 7").

The commenters specifically addressing this issue supported the proposal. Most of the commenters did not believe that the Financial Accounting Standards Board ("FASB") should devote the resources to amend Statement of Financial Accounting Standards No. 95 ("SFAS 95"), and the Commission agrees. One commenter recommended that the final rules provide guidance on the transition from a statement prepared in or reconciled to U.S. GAAP to one prepared in accordance with IAS 7. In response to this comment, the General Instructions to Form 20–F provide that the presentation of cash flow information should be consistent for all periods presented in the filing.

B. Transitional Reconciliation Requirements

The Commission is adopting, as proposed, amendments to Form 20–F that would permit first-time registrants with the Commission to reconcile the required financial statements[35] and selected financial data for only the two most recently completed fiscal years and any required interim periods.[36]

In each subsequent year an additional year of reconciliation would be required. Thus, for example, a foreign company with a calendar fiscal year-end entering the U.S. market in November 1994 would be required to provide reconciled information with respect to 1993 and 1992 and interim periods. In the annual report it files for 1994 and any registration statement filed thereafter (until the filing of the 1995 annual report), the reconciled data would be provided for three years, *i.e.*, 1992, 1993 and 1994, and interim periods if applicable.

The amendments do not change the requirements with respect to the primary financial statements to be included in the filings, *i.e.*, audited balance sheets for the two most recently completed fiscal years and audited income and cash flow statements for the three most recently completed fiscal years,[37] and separate financial statements of significant acquirees or

[27] A foreign issuer wishing to convert an existing effective shelf registration statement to an unallocated shelf registration statement should use the same procedures set forth in a staff interpretive letter for domestic issuers. *See, Transitional Procedures for Converting to an Unallocated Shelf Registration* (Nov. 19, 1992).

[28] *See* General Instruction II.C. to Form F–3, General Instruction H. to Form F–4 and revisions to Rule 457 under the Securities Act. Of course, the issuer must be eligible to use Form F–3 for each type of securities it registers.

[29] To qualify as investment grade, a security must be so rated by a nationally recognized statistical rating organization, as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F)).

[30] Corresponding changes are being made to the provisions of Form F–2 that previously allowed for registration of non-convertible investment grade debt securities (but not preferred securities) without regard to public float or reporting history. *See* General Instruction I.B.2. to Form F–2.

[31] *See* General Instructions I.B.3. and I.B.4 to Form F–3. In addition, the revisions being made today provide immediate effectiveness of registration statements relating to dividend or interest reinvestment plans. *See* revisions to General Instruction III. to Form F–3 and Rule 462 under the Securities Act (§ 230.462). Conforming revisions to Rules 475a and 477 under the Securities Act (§§ 230.475a and 230.477) also are being made. *See also* Rule 405 under the Securities Act (§ 230.405) which defines "dividend or interest reinvestment plan."

[32] *See* General Instruction I.B.4. of Form S–3.

[33] *See* Rule 14a–3(b) under the Exchange Act (§ 240.14a–3(b)).

[34] *See* General Instruction II.B. to Form F–3 and Item 502(c) of Regulation S–K (§ 229.502(c)).

[35] Where financial statements of an acquired business or significant investee must also be furnished, the amendments eliminate the requirement to reconcile the earliest of the three years if that information was not previously included in a filing with the Commission.

[36] Reconciliation of interim information is not required for periodic reporting purposes under the Exchange Act.

[37] If the financial statements are prepared in accordance with U.S. GAAP, the audited income statement and statement of cash flows would only be required for two years. Selected financial data for the full five fiscal years would still be required, using the accounting principles used for reporting to its shareholders.

significant investees. Likewise, the requirement to include selected financial data for the five most recent fiscal years remains unchanged.

A majority of commenters supported the proposed transitional rules for reconciliation. There were some, on the other hand, that opposed the change and several others that questioned whether the cost savings from eliminating the reconciliation of the earliest year of the audited income and cash flow statements would be significant enough to justify the accommodation.

Based on its review of the comments, as well as its prior discussions with foreign issuers that have entered or considered entering the U.S. public securities markets, the Commission believes the amendments will facilitate foreign companies' entry into the U.S. public securities market consistent with investor protection. Therefore, the amendments are adopted as proposed. In response to comments, Form 20-F will be clarified to indicate that the transitional reconciliation relief also applies to financial disclosures required by U.S. GAAP and Regulation S-X.

The Commission also is adopting, as proposed, amendments to allow the simpler reconciliation pursuant to Item 17 of Form 20-F for all offerings of non-convertible investment grade securities (whether debt, preferred stock or other securities) regardless of the registration form used by the foreign private issuer.[38]

C. Reconciliation of Financial Statements of Significant Acquirees and Significant Equity Investees

The Commission is adopting, substantially as proposed, amendments that forego requiring a quantified reconciliation of separate financial statements of certain acquired businesses and of certain less-than-majority-owned investees ("equity investees") based on higher thresholds of significance. A description of differences in accounting methods would continue to be required. Financial statements of acquirees would not have to be reconciled unless the acquiree exceeds the 30% significance level based on the registrant's investment, assets and pre-tax income.[39] Similarly, financial statements of significant equity investees would not have to be reconciled unless the investee exceeds the 30% significance level, but using only the investment and pre-tax income tests for significance.[40]

Frequently, the information required by Item 18 of Form 20-F regarding U.S. GAAP and Regulation S-X is more difficult to obtain for financial statements of acquirees and investees than for the issuer, but it is typically less critical to an understanding of the issuer's financial condition.[41] As suggested by several commenters, compliance with Item 17 of Form 20-F will be acceptable for financial statements of all significant acquirees and investees.[42]

D. Accommodation With Respect to Pro Rata Consolidation

Generally accepted accounting principles in some countries allow pro rata consolidation for certain joint ventures that would be accounted for under the equity method pursuant to U.S. GAAP. Net income and shareholders' equity are not affected by an issuer's use of pro rata consolidation rather than the equity method. There may, however, be significant differences in line item amounts reported in the balance sheet and statements of income and cash flows as a result of the method chosen.

The Commission is adopting, with certain modifications from the proposal, amendments to the forms to streamline the reconciliation of these differences with respect to foreign private issuers that account for an investment in a joint venture using pro rata consolidation. The amendments would require an issuer to provide summarized financial information of the current assets/liabilities, noncurrent assets/liabilities, net sales, gross profit and net income relating to its pro rata interest in the joint venture.[43] Separate financial statements of a joint venture accounted for using the pro rata method are not required to be presented.

Most commenters supported the proposal to allow an issuer that uses pro rata consolidation to provide summarized condensed financial information on a joint venture in lieu of all of the reconciliation information that would otherwise be required. Several commenters indicated that condensed cash flow information should be provided to differentiate cash flow associated with entities controlled by the registrant from those associated with the joint venture. As suggested by these commenters, the rule requires summarized cash flow information—i.e., totals for major captions of operating, financing and investing activities.

As pointed out by commenters, there can be differences between the accounting standards used in the primary statements and U.S. GAAP relating to the joint venture that effect recognition and measurement. The rule as adopted makes clear that the omission from the reconciliation requirement only relates to differences in classification and display.

The Commission requested comment on whether the proposed amendment should be limited to certain types of joint ventures. Several commenters suggested that limitations should apply in order to avoid extending relief to certain financing situations where the intended purpose was to keep the selected debt and other financing off the balance sheet. The accounting standards in many countries would limit the application of pro rata consolidation to appropriate situations. However, given the variability of standards and interpretations, the rule as adopted limits the accommodation to a joint venture that is a contractual arrangement whereby two or more parties undertake an economic activity in which the power to govern the financial and operating policies of the economic activity for purposes of deriving economic benefits are contractually shared. Therefore, relief

[38] *See* General Instruction I.B.2. to Form F-3, General Instruction I.D. to Form F-2, Item 11(c) of Form F-1 and Instruction 2 thereto, Instructions to Item 11(a) of Form F-4, Item 12(b)(2) and 12(b)(3)(vii) of Form F-4, Instructions to Item 13(a) of Form F-4 and Item 14(h) of Form F-4.

[39] Reconciliation to U.S. GAAP would continue to be required for pro forma financial information depicting the effects of a registrant's acquisition of a business.

[40] *See* Rule 1-02(v) of Regulation S-X (17 CFR § 210.1-02(v)). The reconciliation of the registrant's primary financial statements to U.S. GAAP will continue to encompass reconciliation of the registrant's investment in the investee. In circumstances where a registrant furnishes separate financial statements of an equity investee pursuant to Rule 3-09 of Regulation S-X, the staff has not required the registrant to also furnish summarized financial data of the investee pursuant to Rule 4-08(g) of Regulation S-X (Staff Accounting Bulletin Topic 6:K). However, a registrant that furnishes separate financial statements of an investee that are not prepared using the same accounting standards as the registrant should furnish the summarized financial data pursuant to Rule 4-08(g) on the same basis as the registrant.

[41] Instruction 11 of Item 9 (management's discussion and analysis) to Form 20-F requires "a discussion of any aspect of the differences between foreign and United States generally accepted accounting principles, not discussed in the reconciliation, that the registrant believes is necessary for an understanding of the financial statements as a whole." These matters may relate to items that would be disclosed if the financial statements were prepared under Item 18 of Form 20-F. (See Staff Accounting Bulletin Topic 1:D). The registrant should consider discussing the separate financial statements of acquirees and investees in management's discussion and analysis.

[42] In response to several commenters, the Commission today is proposing in a separate release amendments to rules and forms that would apply similar provisions to domestic issuers. *See* Securities Act Release No. 7055 (April 19, 1994).

[43] These are the same captions as required by Rule 1-02(aa) of Regulation S-X (17 CFR § 210.1-02(aa)).

under the rule will be available with respect to the accounting for any operating entity in which the issuer holds an equity interest if the significant financial and operating policies of the entity are, by contractual arrangement, jointly controlled by all parties having an equity interest in that entity. The Commission believes that few, if any, substantive joint ventures will fall outside the scope of this relief. However, in the event that an issuer accounts for other types of joint ventures using pro rata consolidation, the Commission's staff will consider upon request whether to grant similar relief.

E. Elimination of Certain Financial Statement Schedules

The amendments to eliminate six financial schedules are adopted as proposed. As suggested by several commenters, the Commission is proposing to eliminate several financial schedules and to provide comparable relief to domestic issuers in a companion release.[44]

IV. Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports

A. Company Announcements of Unregistered Offerings

As noted in the Proposing Release, the growing number of offshore offerings and U.S. private placements has resulted in repeated requests for guidance concerning appropriate disclosure of such offerings, in light of the limitations on general solicitation and directed selling efforts in private placements and offshore offerings under Regulation S.[45] To address these concerns, the Commission today is adopting a new safe harbor for issuers' announcements of offerings not registered or required to be registered under the Securities Act.[46] The safe harbor is available to both domestic and foreign issuers.

