

# SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 232 and 270

[Release Nos. 33-8859; 34-56732; IC-28042 File No. S7-25-07]

RIN 3235-AJ81

### **Rulemaking for EDGAR System; Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** We propose several amendments to rules regarding our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Specifically, we propose to amend our rules to make mandatory the electronic submission on EDGAR of applications for orders under any section of the Investment Company Act of 1940 (“Investment Company Act”) and Regulation E filings of small business investment companies and business development companies. We also propose to amend the electronic filing rules to make the temporary hardship exemption unavailable for submission of applications under the Investment Company Act. Finally, we propose amendments to Rule 0-2 under the Investment Company Act that would eliminate the requirement that certain documents accompanying an application be notarized and the requirement that applicants submit a draft notice as an exhibit to an application.

**DATES:** Comments should be submitted on or before December 14, 2007.

**ADDRESSES:** Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-25-07 on the subject line; or

- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-25-07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the proposed rules, please contact one of the following members of our staff in the Division of Investment Management, at the Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-0506: in the Office of Legal and Disclosure, Ruth Armfield Sanders, Senior Special Counsel (EDGAR), at (202) 551-6989; in the Office of Investment Company Regulation, Nadya Roytblat, Assistant Director, at (202) 551-6821; or, in the Office of Insurance Products, Keith Carpenter, Senior Special Counsel, at (202) 551-6766; for technical questions relating to the

EDGAR system, in the Office of Information Technology, Richard D. Heroux, EDGAR Program Manager, at (202) 551-8168.

#### **SUPPLEMENTARY INFORMATION:**

The Securities and Exchange Commission (“Commission”) is proposing for comment amendments to Rules 101 and 201 of Regulation S-T<sup>1</sup> relating to electronic filing on the EDGAR system and to Rule 0-2 under the Investment Company Act.<sup>2</sup>

#### **I. BACKGROUND**

Recently, we initiated a series of amendments to keep EDGAR current technologically and to make it more useful to the investing public and Commission staff. In April 2000, we adopted rule and form amendments in connection with the modernization of EDGAR.<sup>3</sup> In the modernization proposing release, we noted that, as the use of electronic databases grows, it becomes increasingly important for members of the public to have electronic access to our filings. We also stated that we were contemplating future rulemaking to bring more of our filings into the EDGAR system on a mandatory basis. In May 2002, we adopted rules requiring foreign private issuers and foreign governments to file most of their documents electronically.<sup>4</sup> In May 2003, we adopted rules requiring electronic filing of beneficial ownership reports filed

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<sup>1</sup> 17 CFR 232.101 and 232.201.

<sup>2</sup> 17 CFR 270.0-2.

<sup>3</sup> See Rulemaking for EDGAR System, Release No. 33-7855 (Apr. 27, 2000) [65 FR 24788] (the modernization adopting release). See also Release No. 33-7803 (Mar. 3, 2000) [65 FR 11507] (the modernization proposing release).

<sup>4</sup> See Mandated EDGAR Filing for Foreign Issuers, Release No. 33-8099 (May 14, 2002) [67 FR 36678].

by officers, directors and principal security holders under Section 16(a)<sup>5</sup> of the Securities Exchange Act of 1934 (“Exchange Act”).<sup>6</sup> In July 2005, we adopted rules requiring certain open-end management investment companies and insurance company separate accounts to identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts) and mandating that fidelity bonds filed under Section 17(g)<sup>7</sup> and sales literature filed with us under Section 24(b)<sup>8</sup> be made by electronic submission on the EDGAR system.<sup>9</sup> In December 2006, we adopted amendments to the rules and forms under Section 7A of the Exchange Act requiring that the forms filed with respect to transfer agent registration, annual reporting, and withdrawal from registration be filed with the Commission electronically on EDGAR.<sup>10</sup>

Today, we propose to require that applicants submit electronically on the EDGAR system their applications for orders under any section of the Investment Company Act (“applications”). We make this proposal to facilitate the efficient submission of applications by applicants, to enable the public to access them more quickly and search them more easily, and to improve the Commission’s ability to track and process such applications. We also propose to make revisions

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<sup>5</sup> 15 U.S.C. 78p(a).

<sup>6</sup> See Mandated EDGAR Filing and Web Site Posting for Forms 3, 4 and 5, Release No. 33-8230 (May 7, 2003) [68 FR 25788] (the EDGAR Section 16 release).

<sup>7</sup> 15 U.S.C. 80a-17(g).

<sup>8</sup> 15 U.S.C. 80a-24(b).

<sup>9</sup> See Rulemaking for EDGAR System, Release No. 33-8590 (July 18, 2005) [70 FR 43558 (July 27, 2005)].

<sup>10</sup> See Electronic Filing of Transfer Agent Forms, Release No. 34-54864 (Dec. 4, 2006) [71 FR 74698 (Dec. 12, 2006)].

to Rule 0-2 and related amendments to Regulation S-T, our electronic filing rules. In addition, we are proposing to add Regulation E filings to the list of those that must be filed electronically through EDGAR.

## **II. PROPOSED MANDATORY ELECTRONIC SUBMISSION OF INVESTMENT COMPANY APPLICATIONS**

The rules under Regulation S-T currently provide that submissions for exemptive relief under any section of the Investment Company Act shall not be made in electronic format.<sup>11</sup> The only applications under the Investment Company Act that are currently mandatory EDGAR submissions are applications for deregistration filed by investment companies.<sup>12</sup> Applicants for orders under the Investment Company Act can include registered investment companies, affiliated persons of registered investment companies, and issuers seeking to avoid investment company status, among other entities.<sup>13</sup> These applications are submitted in paper and currently are available only from the Commission's public reference room or electronically from private services. Private services usually charge fees for electronic copies of applications; also, there is a delay of about thirty days between the submission of applications to the Commission and their

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<sup>11</sup> Current Rule 101(a)(1)(iv) and (c)(11) of Regulation S-T [17 CFR 232.101(a)(1)(iv) and (c)(11)].

<sup>12</sup> These include applications and amendments submitted on Form N-8F [17 CFR 274.218] (EDGAR submission types N-8F and N-8F/A) and those submitted pursuant to Investment Company Act Rule 0-2 [17 CFR 270.0-2] (EDGAR submission types 40-8F-2 and 40-8F-2/A). See Release No. IC-23786 (Apr. 15, 1999) [76 19469 (Apr. 21, 1999)].

<sup>13</sup> There are several sections of the Investment Company Act pursuant to which entities may make applications for relief. For example, Section 6(c) [15 U.S.C. 80a-6(c)] provides the Commission with authority to exempt persons, securities or transactions from any provision of the Investment Company Act, or the regulations thereunder, if and to the extent that such exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.

electronic availability from the private sources.

We propose to amend certain provisions of Regulation S-T and Investment Company Act Rule 0-2<sup>14</sup> to require electronic filing on EDGAR for the submission of applications pursuant to Rule 0-2 under the Investment Company Act. We propose to amend Rule 101(a)(1)(iv) of Regulation S-T to include within its mandatory electronic provisions any application for an order under any section of the Investment Company Act.<sup>15</sup>

Regulation S-T requires the electronic filing of any amendments and related correspondence and supplemental information pertaining to a document that is the subject of mandated EDGAR submission.<sup>16</sup> These requirements would also apply to persons who submit applications.<sup>17</sup>

We make this proposal, in light of the primary goals of the EDGAR system, to facilitate the rapid dissemination of financial and business information in connection with filings, including filings by investment companies. Requiring these applications to be submitted electronically would benefit members of the investing public and the financial community by making information contained in these filings readily available to them and more easily

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<sup>14</sup> Rule 0-2 is the Investment Company Act rule under which applications are submitted.

<sup>15</sup> See proposed amendment to Rule 101(a)(1)(iv) under Regulation S-T. Paragraph (11) of Rule 101(c) currently provides that filings under Section 6(c) of the Investment Company Act, i.e., applications for orders, be submitted in paper format only. We also propose to remove and reserve this paragraph.

<sup>16</sup> Regulation S-T Rule 101(a)(1) [17 CFR 232.101(a)(1)].

<sup>17</sup> See proposed amendments to paragraphs (a)(2) and (3) of Rule 101 of Regulation S-T. Related correspondence and supplemental information are not automatically disseminated publicly through the EDGAR system but are immediately available to the Commission staff.

searchable.<sup>18</sup> In this age of information, we believe that filings and applications made with the Commission are more valuable to investors if they are available in electronic form and that adding applications to the EDGAR database would provide a more complete picture for the investing public. We believe that the proposals would benefit the public by making the EDGAR page of our Web site a more comprehensive resource for most information on file with us related to the operation of investment companies.