In response to the Commission's request for comment on the new safe harbor, the National Association of State Securities Administrators (NASAA) urged the Commission to provide the safe harbor only for foreign and domestic reporting companies and foreign companies that have obtained a Rule 12g3–2(b) exemption if such information is deemed material to the marketplace. NASAA expressed concerns that, as proposed, the safe harbor was overbroad in its applicability to companies without a public market, and thus particularly vulnerable to abuse. The Commission agrees that it would be appropriate in introducing the safe harbor that it be limited to reporting companies and foreign companies that have obtained a Rule 12g3–2(b)[47] exemption. As adopted, the safe harbor is so limited. Given the safe harbor's requirement that copies be filed or provided to the Commission and its exclusion of announcements for the purpose of conditioning the market, the rule should provide adequate means to address abuses without a materiality requirement.

In all other respects, the terms and conditions of the new safe harbor are being adopted substantially as proposed. The information permitted in the announcement is limited to that which is allowed under the safe harbor for pre-filing announcements with respect to registered offerings.[48] In addition, the announcement must contain a legend stating that the securities are not registered under the Securities Act and may not be sold in the United States absent registration or an applicable exemption from the registration requirements. To rely on the safe harbor, a company must file or submit the announcement with the Commission under Form 8–K or 6–K, as applicable, or provide it to the Commission in accordance with Rule 12g3–2(b) if the issuer is relying on that exemptive rule. The safe harbor is not available if the announcement is being used for the purpose of conditioning the market in the United States for the securities being offered.

B. Broker-Dealer Research Reports

The amendments to Rule 139 under the Securities Act are adopted today in the form proposed. The amendments provide that broker-dealers may rely upon the simpler conditions of the Rule 139 safe harbor with respect to certain foreign issuers that have had securities listed or quoted on a designated offshore securities market for at least 12 months.

V. Cost-Benefit Analysis

No specific data were provided in response to the Commission's request regarding the costs and benefits of the rule and amendments being adopted today. The commenters did not address specifically the costs and benefits of the proposed rule and amendments. Eight commenters generally opposed the proposals in the belief that they would be detrimental to U.S. investors. Seventeen commenters addressed specific aspects of the proposals and generally supported the proposals. The Commission is not aware of any costs that will result from the rule and amendments. The Commission believes that the adoption of these rules will be beneficial to U.S. investors, as it will encourage more foreign companies to list their securities and raise capital in the United States and be consistent with investor protection.

VI. Availability of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act has been prepared with respect to the final rule and amendments. A summary of a corresponding Initial Regulatory Flexibility Analysis was included in the Proposing Release. Members of the public who wish to obtain a copy of the Final Regulatory Flexibility Analysis should contact Annemarie Tierney, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–9, Washington, DC 20549, (202) 272–3246.

VII. Statutory Bases

The final rule and amendments to the Commission's rules and forms are being adopted pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended, and sections 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

VIII. Effective Date

The final rule and amendments to the Commission's rules and forms shall be effective immediately upon publication in the **Federal Register**, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. § 553(d)(1).

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[44] *See* Securities Act Release No. 7055 (April 19, 1994).

[45] 17 CFR 230.901–230.904 and Preliminary Notes.

[46] *See* new Rule 135c (§ 230.135c) and revisions to Rule 902(b) of Regulations S (§ 230.902(b)) and Rule 502(c) of Regulation D (§ 230.502(c)). Rule 902(b) will provide that announcements made pursuant to either Rule 135 or new Rule 135c will not constitute "directed selling efforts" for purposes of Regulation S. Rule 502(c) will exclude Rule 135c announcements from the prohibition on general solicitation or general advertising.

[47] 17 CFR 240.12g3–2(b).

[48] Rule 135 under the Securities Act (§ 230.135). Rule 135 also is being amended to conform to the new safe harbor so as to allow statements or legends required by foreign law to be included in such notices.

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

Confidential business information, Reporting and recordkeeping requirements, Securities.

Text of Amendments

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

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

1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. By revising the proviso following paragraph (a)(1)(iii) and revising paragraph (a)(4) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

Provided, however, That paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S–3 (§ 239.13 of this chapter), Form S–8 (§ 239.16b of this chapter) or Form F–3 (§ 239.33 of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

* * * * *

(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by § 210.3–19 of this chapter at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Act need not be furnished, *provided* that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F–3 (§ 239.33 of this chapter), a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Act or § 210.3–19 of this chapter if such financial statements and information are contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Form F–3.

* * * * *

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, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

4. The authority citations following §§ 230.139 and 230.477 are removed.

5. By revising paragraph (a)(6) of § 230.135 to read as follows:

§ 230.135 Notice of certain proposed offerings.

(a) * * *

(6) Any statement or legend required by State or foreign law or administrative authority.

* * * * *

6. By adding § 230.135c to read as follows:

§ 230.135c Notice of certain proposed unregistered offerings.

(a) For the purposes only of section 5 of the Act, a notice given by an issuer required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 or a foreign issuer that is exempt from registration under the Securities Exchange Act of 1934 pursuant to § 240.12g3–2(b) of this chapter that it proposes to make, is making or has made an offering of securities not registered or required to be registered under the Act shall not be deemed to offer any securities for sale if:

(1) Such notice is not used for the purpose of conditioning the market in the United States for any of the securities offered;

(2) Such notice states that the securities offered will not be or have not been registered under the Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements; and

(3) Such notice contains no more than the following additional information:

(i) The name of the issuer;

(ii) The title, amount and basic terms of the securities offered, the amount of the offering, if any, made by selling security holders, the time of the offering and a brief statement of the manner and purpose of the offering without naming the underwriters;

(iii) In the case of a rights offering to security holders of the issuer, the class of securities the holders of which will be or were entitled to subscribe to the securities offered, the subscription ratio, the record date, the date upon which the rights are proposed to be or were issued, the term or expiration date of the rights and the subscription price, or any of the foregoing;

(iv) In the case of an offering of securities in exchange for other securities of the issuer or of another issuer, the name of the issuer and the title of the securities to be surrendered in exchange for the securities offered, the basis upon which the exchange may be made, or any of the foregoing;

(v) In the case of an offering to employees of the issuer or to employees of any affiliate of the issuer, the name of the employer and class or classes of employees to whom the securities are offered, the offering price or basis of the offering and the period during which the offering is to be or was made or any of the foregoing; and

(vi) Any statement or legend required by State or foreign law or administrative authority.

(b) Any notice contemplated by this section may take the form of a news release or a written communication directed to security holders or employees, as the case may be, or other published statements.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in the case of a rights offering of a security listed or subject to unlisted trading privileges on a national securities exchange or quoted on the NASDAQ inter-dealer quotation system information with respect to the interest rate, conversion ratio and subscription price may be disseminated through the facilities of the exchange, the consolidated transaction reporting system, the NASDAQ system or the Dow Jones broad tape, provided such information is already disclosed in a Form 8–K (§ 249.308 of this chapter) on file with the Commission, in a Form 6–K (§ 249.306 of this chapter) furnished to the Commission or, in the case of an issuer relying on § 240.12g3–2(b) of this chapter, in a submission made pursuant to that Section to the Commission.

(d) The issuer shall file any notice contemplated by this section with the Commission under cover of Form 8–K (§ 249.308 of this chapter) or furnish such notice under Form 6–K (§ 249.306 of this chapter), as applicable, and, if relying on § 240.12g3–2(b) of this chapter, shall furnish such notice to the Commission in accordance with the provisions of that exemptive Section.

7. By redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to § 230.139 to read as follows:

§ 230.139 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.

* * * * *

(a)(1) * * *

(2) The registrant is a foreign private issuer that meets all the registrant requirements of Form F–3 (§ 239.33 of this chapter), other than the reporting history provision of paragraph A.2.(a) of General Instruction I. of such form, and meets the minimum float or investment grade securities provisions of either paragraph B.1. or B.2. of General Instruction I. of such form, and the registrant's securities have been traded for a period of at least 12 months on a designated offshore securities market, as defined in § 230.902(a), and such information, opinion or recommendation is contained in a publication which is distributed with reasonable regularity in the normal course of business.

* * * * *

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

§ 230.457 Computation of fee.

* * * * *

(o) Where an issuer eligible to use Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter) is registering securities pursuant to General Instruction I.B.1. or I.B.2. to Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter), as applicable, to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(x), or pursuant to General Instruction H. to Form S–4 (§ 239.25 of this chapter) or General Instruction F. to Form F–4 (§ 239.34 of this chapter), as applicable, in connection with a business combination transaction pursuant to § 230.415(a)(1)(viii), the registration fee may be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table.

9. By revising § 230.462 to read as follows:

§ 230.462 Effective date of a registration statement filed on form S–8, and on certain Forms S–3 and F–3.

A registration statement on Form S–8 (§ 239.16b of this chapter) and a registration statement on Form S–3 (§ 239.13 of this chapter) or on Form F–3 (§ 239.33 of this chapter) for a dividend or interest reinvestment plan shall become effective upon filing with the Commission.

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

§ 230.475a Certain pre-effective amendments deemed filed with the consent of the Commission.

Amendments to a registration statement on Form F–2 (§ 239.32 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form, filed prior to the effectiveness of such registration statement shall be deemed to have been filed with a consent of the Commission and shall accordingly be treated as part of the registration statement.

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

§ 230.477 Withdrawal of registration statement or amendment.

* * * * *

(b) Any application for withdrawal of a registration statement filed on Form F–2 (§ 239.32 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form, and/or any pre-effective amendment thereto, will be deemed granted upon filing if such filing is made prior to the effective date.

* * * * *

12. By revising paragraph (c) of § 230.502 to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(c) *Limitation on manner of offering.* Except as provided in § 230.504(b)(1), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

Provided, however, that publication by an issuer of a notice in accordance with § 230.135c shall not be deemed to constitute general solicitation or general advertising for purposes of this section.

* * * * *

13. By adding paragraph (b)(7) to § 230.902 to read as follows:

§ 230.902 Definitions.

* * * * *

(b) *Directed Selling Efforts.* * * *

(7) Notwithstanding paragraph (b)(1) of this section, publication by an issuer of a notice in accordance with § 230.135 or § 230.135c shall not be deemed "directed selling efforts."

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

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

* * * * *

15. By revising paragraph (c) of Item 11 and Instructions to Item 11 of Form F–1 (§ 239.31) to read as follows:

Note: Form F–1 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–1

* * * * *

Item 11. Information with respect to the Registrant.

* * * * *

(c) Information required by Item 17 of Form 20–F may be furnished in lieu of the information specified by Item 18 thereof if the only securities being registered are non-convertible securities that are "investment grade securities," as defined below, or the only securities to be registered are to be offered: (1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or (2) pursuant to a dividend or interest reinvestment plan; or (3) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer.

Instructions

1. Attention is directed to section 10(a)(3) of the Securities Act.

2. A non-convertible security is an *investment grade security* if, at the time of sale, at least one nationally recognized

statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

* * * * *

16. By revising paragraph (b)(2), Instruction 2 to paragraph (b), and paragraph (d) of § 239.32; in Form F–2 (§ 235.32) by revising General Instruction I.B.2. and Instruction 2 thereto, and revising General Instruction I.D. to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(b)(1) * * *

(2) The provisions of paragraph (b)(1)(i) of this section do not apply to any registrant if:

(i) The aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $75 million or more, or if non-convertible securities that are "investment grade securities," as defined in Instructions to paragraph (b) of this section, are being registered; and

(ii) The registrant has filed at least one Form 20–F (§ 249.220f of this chapter), Form 40–F (§ 249.240f of this chapter) or Form 10–K (§ 249.310 of this chapter) that is the latest required to have been filed.

Instructions to paragraph (b)

1. * * *

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

* * * * *

(d) The financial statements included in this registration statement comply with Item 18 of Form 20–F (§ 249.220f of this chapter); *provided, however,* that if the securities being registered are non-convertible securities that are "investment grade securities," as defined in Instructions to paragraph (b) of this section, such financial statements comply with either Item 17 or Item 18 of Form 20–F (§ 249.220f of this chapter).

* * * * *

Note: Form F–2 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–2

* * * * *

General Instructions

1. Eligibility Requirements for Use of Form F–2

* * * * *

B.1. * * *

2. The provisions of this paragraph B.1.a. do not apply to any registrant if: (i) the aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $75 million or more, or if non-convertible securities that are "investment grade securities," as defined below, are being registered and (ii) the registrant has filed at least one Form 20–F, Form 40–F or Form 10–K that is the latest required to have been filed.

Instructions

1. * * *

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

* * * * *

D. The financial statements included in this registration statement comply with Item 18 of Form 20–F; *provided, however,* that if the securities being registered are non-convertible securities that are "investment grade securities," as defined above, such financial statements comply with either Item 17 or Item 18 of Form 20–F.

* * * * *

17. By revising the text of paragraph (g) preceding the Note of § 239.32 to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(g) If a registrant is a majority-owned subsidiary that does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

* * * * *

18. By amending Form F–2 (§ 239.32) by revising the first sentence of paragraph G. of General Instruction I., revising paragraph (b)(2) of Item 11, revising paragraph (b) of Item 17, and revising Instruction 3 to the Signatures to read as follows:

Note: Form F–2 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–2

* * * * *

General Instructions

1. Eligibility Requirements for Use of Form F–2

* * * * *

G. If a registrant is a majority-owned subsidiary that does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities. * * *

* * * * *

Item 11. Material Changes.

(a) * * *

(b)(1) * * *

(2) If the financial statements included in this registration statement in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference and delivery of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference and delivery of an amended Form 20–F, Form 40–F or Form 10–K; in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

Item 17. Undertakings.

(a) * * *

(b) The registration statement shall contain an undertaking substantially as follows:

The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to which the prospectus is sent or given: the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K; and any filing on Form 10–Q, Form 8–K or Form 6–K incorporated by reference into the prospectus.

* * * * *

Signatures

* * * * *

Instruction

* * * * *

3. Where eligibility for use of the Form is based on the assignment of a security rating under General Instruction I.B.2., the registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the security rating requirement will be met by the time of sale.

* * * * *

19. By amending § 239.33 by revising the introductory text of paragraph (a)

and paragraphs (a)(1) and (a)(2), removing paragraph (a)(4) and the Instruction thereto, redesignating paragraphs (a)(5), (a)(6) and (a)(7) as paragraphs (a)(4), (a)(5) and (a)(6), revising newly designated paragraph (a)(5) and the first sentence of the Note following newly designated paragraph (a)(5)(iii); and amending Form F–3 by revising the introductory text of General Instruction I.A. and General Instructions I.A.1. and I.A.2., removing General Instruction I.A.4. and the Instruction immediately following, redesignating General Instructions I.A.5., I.A.6. and I.A.7. as General Instructions I.A.4., I.A.5. and I.A.6., republishing the introductory text and revising paragraphs (ii) and (iii) of newly designated General Instruction I.A.5. and the first sentence of the Note following newly designated General Instruction I.A.5.(iii) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) *Registrant requirements.* Except as set forth in this paragraph (a), all registrants must meet the following conditions in order to use this Form F–3 for registration under the Securities Act of securities offered in the transactions specified in paragraph (b) of this section:

(1) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed at least one annual report on Form 20–F (§ 249.220f of this chapter), on Form 10–K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A(2) of Form 40–F, on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

(2) The registrant:

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

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during those twelve calendar months and that portion of a month) § 240.12b–25(b) of this chapter with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by § 240.12b–25(b) of this Chapter.

* * * * *

(5) *Majority-Owned Subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this form if:

(i) The registrant-subsidiary itself meets the Registrant Requirements and the applicable Transaction Requirement;

(ii) The parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of the Transaction Requirement set forth in paragraph (b)(2) of this section (Offerings of Certain Debt or Preferred Securities) are met; or

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

Note: In the situation described in paragraph (a)(6)(iii) of this section, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. * * *

* * * * *

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3

* * * * *

A. Registrant Requirements

Except as set forth below, all registrants must meet the following conditions in order to use this Form F–3 for registration under the Securities Act of securities offered in the transactions specified in I.B. below:

1. The registrant has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to Section 12(g) of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act.

2. The registrant: (a) has been subject to the requirements of Section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to Section 13, 14 or 15(d) of the Exchange Act for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and (b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during those twelve calendar months and that portion of a month) Rule 12b–25(b) (§ 240.12b–25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule.

* * * * *

5. *Majority-Owned Subsidiaries.*

If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

(i) * * *

(ii) The parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirement B.2. (Offerings of Certain Debt or Preferred Securities) are met; or

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

Note: In the situation described in paragraph (iii) of General Instruction I.A.5., the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. * * *

* * * * *

20. By revising paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) and adding an Instruction to paragraph (b)(1) of § 239.33; and revising General Instructions I.B.1., I.B.2., I.B.3. and I.B.4. of Form F–3 (§ 239.33) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(b) * * *

(1) *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, *provided* that the aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $75 million or more. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

Instruction to Paragraph (b)(1)

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

(2) *Primary offerings of non-convertible investment grade securities.* Non-convertible securities to be offered for cash if such securities are *investment grade securities.* A non-convertible security is an *investment grade security* if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in § 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F (§ 249.220f of this chapter).

(3) *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In the case of such securities, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F (§ 249.220f of this chapter). In addition, Form F–3 (§ 239.33) may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

(4) *Rights offerings, dividend or interest reinvestment plans, and conversions or warrants.* Securities to be offered:

(i) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or

(ii) Pursuant to a dividend or interest reinvestment plan; or

(iii) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F (§ 249.220f of this chapter). The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs (b) (1), (2) and (3) of this section.

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3

* * * * *

B. Transaction Requirements

* * * * *

1. *Primary Offerings by Certain Registrants.* Securities to be offered for cash by or on behalf of a registrant, *provided* that the aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $75 million or more. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20–F.

Instruction

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

2. *Primary Offerings of Non-Convertible Investment Grade Securities.* Non-convertible securities to be offered for cash if such securities are "investment grade securities." A non-convertible security is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F.

3. *Transactions Involving Secondary Offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In the case of such securities, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

4. *Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions or Warrants.* Securities to be offered: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing securityholders of the class of securities to which the rights attach; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F. The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs (b)(1), (2) and (3) of this section.

* * * * *

21. By adding paragraph C. to General Instruction II. of Form F–3 (§ 239.33) to read as follows:

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. Where two or more classes of securities being registered on this Form pursuant to General Instruction I.B.1. or I.B.2. are to be offered on a delayed or continuous basis pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter), Rule 457(o) (§ 230.457(o) of this chapter) permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify for each class information as to the amount to be registered, proposed maximum offering price per unit and proposed maximum aggregate offering price.

* * * * *

22. By revising the first sentence of General Instruction III. of Form F–3 (§ 239.33) and removing the second and third sentences of General Instruction III. of Form F–3 (§ 239.33) to read as follows:

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

* * * * *

III. Dividend or Interest Reinvestment Plans: Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment

Original registration statements on this Form F–3 solely with respect to securities offered pursuant to dividend or interest reinvestment plans shall become effective automatically upon filing (Rule 456, § 230.456 of this chapter) pursuant to the provisions of Section 8(a) of the Act (Rule 462, § 230.462 of this chapter). * * *

* * * * *

23. By amending Item 11 of Form F–3 (§ 239.33) by revising paragraph (a), paragraph (b)(1) up to (i) and paragraph (b)(2) to read as follows:

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which certified financial statements are included in this registration statement in accordance with Item 12 of this Form and that have not been described in a report on Form 6–K (§ 249.306 of this chapter), Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act and incorporated by reference pursuant to Item 12 of this Form.

(b)(1) Include in the prospectus, if not included in documents incorporated by reference into the prospectus pursuant to Item 12 or a prospectus previously filed pursuant to Rule 424 (b) or (c) under the Securities Act or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or a Form 8–K filed during either of the two preceding years: (i) * * *

(2) If the financial statements included in this registration statement in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S-X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference of an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

24. By amending Item 12 of Form F–3 (§ 239.33) by revising paragraphs (a), (b) and (c) to read as follows:

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

Item 12. Incorporation of Certain Information by Reference

(a) The registrant's latest Form 20–F, Form 40–F, Form 10–K or Form 10 filed pursuant to the Exchange Act shall be incorporated by reference. Any report on Form 10–Q or Form 8–K filed since the date of filing of the annual report incorporated by reference also shall be incorporated by reference. If capital stock is to be registered and securities of the same class are registered under Section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description shall be incorporated by reference.

Instruction * * *

(b) The prospectus shall also state that all subsequent annual reports filed on Form 20–F, Form 40–F or Form 10–K, and all subsequent filings on Forms 10–Q and 8–K filed by the registrant pursuant to the Exchange Act, prior to the termination of the offering, shall be deemed to be incorporated by reference into the prospectus.