As with other entities that make submissions on EDGAR, applicants would be subject to the provisions of Regulation S-T<sup>19</sup> and the EDGAR Filer Manual. Regulation S-T includes detailed rules concerning mandatory and permissive electronic EDGAR submissions; it also makes clear that requests for confidential treatment must be made in paper format.<sup>20</sup> The regulation also covers such matters as providing for the override of formatting requirements applicable to paper submissions.<sup>21</sup> The EDGAR Filer Manual contains detailed technical specifications concerning EDGAR submissions. The Manual also provides technical guidance concerning how to commence submissions on EDGAR by submitting Form ID to obtain a

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<sup>18</sup> From time to time, an applicant may wish to submit an application for exemption under both the Investment Company Act and under the Investment Advisers Act [15 U.S.C. 80b-1 et seq.]. We are not proposing to require that Investment Advisers Act submissions be made on EDGAR. Under our proposal, any document that is intended as an application for an order under both the Investment Company Act and the Investment Advisers Act would need to be submitted separately under each Act.

<sup>19</sup> For a comprehensive discussion of Regulation S-T and electronic filing, see “Electronic Filing and the EDGAR System: A Regulatory Overview,” available on the Commission’s Web site.

<sup>20</sup> See Rule 101 of Regulation S-T [17 CFR 232.101].

<sup>21</sup> The paper formatting requirements continue to be applicable to paper submissions made pursuant to temporary and continuing hardship exemptions under Rules 201 and 202 of Regulation S-T [17 CFR 232.201 and 202].

CIK<sup>22</sup> and confidential access codes and how to maintain and update company data, e.g., how to change company names and contact information.<sup>23</sup>

One technical specification that the EDGAR Filer Manual includes is the electronic “submission type” for each submission made on EDGAR. We expect that the EDGAR electronic submission types for applications would be designed to facilitate and expedite the review of these applications.

Currently, the applications submitted in paper typically reference the provisions of the Investment Company Act and of the rules and regulations under which the application is made.<sup>24</sup> Based on this information, our filer support staff assign a paper “submission type” for our internal recordkeeping of the paper application on the EDGAR system. We also disseminate this paper submission type, which indicates that the paper application has been filed with us. The current paper submission types for applications are the following: 40-APP, 40-6B, and 40-6C. We usually record paper applications under submission types 40-APP or 40-6C, except for those submitted by employees’ securities companies, for which we use submission type 40-6B.

Consistent with our proposal, we expect that the EDGAR Filer Manual and the EDGARLink software would provide for three EDGAR electronic submission types for applications: 40-APP, 40-OIP, and 40-6B. Submission type 40-APP would be used for submissions typically processed by the Division’s Office of Investment Company Regulation; a

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<sup>22</sup> A filer’s CIK (or “central index key”) is a ten-digit number uniquely identifying that filer.

<sup>23</sup> We remind filers that, in the case of name changes, the changes must be made via the EDGAR filing Web site in advance; the new name would be reflected in the next EDGAR submission. The name on past submissions would not change. The CIK and file number(s) of the company would provide a link to filings under the old name.

<sup>24</sup> See paragraph (e) of Investment Company Act Rule 0-2 [17 CFR 270.0-2].

new submission type 40-OIP would be used for submissions typically processed by the Division's Office of Insurance Products. We also would plan to use submission type 40-6B for employees' securities company applications (also processed by the Office of Investment Company Regulation), since we have historically kept records for these applicants separately. We would discontinue use of the paper submission type 40-6C; applications formerly recorded under this submission type would be submitted as either 40-APP or 40-OIP, as appropriate.