(c) The registrant may incorporate by reference any Form 6–K meeting the requirements of this Form. If the registrant intends to incorporate any Form 6–K subsequently submitted to the Commission, the prospectus shall state that the registrant may incorporate such Forms 6–K by identifying in such Forms that they are being incorporated by reference into this Form.

Instructions

* * * * *

25. By revising Instruction 3. to the Signatures of Form F–3 (§ 239.33) to read as follows:

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

Signatures

* * * * *

3. Where eligibility for use of the Form is based on the assignment of a security rating pursuant to General Instruction I.B.2., the registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the security rating requirement will be met by the time of sale.

26. By amending Form F–4 (§ 239.34) by revising General Instruction B.1.(a) and B.1.(a)(ii)C., adding paragraph 3. to General Instruction D., revising paragraphs (a), (b) and (c) of Item 10, revising the introductory text and paragraphs (a)(1), (a)(2) and Instruction 1 following paragraph (a)(3) of Item 11 to read as follows:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

* * * * *

B. Information With Respect to the Registrant

1. * * *

(a) Items 10 and 11 of this Form, if the registrant elects this alternative and meets the following requirements for use of Form F–3 (§ 239.33 of this chapter) (hereinafter, with respect to the registrant, "meets the requirements for use of Form F–3") for this offering of securities:

(i) * * *

(ii) One of the following is met:

* * * * *

C. The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.A.5. of Form F–3 is met.

* * * * *

D. Application of General Rules and Regulations

* * * * *

3. Where two or more classes of securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of this chapter), Rule 457(o) (§ 230.457(o) of this chapter) permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table ("Fee Table") if the securities are being registered by an issuer eligible to use Form F–3. In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify for each class information as to the amount to be registered, proposed maximum offering price per unit and proposed maximum aggregate offering price.

* * * * *

Item 10. Information With Respect to Certain Form F–3 Registrants

* * * * *

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements are incorporated by reference in accordance with Item 11 of this Form and that have not been described in a report on Form 6–K (§ 249.306 of this chapter), Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act;

(b) If the financial statements incorporated by reference in accordance with Item 11 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus, in an amended Form 20–F, 40–F or 10–K (in which case the prospectus shall disclose that such form has been so amended), or in a Form 6–K, Form 10–Q or Form 8–K; and

(c) Include in the prospectus, if not incorporated by reference from the documents filed under the Exchange Act specified in Item 11 of this Form, from a prospectus previously filed pursuant to Rule 424(b) or (c) under the Securities Act (§ 230.424 of this chapter) or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or from a Form 6–K filed during either of the two preceding fiscal years:

* * * * *

Item 11. Incorporation of Certain Information by Reference

If the registrant furnishes information in accordance with the provisions of Item 10 of this Form:

(a) * * *

(1) The registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 10–K or Form 40–F was required to be filed;

(2) All reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the financial statements in the report or registration statement incorporated pursuant to Item 11(a)(1) of this Form; and

* * * * *

Instructions

1. All annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20–F except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–3.

* * * * *

27. By amending Form F–4 (§ 239.34) by revising the second sentence of the introductory text of Item 12, revising the introductory text of paragraph (a), paragraph (a)(1), the introductory text of paragraph (a)(2), paragraphs (a)(3) and (a)(4), the introductory text of paragraph (b), the first sentence of paragraph (b)(2), and paragraph (b)(3)(vii) of Item 12 to read as follows:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

Item 12. Information With Respect to F–2 or F–3 Registrants

* * * *However*, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements incorporated by reference pursuant to Item 13 of this Form reflect: (1) * * *

(a) If the registrant elects to deliver this prospectus together with the annual report incorporated by reference pursuant to Item 13, or a complete and legible facsimile thereof:

(1) Indicate that the prospectus is accompanied by such annual report or registration statement.

(2) If the financial statements incorporated by reference pursuant to Item 13 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S-X, provide the information required by Rule 10–01 of Regulation S-X and Item 9 of Form 20–F by one of the following means: * * *

(3) If not reflected in the registrant's annual report incorporated by reference in accordance with Item 13 of this Form, provide information required by Rule 3–05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements are incorporated by reference in accordance with Item 13 of this Form and that have not been described in a report on Form 6–K, Form 10–Q or Form 8–K delivered with the prospectus in accordance with paragraph (2)(ii) of this Item.

(5) * * *

(b) If the registrant elects not to deliver its annual report incorporated by reference pursuant to Item 13 to the securityholders of the company to be acquired:

(1) * * *

(2) Include financial statements and information as required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–2. * * *

(3) * * *

(vii) Financial statements required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–2, and financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued (Schedules required under Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form); and

* * * * *

28. By amending Form F–4 (§ 239.34) by revising Item 13, revising the introductory text of Item 14 and revising paragraph (h) of Item 14 to read as follows and revising the phrase "Section 13(a) or 15(d) of the Exchange Act, or" to read "Section 13(a) or 15(d) of the Exchange Act, and" in paragraph (a) of Item 17:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

Item 13. Incorporation of Certain Information by Reference

If the registrant furnishes information in accordance with the provisions of Item 12 of this Form, incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, the documents listed in paragraphs (a) and, if applicable, (b) below:

(a) The registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 10–K or Form 40–F was required to be filed; and

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the financial statements in the report incorporated pursuant to Item 13(a) of this Form.

Instructions

1. All annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–2.

2. Where common equity securities are being issued, the information required by Item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or Form 40–F or in a Form 6–K, Form 10–Q or Form 8–K.

3. The registrant may incorporate by reference and deliver with the prospectus any Form 6–K, Form 10–Q or Form 8–K containing information meeting the requirements of Form F–2. See Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item 18 of Form 20–F.

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

Item 14. Information With Respect to Foreign Registrants Other Than F–2 or F–3 Registrants

If the foreign registrant does not meet the requirements for use of Form F–2 or F–3, or otherwise elects to comply with this Item in lieu of Items 10 and 11 or Items 12 and 13, furnish the following information:

* * * * *

(h) Financial statements required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–1, as well as financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued (Schedules required by Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form); and

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

29. The authority citation for Part 249 continues to read in part as follows:

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

* * * * *

30. By amending Form 20–F (§ 249.220f) by adding one sentence to the end of Instruction 7 to Item 8; and in Item 17 revising paragraph (a), removing paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(2), in newly designated paragraph (c)(2), adding one sentence to the end of paragraph (c)(2)(i) before the table, redesignating paragraph (c)(2)(iii) as (c)(2)(iv), adding paragraphs (c)(2)(iii), (c)(2)(v), (c)(2)(vi) and (c)(2)(vii), and adding Instruction (4) to read as follows:

Note: Form 20–F does not and these amendments will not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 8. Selected Financial Data

* * * * *

Instructions

* * * * *

7. * * * Selected financial data on a basis reconciled to U.S. generally accepted accounting principles need be provided only for (i) those periods for which the primary annual financial statements have been required to be reconciled in a filing made under the Securities Act or Exchange Act, and (ii) any interim periods.

* * * * *

Item 17. Financial Statements

(a) The registrant shall furnish financial statements for the same fiscal years and accountants' reports that would be required to be furnished if the registration statement were on Form 10 or the annual report on Form 10–K. Schedules designated by §§ 210.12–04, 210.12–09, 210.12–10, 210.12–11, 210.12–15, 210.12–16, 210.12–17, 210.12–18, 210.12–28 and 210.12–29 of this chapter shall be furnished if applicable to the registrant.

* * * * *

(c) * * *

(2) * * *

(i) * * * However, reconciliation of net income of the earliest of the three years may be omitted if that information has not previously been included in a filing made under the Securities Act or Exchange Act.

* * * * *

(iii) For each period for which an income statement is presented and required to be reconciled to generally accepted accounting principles in the United States, provide either a statement of cash flows prepared in accordance with generally accepted accounting principles in the United States or with International Accounting Standard No. 7, as amended in October 1992; or furnish in a note to the financial statements a quantified description of the material differences between cash or funds flows reported in the primary financial statements and cash flows that would be reported in a statement of cash flows prepared in accordance with accounting principles generally accepted in the United States.

* * * * *

(v) Issuers that prepare financial statements on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a business acquired or to be acquired pursuant to § 210.3–05 of this chapter may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this Item if the conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30 percent.

(vi) Issuers that prepare financial statements on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a less-than-majority-owned investee pursuant to § 210.3–09 of this chapter may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this Item if the first and third conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30 percent.

(vii) Issuers that prepare financial statements on a basis of accounting other than U.S. generally accepted accounting principles that allows proportionate consolidation for investments in joint ventures that would be accounted for under the equity method pursuant to U.S. GAAP may omit differences in classification or display that result from using proportionate consolidation in the reconciliation to U.S. GAAP specified by paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this Item; *Provided*, the joint venture is an operating entity, the significant financial operating policies of which are, by contractual arrangement, jointly controlled by all parties having an equity interest in the entity. Financial statements that are presented using proportionate consolidation must provide summarized balance sheet and income statement information using the captions specified in § 210.1–02(aa) of this chapter and summarized cash flow information resulting from operating, financing and investing activities relating to its pro rata interest in the joint venture.

* * * * *

Instructions

* * * * *

(4) If the cash flows statement prepared under the basis of accounting used in the primary financial statements complies with International Accounting Standard No. 7 or U.S. GAAP, a statement to this effect must be included in the financial statements or the accountant's report. If the cash flows statement in the primary financial statements is prepared in accordance with either U.S. GAAP or International Accounting Standard No. 7 but such presentation departs from the comprehensive body of accounting principles otherwise followed in the financial statements, the reference to the departure in the accountant's report must identify the body of accounting standards used in preparing the cash flow statement. If a supplemental cash flows statement that complies with either International Accounting Standards or U.S. generally accepted accounting principles is furnished in a note to the financial statements, the body of accounting standards used in preparing the statement must be indicated. The basis of presentation must be consistent for all periods.

31. By amending Item 18 of Form 20–F (§ 249.220f) by revising paragraph (a), removing paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(2), and redesignating paragraph (c)(4) as paragraph (c)(3), in newly redesignated paragraph (c)(2), adding one sentence to the end of paragraph (c)(2)(i) before the table, redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(iv) and adding paragraphs (c)(2)(iii), (c)(2)(v), (c)(2)(vi) and (c)(2)(vii), adding one sentence to the end of newly designated paragraph (c)(3), and adding Instruction 3 to the Instructions to Item 18 to read as follows:

Note: Form 20–F does not and these amendments will not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 18. Financial Statements

* * * * *

(a) The registrant shall furnish financial statements for the same fiscal years and accountants' reports that would be required to be furnished if the registration statement were on Form 10 or the annual report on Form 10–K. Schedules designated by §§ 210.12–04, 210.12–09, 210.12–10, 210.12–11, 210.12–15, 210.12–16, 210.12–17, 210.12–18, 210.12–28 and 210.12–29 of this chapter shall be furnished if applicable to the registrant.

* * * * *

(c) * * *

(2) * * *

(i) * * * However, reconciliation of net income of the earliest of the three years may be omitted if that information has not previously been included in a filing made under the Securities Act or Exchange Act.

* * * * *

(iii) For each period for which an income statement is presented and required to be reconciled to generally accepted accounting principles in the United States, provide either a statement of cash flows prepared in accordance with generally accepted accounting principles in the U.S. or with International Accounting Standard No. 7, as amended in October 1992; or furnish in a note to the financial statements a quantified description of the material differences between cash or funds flows reported in the primary financial statements and cash flows that would be reported in a statement of cash flows prepared in accordance with accounting principles generally accepted in the United States.

* * * * *

(v) Issuers that prepare financial statements on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a business acquired or to be acquired pursuant to § 210.3–05 of this chapter may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this Item if the conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30 percent.

(vi) Issuers that prepare financial statements on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a less-than-majority-owned investee pursuant to § 210.3–09 of this chapter may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this Item if the first and third conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30 percent.

(vii) Issuers that prepare financial statements on a basis of accounting other than U.S. generally accepted accounting principles that allows proportionate consolidation for investments in joint ventures that would be accounted for under the equity method pursuant to U.S. GAAP may omit differences in classification or display that result from using proportionate consolidation in the reconciliation to U.S. GAAP specified by paragraphs (c)(2)(i), (c)(2)(ii) and (c)(2)(iii) of this Item; *Provided*, the joint venture is an operating entity, the significant financial operating policies of which are, by contractual arrangement, jointly controlled by all parties having an equity interest in the entity. Financial statements that are presented using proportionate consolidation must provide summarized balance sheet and income statement information using the captions specified in § 210.1–02(aa) of this chapter and summarized cash flow information resulting from operating, financing and investing activities relating to its pro rata interest in the joint venture.

* * * * *

(3) * * * However, information may be omitted (i) for any period in which net income has not been presented on a basis reconciled to United States generally accepted accounting principles, or (ii) if the financial statements are furnished for a business acquired or to be acquired pursuant to § 210.3–05 or less-than-majority-owned investee pursuant to § 210.3–09 of this chapter.

* * * * *

Instructions

* * * * *

(3) If the cash flows statement prepared under the basis of accounting used in the primary financial statements complies with International Accounting Standard No. 7 or U.S. GAAP, a statement to this effect must be included in the financial statements or the accountant's report. If the cash flows statement in the primary financial statements is prepared in accordance with either U.S. GAAP or International Accounting Standard No. 7 but such presentation departs from the comprehensive body of accounting principles otherwise followed in the financial statements, the reference to the departure in the accountant's report must identify the body of accounting standards used in preparing the cash flow statement. If a supplemental cash flows statement that complies with either International Accounting Standards or U.S. generally accepted accounting principles is furnished in a note to the financial statements, the body of accounting standards used in preparing the statement must be indicated. The basis of presentation must be consistent for all periods.

* * * * *

By the Commission.

Dated: April 19, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–9846 Filed 4–25–94; 8:45 am]

BILLING CODE 8010–01–P

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17 CFR Parts 275 and 279

[Release No. IA–1411; S7–2–94]

RIN 3235–AG02

Disclosure by Investment Advisers Regarding Wrap Fee Programs

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and form amendments.

SUMMARY: The Commission is adopting rule and form amendments under the Investment Advisers Act of 1940 relating to "wrap fee" programs. The amendments specify the information that registered investment advisers that are sponsors of wrap fee programs must provide to prospective clients in these programs. The amendments are intended to provide prospective wrap fee program clients with important information regarding the cost of the programs and the services provided.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Eric C. Freed, Senior Attorney, (202) 942–0726, or Robert E. Plaze, Assistant Director, (202) 942–0721, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting amendments to:

(1) Form ADV [17 CFR 279.1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] (the "Advisers Act") to require advisers that sponsor wrap fee programs ("sponsors") to file with the Commission as part of Form ADV a document (the "wrap fee brochure") containing certain disclosures about the sponsor and its wrap fee programs in a narrative (rather than check-the-box) format;

(2) Rule 204–3 under the Advisers Act [17 CFR 275.204–3] to require sponsors to deliver the wrap fee brochure to current and prospective wrap fee program clients in lieu of the disclosure document they are required to deliver to other clients and prospective clients; and

(3) Rule 204–1 under the Advisers Act [17 CFR 275.204–1] setting forth the requirements for updating the wrap fee brochure.

I. Discussion

On January 13, 1994, the Commission issued a release proposing amendments to Form ADV and related rules under the Advisers Act ("Proposing Release") to improve the quality of brochure disclosure that clients of wrap fee programs receive.[1] A wrap fee program provides an investor with two types of services: investment advisory services and execution services for a single "wrap" fee, usually a percentage of assets under management. Among the advisory services typically provided are asset allocation, portfolio management, and monitoring of the portfolio management services.[2] Other ancillary

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[1] Investment Advisers Act Rel. No. 1401 (Jan. 13, 1994) [59 FR 3033 (Jan. 20, 1994)].

[2] See Proposing Release, *supra* note 1, at § I.

services, such as custody of client funds and securities and client reporting, are also provided. The Commission proposed that the sponsor of a wrap fee program provide the wrap fee brochure to prospective clients of the program in lieu of the brochure the sponsor currently is required to provide to other advisory clients.[3] The Commission also proposed requirements for disclosure to be included in the wrap fee brochure. The Commission received thirty comment letters in response to the proposed amendments.[4]

The Commission is adopting the proposed amendments with some modifications to reflect comments received. The modifications generally relate to the scope of the obligation to deliver the wrap fee brochure (*i.e.*, the definitions of "wrap fee program" and "sponsor") and the disclosure requirements of the brochure.[5]

A. Applicability of Disclosure Requirements

The Commission proposed to require that the wrap fee brochure be provided by "sponsors" of "wrap fee programs." The Commission received several comments concerning the scope of these terms. The amendments, as adopted, contain modifications to reflect certain of these comments.

1. Wrap Fee Programs

Under the proposal, a "wrap fee program" was defined, in part, as a program under which any client is charged for investment advisory and execution services a specified fee or fees not based directly upon the transactions in the client's account. Some commenters asserted that programs under which clients are charged a wrap fee for portfolio management and execution of transactions, but under which no advice about portfolio managers is provided, should be excluded from the definition of wrap fee program because of the absence of advice about portfolio managers.[6] The wrap fee brochure is intended to address the special disclosure needs of clients participating in programs that offer investment advice and brokerage for a single fee, regardless of whether advice about portfolio managers is provided.[7] Therefore, as adopted, the definition of wrap fee program includes programs under which no advice regarding portfolio managers is provided.[8]

a. *Managed Account Programs.* In the Proposing Release, the Commission requested comment whether "managed account programs," under which clients are provided with advice about portfolio managers but are charged advisory fees together with transaction-based commissions (rather than a single fee), should be included in the definition of wrap fee program. Commenters generally were opposed to the inclusion of managed account programs in the definition. Because managed account programs do not involve advisory and brokerage services provided for a single fee and thus do not raise the types of disclosure concerns addressed in the amendments, the Commission has not included these programs within the definition.[9]

b. *Mutual Fund Asset Allocation Programs.* The proposed amendments would have included as wrap fee programs arrangements under which advice is provided regarding the allocation of client assets among mutual funds affiliated with the sponsor. Many commenters argued that mutual fund asset allocation programs should be excluded from the definition because they are more similar to traditional advisory services than to wrap fee programs, and the disclosure concerns they raise are addressed under current Part II of Form ADV ("Part II"). The Commission believes that mutual fund asset allocation programs, because they do not involve the provision of advisory and brokerage services for a single wrap fee, generally do not raise the disclosure concerns addressed in the amendments, and has modified the definition of wrap fee program to exclude mutual fund asset allocation programs. The Commission may consider in connection with future revisions to Form ADV whether additional disclosure requirements regarding these programs are needed.

2. Sponsors

The proposed amendments defined the term "sponsor" broadly to include an adviser that sponsors or organizes a wrap fee program or that provides advice to clients regarding the selection of portfolio managers in the program.[10] The Commission recognized that such a broad definition might result in a single program's having more than one sponsor, and therefore proposed to permit the sponsors to choose among themselves the sponsor that would deliver the wrap fee brochure to clients.[11] Some comments suggested that the definition of sponsor unintentionally included advisers who recommend wrap fee program portfolio managers to clients, but who are not involved with or compensated under the wrap fee program. In addition, commenters suggested that the definition of "sponsor" be made consistent with the North American Securities Administrators Association's proposed amendments to their Uniform Rules under the Uniform Securities Act.[12]

Based on these comments, the Commission is revising the definition of sponsor to include only those advisers that "are compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program."[13]

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[3] An adviser has the option to deliver to prospective advisory clients a copy of Part II of Form ADV, which consists primarily of a series of questions relating to the adviser's investment advisory services answered by checking the appropriate boxes, or a narrative brochure containing, at a minimum, the information required by Part II, Paragraph (a) of rule 204–3 [17 CFR 275.204–3(a)].

[4] The comment letters, as well as a comment summary prepared by the Commission's staff, are available for public inspection and copying at the Commission's Public Reference Room in File No. S7–2–94.

[5] Form ADV is a joint federal-state form used to register as an adviser with the Commission and with all states that require adviser registration. The amendments were prepared in cooperation with the North American Securities Administrators Association, Inc., which has voted to amend its Uniform Rules under the Uniform Securities Act to adopt the wrap fee brochure requirements discussed in this Release.

[6] Under many of these programs, only a single portfolio manager, usually the broker itself or its affiliate, is available to clients.

[7] The only disclosure requirement that necessarily will not be applicable to programs not contemplating the selection of a portfolio manager is Item 7(f) of Schedule H, regarding how the sponsor selects and recommends portfolio managers.

[8] The definition includes only wrap fee arrangements that are part of wrap fee "programs," a term intended to describe arrangements that have some degree of uniformity among clients and that are entered into more than occasionally. Thus, an adviser that occasionally enters into wrap fee arrangements with clients and does not promote or solicit clients for wrap fee arrangements is not a sponsor of a "program" under the amendments.