We anticipate that the EDGAR Filer Manual would provide guidance for applicants in choosing the correct submission type. Most applications would be submitted under EDGAR submission type 40-APP, the submission type designated for the Office of Investment Company Regulation. But, the following categories of applications would be transmitted under EDGAR submission type 40-OIP, the submission type for the Office of Insurance Products:

- (1) applications with regard to mixed and shared funding filed under Section 6(c) of the Investment Company Act, for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Investment Company Act,<sup>25</sup> and Rules 6e-2(b)(15) and 6e-3(T)(b)(15);<sup>26</sup>
- (2) applications relating to the recapture of bonus credits filed under Section 6(c) of the Investment Company Act for exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Investment Company Act<sup>27</sup> and Rule 22c-1<sup>28</sup>;
- (3) applications relating to the substitution of securities held by a variable insurance separate account filed under Section 26(c) of the Investment Company Act;<sup>29</sup> and

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<sup>25</sup> 15 U.S.C. 80a-9(a), 80a-13(a), 80a-15(a), 80a-15(b).

<sup>26</sup> 17 CFR 270.6e-2(b)(15), 270.6e-3(T)(b)(15).

<sup>27</sup> 15 U.S.C. 80a-2(a)(32), 80a-27(i)(2)(A).

<sup>28</sup> 17 CFR 270.22c-1.

<sup>29</sup> 15 U.S.C. 80a-26(c).

(4) applications for approval of the terms of an exchange offer involving variable insurance contracts filed under Section 11(a) of the Investment Company Act.<sup>30</sup>

We believe that these three submission types would facilitate and expedite the review of submissions. Our internal system will be able to quickly route the application to the appropriate office. If applicants have any questions as to the appropriate EDGAR submission type, we would encourage them to verify in advance the correct submission type so that the application can be routed automatically to the appropriate Office. We would provide contact information in the EDGAR Filer Manual and on the Commission's Web site so that, in case of doubt, applicants may contact the staff.

We request comment on whether these EDGAR submission types would be sufficient or whether other or additional submission types would be helpful to applicants or the public in connection with the submission of applications.

For applications with multiple co-applicants, the applicants would be able to submit the application with all co-applicants included in one submission. The applicants would choose one applicant to list first as the "primary" co-applicant. Then, they would include in the EDGAR template the information for all other co-applicants, *i.e.*, the CIK of each co-applicant and, for amendments, file number of each co-applicant. Applicants could be dropped from or added to an application with each amendment submission.<sup>31</sup>

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<sup>30</sup> 15 U.S.C. 80a-11(a).

<sup>31</sup> As is the case currently with paper applications, for each application, an applicant would receive a unique file number which would begin with the prefix "812," or "813" in the case of applications made by employees' securities companies. As also is currently the case with paper filings, each co-applicant's file number would be composed of the primary applicant's file number with an appended two-digit suffix unique to that co-applicant. Each applicant or co-applicant would include this file number, in addition to its CIK, in the EDGAR template of all

We expect that the internal EDGAR system would be enhanced to allow for the upload and public dissemination via the EDGAR system of notices and orders in connection with specific applications.

We request comment on the impact of our making the submission of requests for orders under the Investment Company Act mandatory electronic submissions. Should we implement this rule? We request comment on whether it would be burdensome for us to require applicants to submit applications electronically. To which applications should the rule apply? We ask commenters to address the issue of what the transition period should be for investment companies and other applicants to prepare for the mandatory electronic submission of these applications.

We ask commenters to provide detailed information on any difficulties and considerations unique to these proposed requirements. In the event commenters believe that any aspect of the proposed requirements would be burdensome, we ask for specific details and alternative approaches.

### **III. PROPOSED AMENDMENTS TO RULE 0-2 AND TO TEMPORARY HARDSHIP EXEMPTION OF REGULATION S-T**

Rule 0-2 currently requires that every application for an order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such

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amendments to the application, which would also be required electronic submissions.

requirements have been complied with and that the person signing and filing the application is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, Rule 0-2 requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to Rule 0-2 must be verified by the person executing the application by providing a notarized signature in substantially the form specified in the rule. Each application subject to Rule 0-2 must state the reasons why the applicant is deemed to be entitled to the action requested, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Rule 0-2 requires that a proposed notice of the proceeding initiated by the filing of the application accompany each application as an exhibit and, if necessary, be modified to reflect any amendment to the application.

We are proposing three amendments to Rule 0-2 governing the form of applications under the Investment Company Act. First, we propose to eliminate the requirement to have verifications of applications and statements of facts made in connection with applications notarized.<sup>32</sup> We believe that this requirement is unnecessary in the context of an electronic filing.<sup>33</sup> Second, we propose to eliminate the requirement that applicants include draft notices as

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<sup>32</sup> See Rule 0-2(d).

<sup>33</sup> Regulation S-T requires that each signatory to an electronic filing manually sign a signature page

exhibits to applications.<sup>34</sup> The staff has found these exhibits to be of limited value because the staff prefers to draft its own notices of applications. Finally, we also propose to amend Rule 0-2 to remove the last sentence of paragraph (b),<sup>35</sup> which was added in the initial EDGAR rulemaking and would be inconsistent with mandatory electronic submission of applications on EDGAR.<sup>36</sup> We request comment on these proposed amendments. Is there any reason we should retain the notary and draft notice requirements?

We are also proposing an amendment to Rule 201 of Regulation S-T. Rules 201 and 202<sup>37</sup> of Regulation S-T address hardship exemptions from EDGAR filing requirements, and Rule 13(b) of Regulation S-T<sup>38</sup> addresses the related issue of filing date adjustments.

A filer may obtain a temporary hardship exemption under Rule 201 if it experiences unanticipated technical difficulties that prevent the timely preparation and submission of an

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or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form in the electronic filing. This document must be executed before or at the time the electronic filing is made, must be retained by the filer for a period of five years, and must be made available to the Commission upon request. See Rule 302(b) of Regulation S-T [17 CFR 232.302(b) ]. We believe that this requirement provides sufficient assurance of the legitimacy of signatures contained in the electronic filings so that notarization is unnecessary.

<sup>34</sup> See Rule 0-2(g).

<sup>35</sup> The last sentence of Rule 0-2(b) currently reads as follows: “Every application for an order under any provision of the Act and every amendment to such application shall be submitted to the Commission in paper only, whether or not the applicant is otherwise required to file in electronic format, unless instructions for electronic filing are included on the form, if any, prescribed for such application.

<sup>36</sup> See Rulemaking for EDGAR System – Investment Companies and Institutional Investment Managers, Release No. 33-6978 (Feb. 23, 1993) [58 FR 14848 (Mar. 18, 1993)].

<sup>37</sup> 17 CFR 232.202.

<sup>38</sup> 17 CFR 232.13(b).

electronic filing by filing a properly legended paper copy<sup>39</sup> of the filing under cover of Form TH.<sup>40</sup> This process is self-executing. A filer who files in paper under the temporary hardship exemption must submit an electronic format copy of the filed paper document within six business days of the filing of the paper format document.<sup>41</sup>

A filer may apply for a continuing hardship exemption under Rule 202 if it cannot file all or part of a filing without undue burden or expense.<sup>42</sup> In contrast to the self-executing temporary hardship exemption process, a filer can obtain a continuing hardship exemption only by submitting a written application, upon which the Commission, or Commission staff pursuant to delegated authority, must then act.

We are proposing to make the temporary hardship exemption unavailable for submission of applications under the Investment Company Act.<sup>43</sup> We are proposing to amend Rule 201(a) of Regulation S-T to make temporary hardship exemptions unavailable for these submissions, since there is generally no submission exigency or submission deadline associated with these submissions. An applicant would continue to have the ability to apply for a continuing hardship

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<sup>39</sup> See 17 CFR 232.201(a).

<sup>40</sup> 17 CFR 239.65, 249.447, 269.10, and 274.404.

<sup>41</sup> See 17 CFR 232.201(b).

<sup>42</sup> See 17 CFR 232.202(a).

<sup>43</sup> See proposed amendment to rule 201(a) of Regulation S-T.

We have previously made unavailable the ability for filers to use the temporary hardship exemption for EDGAR submissions of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the Exchange Act [15 U.S.C. 78p(a)]. See Mandated EDGAR Filing and Web Site Posting for Forms 3, 4 and 5, Release No. 33-8230 (May 7, 2003) [68 FR 25788].

exemption under Rule 202 if it cannot submit all or part of an application without undue burden or expense. Also, while we would expect the circumstances and exercise to be rare, the staff could use its delegated authority to grant a filing date adjustment pursuant to Rule 13(b) of Regulation S-T [17 CFR 232.13(b)]. While we would not expect an applicant to need a filing date adjustment in the context of an application, it would be available in the unlikely event it were needed. We ask for comment on making the temporary hardship exemption unavailable for submission of applications for orders under the Investment Company Act.