[9] As noted in the Proposing Release, the definition of wrap fee program includes programs under which clients are offered a choice between a wrap fee and a fee-plus-commission arrangement. Proposing Release, *supra* note 1, at n.9. The sponsor of a program offering a choice of fee arrangements must provide prospective clients of the program with the wrap fee brochure describing each alternative.

[10] The sponsor of a wrap fee program is generally required to register as an adviser under the Advisers Act. *See* National Regulatory Services, Inc. (pub. avail. Dec. 2, 1992).

[11] As adopted, amended rule 204–3 permits the sponsors of a wrap fee program to allocate brochure obligations. The rule does not, however, relieve a sponsor from liability for violating the rule if another sponsor fails to deliver the brochure.

[12] Uniform Rule 203(b)–2, NASAA Reports (CCH) ¶ 4104 (Oct. 1993).

[13] New paragraph (f)(1) of rule 204–3; Instruction 1 of Schedule H. A person that is paid to solicit clients for a wrap fee program is not a sponsor of the program merely because of the solicitation

A registered adviser that has an advisory relationship or prospective advisory relationship with a wrap fee client, but is not compensated under the wrap fee program, is not a sponsor and must provide the client with the brochure that the adviser is otherwise required to provide its clients pursuant to rule 204–3 under Advisers Act (the "general brochure").[14] A sponsor of a wrap fee program that is a registered investment adviser must deliver the wrap fee brochure (unless another sponsor has assumed that obligation) to a prospective client of the program even if that sponsor will not have an advisory relationship with the prospective client (because, for example, that sponsor provides only administrative services under the program).[15]

B. The Separate Brochure

1. In General

As noted above, the Commission proposed a narrative wrap fee brochure that would be separate from, and would be provided to wrap fee clients in lieu of, the sponsor's general brochure. Commenters generally supported requiring a narrative disclosure document in connection with wrap fee programs. Commenters were divided, however, over whether a separate wrap fee brochure should be required. Nine commenters supported requiring a separate brochure, six of whom asserted that a separate document should be required for each program.[16] Nine other commenters opposed the separate brochure requirement, arguing that a brochure describing all of the sponsor's advisory services would provide relevant information about the client's investment alternatives.

The Commission has decided to retain a separate brochure requirement.[17] The Commission has observed that brochures containing disclosure about wrap fee programs often also describe other programs that are not available to most wrap fee clients because they do not meet the minimum account or other eligibility requirements of those other programs. Thus, these combined brochures may not in fact provide information about available investment alternatives, as argued by commenters opposing the separate brochure proposal. Moreover, brochures describing multiple programs are often lengthy and cumbersome and may discourage prospective clients from reading them.[18]

Commenters opposed to a separate brochure requirement also argued that such a requirement would impose substantial additional costs on sponsors. The Commission believes, however, that the cost burden of a separate brochure requirement will be small in relation to its benefits.[19]

The Commission does not expect that sponsors will need to deliver both their general brochure and their wrap fee brochure to significant numbers of prospective advisory clients. Many prospective wrap fee program clients will likely not be interested in or eligible for other programs. Furthermore, a client being offered a program with a choice of fee arrangements need only be offered the wrap fee brochure.[20]

2. Multiple Wrap Fee Programs

The proposed amendments would give sponsors the option to prepare either a single brochure describing all their wrap fee programs or separate brochures describing different programs. The Proposing Release requested comment whether separate brochures should be required for each of a sponsor's wrap fee programs, or whether a single brochure describing all programs should be required. Some commenters believed that separate brochures for each program should be required, while others believed that sponsors should have the flexibility to use either separate or combined brochures.

The Commission is retaining the provision in the proposal giving sponsors the option to prepare either a single brochure describing all of their wrap fee programs or separate brochures for each program. A sponsor that uses separate brochures for different wrap fee programs must note the existence of the other programs in each brochure, and state how brochures for the other programs can be obtained.[21] This disclosure will inform clients that alternative programs may be available to them.

C. Contents of the Brochure

The requirements for the contents of the wrap fee brochure are set forth in a new schedule to Form ADV, Schedule H.[22] The requirements of Schedule H are substantially similar to the requirements set forth in the proposed amendments.

The Commission urges sponsors to draft wrap fee brochures in a direct and understandable manner. Consideration should be given, for example, to the level of sophistication of clients and prospective clients of the program. In addition, technical language should be avoided, unless it is clearly explained or substantially all of the program's clients and prospective clients possess the sophistication to understand the disclosure without explanation.

1. Cover Page and Table of Contents

Schedule H requires that the cover page of the wrap fee brochure include the sponsor's name, address, telephone number, and a legend regarding the purpose of the brochure.[23] These requirements are the same as those of the proposed amendments. In addition, the amendments require that the wrap fee brochure include a table of contents reflecting the subject headings in the brochure. The table of contents need not be on the cover page.[24]

2. Fee and Compensation Disclosure

The Commission is adopting as proposed those provisions of Schedule H that require the wrap fee brochure to set forth the wrap fee, the services provided for that fee, and whether the fee is negotiable.[25] Schedule H also

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activities. A person that is paid to solicit clients for a program, but that does not provide any services under the program, generally will be subject to rule 206(4)–3 under the Advisers Act [17 CFR 275.206(4)–3].

[14] Paragraph (a) of rule 204–3. A firm that provides services enumerated in the definition of sponsor, but that is not a registered investment adviser (*e.g.*, a bank), is not required to provide any brochure. Paragraph (f)(1) of rule 204–3.

[15] As adopted, paragraph (f) of rule 204–3 requires advisers that are registered or required to be registered to deliver a brochure to prospective clients "of the wrap fee program." Compare paragraph (a) of rule 204–3. This provision is intended to increase the likelihood that at least one registered investment adviser is obligated to provide the wrap fee brochure to a client participating in a wrap fee program.

[16] The proposed amendments would give a sponsor the option of using a single brochure for all of its wrap fee programs or creating separate brochures for each program.

[17] New paragraph (f)(1) of rule 204–3. As noted below, more than one wrap fee program may be described in the same brochure. *See* Section I.B.2 *infra*.

[18] For instance, the Commission staff found that one sponsor delivered a fifty-nine page Part II (exclusive of financial statements) to wrap fee program clients, while another delivered a fifty-two page Part II. Some commenters suggested requiring a table of contents in brochures as an alternative to a separate brochure. A table of contents requirement would not serve as an effective substitute for a separate brochure because all of the information relevant to a wrap fee client typically is not located in one section of the brochure.

[19] *See* the Cost/Benefit Analysis in Section II of this Release *infra*.

[20] *See* note 9 *supra*.

[21] Item 5 of Schedule H.

[22] Wrap fee brochures must be filed with the Commission attached to a completed Schedule H.

[23] Item 7(a) of Schedule H.

[24] Item 7(b) of Schedule H. The amendments do not require that the information in the brochure be ordered or organized in any particular manner, except with regard to the information required to be on the cover page.

[25] Item 7(c) of Schedule H.

requires that the brochure describe the nature of any fees the client may pay in addition to the wrap fee, state that the program may cost the client more or less than the same services purchased separately, and disclose the factors that bear upon the cost of the program in relation to the cost of the same services purchased separately.[26] If fees vary according to a schedule (e.g., on the basis of the amount of assets the client has in the program), the fee schedule must be presented in a table.

As adopted, Schedule H also retains the requirement of the proposal that the portion of the wrap fee paid to portfolio managers (or the range of those amounts) be disclosed in the wrap fee brochure.[27] The Proposing Release requested comment whether similar information should be required regarding the compensation paid to registered representatives of the sponsor in connection with wrap fee accounts, and whether disclosure that registered representatives have a financial incentive to recommend the wrap fee program over other services of the sponsor should be required. Industry commenters were opposed to requiring amounts of compensation to be disclosed, in part because the amounts often vary substantially among representatives, but many acknowledged the need for disclosure that representatives are compensated.

The method and amount of compensation of an adviser or its representative may create a conflict of interest between the adviser and its client and the representative and his client if incentives are created for recommending a wrap fee program rather than, for example, mutual funds or other advisory programs (including traditional fee-plus-commission arrangements) that meet the needs of clients and that may be less expensive. To alert investors to this conflict of interest, Schedule H requires that, if persons recommending a wrap fee program receive compensation as a result of client participation in the program, the wrap fee brochure must disclose (1) that persons recommending the program will be compensated, (2) that the amount of this compensation may be more than the amount the person would receive if the client participated in other programs of the sponsor or paid separately for investment advice, brokerage and other services, and (3) that the person may therefore have a financial incentive to recommend the program over other programs or services.[28]

3. Portfolio Manager Performance Information

The Commission proposed that the wrap fee brochure be required to disclose if performance information provided to clients regarding portfolio managers is not calculated on a uniform or consistent basis, and to refer to any standards under which the information is calculated.[29] The Commission also proposed that the brochure disclose whether performance information is reviewed by the sponsor or a third party, and, if so, the identity of the reviewer.[30] These requirements are being adopted substantially as proposed.

The Proposing Release requested comment whether sponsors should be required to explain the extent of any review of portfolio manager performance information. Most commenters addressing the issue favored such disclosure, and the amendments require the wrap fee brochure to describe briefly the nature of the review.[31] This description should include, among other matters, whether the review is designed to determine whether the performance information reflects the actual experience of accounts under management, the appropriateness of the methodology used to calculate performance, compliance with any standards the sponsor or portfolio manager has stated it will follow, and/or whether the reviewer has merely reviewed the mathematical accuracy of the calculations.[32] If the scope of the review of the performance information is limited to the mathematical accuracy of the calculations, the brochure should describe that the reviewer has not reviewed the information to determine the appropriateness of the methodology used or whether the information reflects the actual experience of accounts under management.

4. Other Disclosure Requirements

The other disclosure requirements of the proposed amendments are being adopted largely as proposed. These requirements include how portfolio managers in the program are selected,[33] the information about the client that is communicated to its portfolio manager,[34] and restrictions placed on client contact with portfolio managers.[35] The general disclosure about the sponsor that is required to be included in the wrap fee brochure by reference to certain questions of Part II is also being adopted without modification to the proposal.[36]

D. Delivery and Updating

The amendments require that the wrap fee brochure be delivered to prospective wrap fee clients and annually offered to an adviser's existing wrap fee clients.[37] The Commission is also requiring that the wrap fee brochure be delivered to all clients (including clients who have received the sponsor's general brochure) on a one-time basis when the brochure is first filed with the Commission, so that existing clients of wrap fee programs receive the basic disclosure about the

[26] The brochure is required only to explain the factors that affect whether a wrap fee arrangement or a traditional fee-plus-commission arrangement will be less costly to a client, and need not provide actual or estimated costs for particular services outside the wrap fee program.

[27] Item 7(c) of Schedule H. Because of the inclusion of this information in the sponsor's wrap fee brochure, the Division of Investment Management would not object if the portfolio manager's brochure omitted the portion of the wrap fee received by the manager in response to Item 1 of Part II. See National Regulatory Services, supra note 10.

[28] Item 7(e) of Schedule H. Because the amount a registered representative will receive may not be readily determinable at the time a client selects a program or service, Schedule H does not require that the brochure state that the representative will receive greater compensation in connection with the wrap fee program than with alternative programs.

[29] Item 7(h) of Schedule H.

[30] Id.

[31] Id.

[32] The Proposing Release requested comment whether the Commission should propose the use of standardized formulas for the calculation of performance information of portfolio managers in wrap fee programs, or of advisers generally. The Commission plans to continue to study this issue.

[33] Item 7(g) of Schedule H.

[34] Item 7(i) of Schedule H.

[35] Item 7(j) of Schedule H. One commenter requested that the Commission clarify that the requirement to disclose restrictions on client contact with portfolio managers does not indicate a change in the Division of Investment Management's position that an adviser managing accounts in a collective manner may be operating an unregistered investment company. It does not.

[36] Item 7(k) of Schedule H. Item 7(m) of Schedule H requires that the wrap fee brochure discuss the nature of the portfolio management services provided under the program by the sponsor's employees or divisions covered under the same investment adviser registration as the sponsor. Although the Schedule would not require disclosure regarding the educational and business background of, and the particular investment strategy used by, every registered representative that serves as a portfolio manager in a wrap fee program sponsored by the representative's employer, such information may be material and may have to be provided to clients in some form. *See* Proposing Release, *supra* note 1, at n.33.

[37] These delivery requirements are the same as the requirements in the proposed amendments and for the general brochure. Paragraphs (b) and (c) of rule 204–3 [17 CFR 275.204–3 (b) and (c)]. The delivery to prospective clients must occur not less than forty-eight hours before the client enters into an advisory contract or, if the contract may be terminated by the client without penalty within five business days of its execution, at the time of entering into the contract. Paragraph (b)(1) of rule 204–3 [17 CFR 275.204–3(b)(1)].

program that will in the future be provided to prospective clients.[38]

The wrap fee brochure is required to be updated promptly to reflect material changes to the information it contains, or within ninety days after the end of the sponsor's fiscal year to reflect other changes.[39] The wrap fee brochure may be updated by the use of a sticker (*i.e.*, a supplement affixed to the brochure that indicates what information is being added or updated and states the new or revised information). The proposed amendments would have limited sponsors to two consecutive stickers before all changes would have had to be incorporated into the brochure itself. As some commenters suggested, the Commission is not adopting a numerical limit on stickers; instead, updating by sticker will be permitted so long as the resulting brochure remains readable.[40]

E. Date of Effectiveness

A sponsor is required to file an amendment to Form ADV to include the necessary wrap fee brochure or brochures, to deliver the wrap fee brochure to existing wrap fee clients,[41] and to begin to deliver the wrap fee brochure to prospective wrap fee clients, by October 1, 1994, approximately five months after the adoption of the amendments.[42]

II. Cost/Benefit Analysis

Several commenters raised concerns that the form and rule amendments as proposed, particularly the requirement for a separate wrap fee brochure, could result in additional costs for sponsors that may be passed on to investors. The Commission has modified the amendments in part because of these concerns, but continues to believe that the cost of a separate wrap fee brochure is outweighed by the benefit to investors of improved disclosure about wrap fee programs.

The Commission has narrowed the scope of the terms "wrap fee program" and "sponsor." As a result, certain advisers that would have incurred the costs of the wrap fee brochure under the proposed amendments will not incur any costs as a result of the amendments, and other advisers will incur reduced costs because fewer of their programs are subject to the amendments. The Commission has also liberalized the use of stickers, which should reduce the cost of updating the brochure.

The Commission does not believe that the cost of a separate wrap fee brochure need be substantial. The brochure need not be professionally printed, and professionally printed brochures generally can be updated by sticker, rendering frequent reprinting unnecessary.[43]

III. Regulatory Flexibility Act Analysis

A summary of the Initial Regulatory Flexibility Analysis, which was prepared in accordance with 5 U.S.C. 603, was published in Investment Advisers Act Rel. No. 1401. No comments were received on this analysis. The Commission has prepared a Final Regulatory Flexibility Analysis, a copy of which may be obtained by contacting Eric C. Freed, Office of Disclosure and Investment Adviser Regulation, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

IV. Text of Rule and Form Amendments

List of Subjects in 17 CFR Parts 275 and 279

Investment advisers, Reporting and recordkeeping requirements.

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

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The general authority citation for Part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–3, 80b–4, 80b–6A, 80b–11, unless otherwise noted.

* * * * *

2. By revising paragraph (b)(1) of § 275.204–1 to read as follows:

§ 275.204–1 Amendments to application for registration.

* * * * *

(b)(1) If the information contained in response to Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A and 14B of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason or if the information contained in response to any question in Items 9 and 10 of Part I, all of Part II (except Item 14), and all of Schedule H of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment on Form ADV (§ 279.1 of this chapter) correcting such information.

* * * * *

3. By amending § 275.204–3 by redesignating paragraph (f) as paragraph (g), and by adding paragraphs (f) and (g)(4) to read as follows:

§ 275.204–3 Written disclosure statements.

* * * * *

(f) *Sponsors of Wrap Fee Programs.*—(1) An investment adviser, registered or required to be registered pursuant to Section 203 of the Act, that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program, shall, in lieu of the written disclosure statement required by paragraph (a) of this section and in accordance with the other provisions of this section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV (§ 279.1 of this Chapter). Any additional information included in such disclosure statement should be limited to information concerning wrap fee programs sponsored by the investment adviser.

(2) If an investment adviser is required under this paragraph (f) to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.

(3) An investment adviser need not furnish the written disclosure statement required by paragraph (f)(1) of this section to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

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[38] New paragraph (f)(4) of rule 204–3. *See* the effectiveness provisions in Section I.E of this Release *infra*.

[39] Paragraph (b) of rule 204–1, as amended.

[40] Item 6 of Schedule H. The Commission would consider a brochure subject to multiple stickers or a single sticker amending multiple provisions to be unreadable if the brochure has become particularly unwieldy or difficult to follow as a result of the stickers or sticker.

[41] *See* Section I.D *supra*.

[42] The Proposing Release requested comment whether a 120-day transition period would be appropriate. A few commenters stated that a 180-day transition period would be more appropriate.

[43] One commenter suggested that sponsors would find professional printing necessary for marketing purposes. Many sponsors, however, currently deliver Part II, rather than a printed document, to clients as their brochure. Many sponsors that use Part II presumably would deliver a typewritten wrap fee brochure to wrap fee clients.

(4) An investment adviser that is required under this paragraph (f) to furnish a disclosure statement to clients of a wrap fee program shall furnish the disclosure statement to each client of the wrap fee program (including clients that have previously been furnished the brochure required under paragraph (a) of this section) no later than October 1, 1994.

(g) *Definitions.* * * *

(4) *Wrap fee program* means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

4. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations.

5. By revising Instructions 2, 6 and 7 of Form ADV (referenced in § 279.1), and by adding Instruction 9 to read as follows:

Form ADV Instructions

* * * * *

2. Organization

The Form contains two parts. Parts I and II are filed with the SEC and the jurisdictions; Part II can generally be given to clients to satisfy the brochure rule. The Form also contains the following schedules:

- Schedule A—for corporations;
- Schedule B—for partnerships;
- Schedule C—for entities that are not sole proprietorships, partnerships or corporations;
- Schedule D—for reporting information about individuals under Part I Item 12;
- Schedule E—for continuing responses to Part I items;
- Schedule F—for continuing responses to Part II items;
- Schedule G—for the balance sheet required by Part II Item 14; and
- Schedule H—for satisfaction of the brochure rule by sponsors of wrap fee programs.

* * * * *

6. Continuation Sheets—Schedules E and F provide additional space for continuing Form ADV items (Schedule E for Part I; Schedule F for Part II) but not for continuing Schedules A, B, C, D, G or H. To continue Schedules A, B, C, D and G, use copies of the schedule being continued. The response to Schedule H should be included as a separate document attached to the Schedule.

7. SEC Filings

- Submit filings in triplicate to the Securities and Exchange Commission, Washington, DC 20549. To register, submit a check or money order for $150 payable to the Securities and Exchange Commission. This fee is non-refundable. There is no fee for amendments.
- Non-Residents—Rule 0–2 under the Investment Advisers Act of 1940 [17 CFR 275.0–2] covers those non-resident persons named anywhere in Form ADV that must file a consent to service of process and a power of attorney. Rule 204–2(j) under the Investment Advisers Act of 1940 [17 CFR 275.204–2] covers the notice of undertaking on books and records non-residents must file with Form ADV.
- Updating. Federal law requires filing amendments:

—promptly for any changes in:
Part I—Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A, and 14B;
—promptly for material changes in:
Part I—Items 9 and 10, all Items of Part II except Item 14, and all Items of Schedule H;
—within 90 days of the end of the fiscal year for any other changes.

- Federal Information Law and Requirements—Investment Advisers Act of 1940 Sections 203(c), 204, 206, and 211(a) authorize the SEC to collect the information on this Form from applicants for investment adviser registration. The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number, which aids identifying the applicant, is voluntary. The SEC may return as unacceptable Forms that do not include all other information. By accepting this Form, however, the SEC does not make a finding that it has been filled out or submitted correctly. Intentional misstatements or omissions constitute Federal criminal violations under 18 U.S.C. 1001 and 15 U.S.C. 80b–17.

* * * * *

9. Sponsors of Wrap Fee Programs—Sponsors of wrap fee programs must provide clients and prospective clients of wrap fee programs with a document containing the information required by Schedule H.

- Wrap Fee Programs—A wrap fee program is any program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.
- Sponsors—A sponsor of a wrap fee program is any applicant that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program.

The document prepared in response to Schedule H must be provided to clients of the wrap fee program in lieu of Part II (or the document containing the information required by Part II), which the sponsor is required to provide to other advisory clients. Part II and Schedule F need only contain an abbreviated narrative discussion of a sponsor's wrap fee programs, although responses to check-the-box questions in Part I and Part II should reflect the applicant's wrap fee programs.