**IV. PROPOSED AMENDMENTS TO MANDATE THAT CERTAIN FILINGS OF SMALL BUSINESS INVESTMENT COMPANIES AND BUSINESS DEVELOPMENT COMPANIES BE MADE ELECTRONICALLY**

Regulation E<sup>44</sup> provides for the exemption from registration of securities issued by small business investment companies registered under the Investment Company Act and business development companies regulated under that Act, subject to the terms and conditions of the regulation. Rule 604<sup>45</sup> of Regulation E requires the filing of notification on Form 1-E<sup>46</sup> of sales of securities under Regulation E. Rule 607<sup>47</sup> of Regulation E requires the filing of sales material used in connection with the offering. Rule 609<sup>48</sup> of Regulation E requires the filing of reports of sales on Form 2-E.<sup>49</sup>

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<sup>44</sup> 17 CFR 230.601 to 610a.

<sup>45</sup> 17 CFR 230.604.

<sup>46</sup> 17 CFR 239.200.

<sup>47</sup> 17 CFR 230.607.

<sup>48</sup> 17 CFR 230.609.

<sup>49</sup> 17 CFR 239.201.

Currently, these companies must make most of their filings electronically on the EDGAR system. However, they must make their Regulation E<sup>50</sup> filings in paper. Since these filers are already EDGAR filers and most would have available electronic copies of their Form 1-E (and any related sales material)<sup>51</sup> and Form 2-E, we believe that making these filings electronically on EDGAR would impose very little burden or cost on these companies. We are therefore proposing to make these filings mandatory electronic submissions.<sup>52</sup> We request comment on any burdens or costs that would result. Is there any reason not to require that these submissions be made electronically on the EDGAR system?

#### **V. GENERAL REQUEST FOR COMMENT**

You are invited to submit written comments relating to the rule proposals set forth in this release. We request comment not only on the specific issues we discuss in this release, but on any other approaches or issues that we should consider in connection with the submission of applications for orders and Regulation E filings on the EDGAR system. We seek comment from any interested person, including those required to file information with us on the EDGAR system, as well as investors, disseminators of EDGAR data, EDGAR filing agents, and other members of the public who have access to and use information from the EDGAR system.

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<sup>50</sup> 17 CFR 230.601 to 610a.

<sup>51</sup> Requiring electronic filing on EDGAR of Rule 607 sales literature would be consistent with the current requirement to file electronically on EDGAR omitting prospectuses under Rule 482 of the Securities Act of 1933 (“Securities Act”) (referred to as “482 ads”) and sales literature under Section 24(b) of the Investment Company Act.

<sup>52</sup> See proposed amendments to paragraphs (a)(1)(v) and (c)(6) of Rule 101 of Regulation S-T.

## **VI. COST-BENEFIT ANALYSIS**

We are sensitive to the costs and burdens of our rules. The rules we are proposing today would reflect the addition of applications under the Investment Company Act as mandatory electronic submissions on EDGAR. In addition, the proposals would amend Rule 0-2 and make unavailable to applicants Regulation S-T's provision for temporary hardship exemptions. In addition, the proposals would add Regulation E filings to the list of those that must be filed electronically through EDGAR.

### **A. Expected Benefits**

We expect that the addition of applications under the Investment Company Act as mandatory electronic submissions on EDGAR would result in considerable benefits to the securities markets, investors, and other members of the public, by expanding the accessibility of information, and increasing the types of information, filed and made available for public review through the EDGAR system. The primary goal of the EDGAR system since its inception has been to facilitate the rapid dissemination of financial and business information in connection with filings, including filings by investment companies. The proposed amendments would benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating these applications. The mandated electronic transmission of these documents would enable the public to access them more quickly and search them more easily. Instead of having to come in person or through an agent to the Commission's public reference room to conduct a search for a particular submission that is in paper or microfiche, the public would be

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able to find and review the application on any computer with an Internet connection by accessing the EDGAR system through the Commission's Web site or through a third party Web site that links to EDGAR. The proposals would benefit the public by making the EDGAR page of our Web site a more comprehensive resource for most information on file with us related to the operation of investment companies. A further benefit would be to ensure that all applications are available to the public free of charge on our Web site without the cost of paying a third party for a copy.

Persons who may consider requesting a hearing on an application on the basis of a notice would be able to more easily obtain the actual application so that they could better understand the legal issues. We believe this would be a significant improvement in the applications process.

We also expect that applicants would benefit from the increased efficiencies in the filing process for these submissions resulting from the proposed amendments. By electronically transmitting these documents directly to the Commission, applicants would avoid the uncertainties and delays that can occur with the manual delivery of paper documents; we believe that it would be a simpler and more efficient means to submit applications. Applicants also would benefit from no longer having to submit multiple copies of paper documents to the Commission.

Because the Commission's staff would be able to retrieve and analyze information contained in these submissions more readily than under our current paper system, mandated electronic submission of these documents should facilitate the staff's retrieval and review of a particular document. Applicants and investors should benefit from increased efficiencies in the

Commission's storage, retrieval, and analysis of these submissions which would result from the proposed amendments.

We believe the proposal to amend Rule 0-2 would benefit applicants. Removing the notarization requirement would remove a requirement from filers that is unnecessary, and removing the requirement to include a draft notice as an exhibit will result in a cost-savings to applicants. And, we believe that making unavailable to applicants Regulation S-T's Rule 201 provision for temporary hardship exemptions would benefit applicants because applicants would not bear the cost of both submitting an application in paper and in electronic form as a confirming copy within 6 business days as required by the temporary hardship exemption rule. This is true in light of the fact that there is no deadline for the submission of an application.

We also expect that the addition of Regulation E filings as mandatory electronic submissions on EDGAR would result in benefits to the securities markets, investors, and other members of the public, by expanding the accessibility of information, and increasing the types of information, filed and made available for public review through the EDGAR system. Requiring these Regulation E filings to be submitted on EDGAR would benefit members of the investing public and the financial community by making information contained in these Commission filings more easily searchable and readily available to them. The proposals would result in the benefit to the public of the EDGAR page of our Web site being a comprehensive source from which to find filings of small business investment companies and business development companies.

We also expect that Regulation E filers would benefit from the increased efficiencies in the filing process for these submissions resulting from the proposed amendments. By

electronically transmitting these documents directly to the Commission, these filers would avoid the uncertainties and delays that can occur with the manual delivery of paper documents; we believe that it would be a simpler and more efficient means to submit these Regulation E filings. Regulation E filers also would benefit from no longer having to submit multiple copies of paper documents to the Commission.

The proposed amendments would benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating these filings. The mandated electronic transmission of these documents would enable the public to access them more quickly. Instead of having to come in person or through an agent to the Commission's public reference room to conduct a search for a particular submission that is in paper or microfiche, the public would be able to find and review the filing on any computer with an Internet connection by accessing the EDGAR system through the Commission's Web site or through a third party Web site that links to EDGAR. The proposed amendments would also enable financial analysts and others to retrieve, analyze and disseminate more rapidly this information.

An investor would be able to more efficiently gather information of interest about Regulation E filers. Also, Regulation E filers and investors should benefit from increased efficiencies in the Commission's storage, retrieval, and analysis of these submissions which would result from the proposed amendments. Mandated EDGAR submission of these documents would result in their addition to the Commission's central electronic repository of filings that is free to anyone who has access to a computer linked to the Internet. Because the Commission's staff would be able to retrieve and analyze information contained in these Regulation E submissions more readily than under our current paper system, mandated electronic

submission of these documents should facilitate the staff's retrieval and review of a particular document.

In the Paperwork Reduction Act section we estimate that, if the proposed amendments are adopted, the total reduction in the burden would be approximately \$52,550.

### **B. Expected Costs**

We expect that, if adopted, the proposed amendments would result in some initial and ongoing costs to applicants. We also expect, however, that many applicants would not bear the full range of costs that would result from the amendments for the reasons described below.

Initial costs are those associated with filing a Form ID in order to obtain the access codes needed to submit an application electronically and otherwise preparing to make an application submission.<sup>53</sup> In order to file a Form ID, an applicant would need to learn the related electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Commission's EDGAR Filer Management Web site, respond to Form ID's information requirements and fax to the Commission a notarized authenticating document

Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and additional costs arising from each subsequent submission of an application.

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<sup>53</sup> Applicants that already have EDGAR access codes would not need to file a Form ID. As further discussed in Part IX, however, we assume that a small number of applicants per year would not already have the codes.

We expect that the vast majority of applicants would need to incur few, if any, additional costs related to obtaining computer and Internet access. We believe that the vast majority of applicants already would have access to a computer and the Internet.<sup>54</sup>

We expect no additional costs to applicants from our proposal to amend Rule 0-2. We request comment on whether our proposed amendments to Rule 0-2 to remove the current requirements for notarization of the application and provision of a draft notice as an exhibit would result in any additional costs. We expect no additional costs to applicants from our proposal to make unavailable to applicants Regulation S-T's Rule 201 provision for temporary hardship exemption. An applicant would still be able to request a continuing hardship exemption under Regulation S-T Rule 202 under appropriate circumstances.

We believe that mandatory EDGAR submission of Regulation E filings would result in minimal cost to these filers. For the following reasons, we also expect that Regulation E filers would not bear the full range of costs frequently associated with new electronic filing requirements. Initial costs are those associated with the purchase of compatible computer equipment and software, including EDGAR software if obtained from a third-party vendor and not from the Commission's Web site. Initial costs also include those resulting from the training of existing employees to be EDGAR proficient or the hiring of additional employees or agents that are already skilled in EDGAR processing. Initial costs further include those associated with the formatting and transmission of an applicant's first document submitted on EDGAR. These

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<sup>54</sup> An applicant that did not already own a computer with Internet access could, for example, go to a public library to use its computer and obtain Internet access.

transmission costs may include those related to subscribing to an Internet service provider.

Regulation E filers already file on EDGAR and would have minimal or no initial costs.

Ongoing costs are those associated with the electronic formatting and transmission of subsequent EDGAR filings. Regulation E filers may also incur future costs resulting from the training or hiring of employees regarding updated EDGAR filing requirements. The magnitude of these costs would depend on the filers' levels of technological proficiency and their previous familiarity with EDGAR filing requirements. Regulation E filers would incur the ongoing costs associated with formatting and transmitting their subsequent EDGAR filings. Consequently, the mandated EDGAR requirements should result only in costs related primarily to the electronic formatting of these documents in a format compatible with EDGAR, and transmission of the EDGAR formatted documents to the Commission. In any event, we believe that any costs for transmission, formatting, and education would be comparable to savings from not having to incur similar costs related to paper submissions.

### **C. Comment Solicited**

We solicit comment on the costs and benefits of the proposed amendments. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of these proposals. Please identify any costs or benefits associated with the rule proposal for the mandatory electronic submission of applications (and related proposed amendments to Investment Company Act Rule 0-2 and Rule 201 of Regulation S-T) and Regulation E filings and any impact that the rule proposals may have on the ease of locating and using EDGAR data. How much, if any, expense would be avoided with the removal of the notary and draft notice requirements? What are the benefits that investors,

financial analysts, other members of the financial community, applicants, and small business investment company and business development company Regulation E filers should realize from these proposals? Would the proposed amendments help an investor to gather information about an applicant and its operations? What are the likely expected initial and ongoing costs of these added categories of mandated EDGAR submissions? Are there costs in addition to those discussed above? Are there unidentified costs associated with any of the proposed amendments and, if so, what are they?

We encourage commenters to identify any costs or benefits associated with the rule proposals. We also request data to quantify the costs and the benefits identified.

## **VII. BURDEN ON COMPETITION; PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION**

Section 23(a)(2) of the Exchange Act requires us, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules that we adopt thereunder. Furthermore, Section 2(b) of the Securities Act,<sup>55</sup> Section 3(f) of the Exchange Act,<sup>56</sup> and Section 2(c)<sup>57</sup> of the Investment Company Act require us, when engaging in rulemaking, and considering or determining whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. In compliance with our responsibilities under these sections, we request comment on whether the proposals, if adopted, would burden competition and whether they would promote efficiency, competition,

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<sup>55</sup> 15 U.S.C. 77b(b).

<sup>56</sup> 15 U.S.C. 78c(f).

<sup>57</sup> 15 U.S.C. 80a-2(c).

and capital formation. We encourage commenters to provide empirical data or other facts to support their views.

The proposed amendments regarding mandated electronic filing of applications and the related amendments to Rule 