* * * * *

6. By revising Item 16 of Part I of Form ADV (referenced in § 279.1) to read as follows:

Form ADV

Part I

* * * * *

16. With a few exceptions, the "brochure rule" (Advisers Act Rule 204–3) requires that clients must be given information about the investment adviser. Will applicant be giving clients (other than wrap fee clients to be given Schedule H):

	Yes	No
A. Part II of this Form ADV? ...	___	___
B. Another document that includes at least the information contained in Form ADV Part II?.	___	___

* * * * *

7. By adding Schedule H to Form ADV (referenced in § 279.1) to read as follows:

Note: Schedule H to Form ADV is attached as Appendix 1 to this document and the Schedule will not appear in the Code of Federal Regulations.

By the Commission.

April 19, 1994.

Margaret H. McFarland,

Deputy Secretary.

Appendix 1

Schedule H of Form ADV

Applicant:

SEC File No.: 801–

Date: MM/DD/YY

(for sponsors of wrap fee programs)

Name of wrap fee program or programs described in attached brochure:

1. *Applicability of Schedule.* This Schedule must be completed by applicants that are compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program ("sponsors"). A wrap fee program is any program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

2. *Use of Schedule.* This Schedule sets forth the information the sponsor must include in the wrap fee brochure it is required to deliver or offer to deliver to clients and prospective clients of its wrap fee programs under Rule 204–3 under the federal Advisers Act and similar rules of the jurisdictions. The wrap fee brochure prepared in response to this Schedule must be filed with the Commission and the jurisdictions as part of Form ADV by completing the identifying information on this Schedule and attaching the brochure. Brochures should be prepared separately, not on copies of this Schedule. Any wrap fee brochure filed with the Commission as part of an amendment to Form ADV shall contain in the upper right hand corner of the cover page the sposor's registration number (801–).

3. *General Contents of Brochure.* Unlike Parts I and II of this form, this Schedule is not organized in "check-the-box" format. These Instructions, including the requests for information in Item 7 below, should not be repeated in the brochure. Rather, this Schedule describes minimum disclosures that must be made in the brochure to satisfy the sponsor's duty to disclose all material facts about the sponsor and its wrap fee programs. Nothing in this Schedule relieves the sponsor from any obligation under any provision of the federal Advisers Act or rules thereunder, or other federal or state law to disclose information to its advisory clients or prospective advisory clients not specifically required by this Schedule.

4. *Multiple Sponsors.* If two or more persons fall within the definition of "sponsor" in Item 1 above for a single wrap fee program, only one such sponsor need complete the Schedule. The sponsors may choose among themselves the sponsor that will complete the Schedule.

5. *Omission of Inapplicable Information.* Any information not specifically required by this Schedule that is included in the brochure should be applicable to clients and prospective clients of the sponsor's wrap fee programs. If the sponsor is required to complete this Schedule with respect to more than one wrap fee program, the sponsor may omit from the brochure furnished to clients and prospective clients of any wrap fee program or programs information required by this Schedule that is not applicable to clients or prospective clients of that wrap fee program or programs. If a sponsor of more than one wrap fee program prepares separate wrap fee brochures for clients of different programs, each brochure prepared must be filed with the Commission and the jurisdictions attached to a separate copy of this Schedule. Each such brochure must state that the sponsor sponsors other wrap fee programs and state how brochures for those programs may be obtained.

6. *Updating.* Sponsors are required to file an amendment to the brochure promptly after any information in the brochure becomes materially inaccurate. Amendments may be made by use of a "sticker," *i.e.*, a supplement affixed to the brochure that indicates what information is being added or updated and states the new or revised information, as long as the resulting brochure is readable. Stickers should be dated and should be incorporated into the text of the brochure when the brochure itself is revised.

7. *Contents of Brochure.* Include in the brochure prepared in response to this Schedule:

(a) on the cover page, the sponsor's name, address, telephone number, and the following legend in bold type or some other prominent fashion:

This brochure provides clients with information about [name of sponsor] and the [name of program or programs] that should be considered before becoming a client of the [name of program or programs]. This information has not been approved or verified by any governmental authority.

(b) a table of contents reflecting the subject headings in the sponsor's brochure;

(c) the amount of the wrap fee charged for each program or, if fees vary according to a schedule established by the sponsor, a table setting forth the fee schedule, whether such fees are negotiable, the portion of the total fee (or the range of such amounts) paid to persons providing advice to clients regarding the purchase of sale of specific securities under the program ("portfolio managers"), and the services provided under each program (including the types of portfolio management services);

(d) a statement that the program may cost the client more or less than purchasing such services separately and a statement of the factors that bear upon the relative cost of the program (*e.g.*, the cost of the services if provided separately and the trading activity in the client's account);

(e) if applicable, a statement that the person recommending the program to the client receives compensation as a result of the client's participation in the program, that the amount of this compensation may be more than what the person would receive if the client participated in other programs of the sponsor or paid separately for investment advice, brokerage, and other services, and that the person may therefore have a financial incentive to recommend the wrap fee program over other programs or services;

7. (f) a description of the nature of any fees that the client may pay in addition to the wrap fee and the circumstances under which these fees may be paid (including, if applicable, mutual fund expenses and mark-ups, mark-downs or spreads paid to market makers from whom securities were obtained by the wrap fee broker);

(g) how the program's portfolio managers are selected and reviewed, the basis upon which portfolio managers are recommended or chosen for particular clients, and the circumstances under which the sponsor will replace or recommend the replacement of the portfolio manager;

(h) (1) if applicable, a statement to the effect that portfolio manager performance information is not reviewed by the sponsor or a third party and/or that performance information is not calculated on a uniform and consistent basis,

(2) if performance information is reviewed to determine its accuracy, the name of the party who reviews the information and a brief description of the nature of the review,

(3) a reference to any standards (*i.e.*, industry standards or standards used solely by the sponsor) under which performance information may be calculated;

(i) a description of the information about the client that is communicated by the sponsor to the client's portfolio manager, and how often or under what circumstances the sponsor provides updated information about the client to the portfolio managers;

(j) any restrictions on the ability of clients to contact and consult with portfolio managers;

(k) in narrative text, the information required by Items 7 and 8 of Part II of this form and, as applicable to clients of the wrap fee program, the information required by Items 2, 5, 6, 9A and C, 10, 11, 13 and 14 of Part II;

(l) if any practice or relationship disclosed in response to Items 7, 8, 9A, 9C and 13 of Part II presents a conflict between the interests of the sponsor and those of its clients, explain the nature of any such conflict of interest; and

(m) if the sponsor or its divisions or employees covered under the same investment adviser registration as the sponsor act as portfolio managers for a wrap fee program described in the brochure, a brief, general description of the investments and investment strategies utilized by those portfolio managers.

8. *Organization and Cross References.* Except for the cover page requirements in Item 7(a) above, information contained in the brochure need not follow the order of the items listed in Item 7. However, the brochure should not be organized in such a manner that important information called for by the form is obscured.

Set forth below the page(s) of the brochure on which the various disclosures required by Item 7 are provided.

Item No.	Page(s)
7(a)	Cover
7(b)	

Item No.	Page(s)
7(c)	
7(d)	
7(e)	
7(f)	
7(g)	
7(h)	
7(i)	
7(j)	
7(k)	
7(l)	
7(m)	

[FR Doc. 94–9890 Filed 4–25–94; 8:45 am]
BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–53–6409; FRL–4877–3]

Approval and Promulgation of Implementation Plans Florida; Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: On February 23, 1994 (59 FR 8542), EPA published a document to approve without prior proposal the February 24, 1993, version of the revisions made by Florida to the Florida State Implementation Plan (SIP). These revisions established a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), to be fully implemented by November 15, 1994. This implementation plan was submitted by the State to satisfy the Federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act as amended in 1990 (CAA). EPA subsequently received adverse comments on the action. Accordingly, EPA is withdrawing its direct-final approval. Elsewhere in today's **Federal Register**, EPA is proposing to approve the February 23, 1993, version of revisions made by Florida and providing an opportunity to comment on the proposal.

EFFECTIVE DATE: This withdrawal will be effective April 22, 1994.

ADDRESSES: Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton R. Layne, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347–2864.

SUPPLEMENTARY INFORMATION: Implementation of the Clean Air Act (CAA) requires small businesses to comply with specific regulations in order for areas to attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a PROGRAM, and submit this PROGRAM as a revision to the federally approved SIP. On February 24, 1993, the Florida Department of Environmental Protection submitted to EPA for approval the requisite revisions to the SIP establishing the PROGRAM. These revisions were adopted by the Florida Legislature by amending chapter 403 of the Florida Statute, approved on April 8, 1992. The EPA reviewed this request for revision of the federally approved SIP and found it to be in conformance with the requirements of the 1990 CAA. EPA therefore published a notice to approve the revisions without prior proposal (59 FR 8542, February 23, 1994).

In the final rulemaking, EPA advised the public the effective date of the action was deferred for 60 days (until April 25, 1994) to provide an opportunity to submit comments. EPA announced if notice was received within 30 days of the publication of the final rule that someone wanted to submit adverse or critical comments, the final action would be withdrawn and a new rulemaking would begin by proposing a 30 day comment period. EPA had earlier published a general notice explaining this special procedure (56 FR 44477, September 4, 1991).

EPA has received comments on this action that address the structure of the Florida PROGRAM. Accordingly, the Agency is today withdrawing its approval.

EPA is withdrawing this action without providing prior notice and opportunity for comment. The Agency finds it has good cause within the meaning of 5 U.S.C. 553(b) to proceed without notice and comment. Notice and comment would be impracticable in this case because EPA needs to withdraw its approval as quickly as possible in order to consider the comments which the public has submitted or may wish to submit. Moreover, further notice is not necessary because EPA has already informed the public it would follow this procedure if it received a request for the opportunity to comment. For the same reasons, EPA finds it has good cause under 5 U.S.C. 553(d) to make this withdrawal immediately effective.

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Small business stationary source technical and environmental assistance program.

Authority: 42 U.S.C. 7401–7671q.

Therefore the final rule appearing at 59 FR 8542, February 23, 1994. which was to become effective April 25, 1994, is withdrawn.

Dated: April 14, 1994.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 94–9986 Filed 4–22–94; 11:23 am]
BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–4878–6]

Georgia; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Georgia's revisions consist of the provisions contained in RCRA Cluster II which are the hazardous waste rules promulgated between July 1, 1991, and June 30, 1992. These requirements are listed in section B of this notice. The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that the Georgia hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus,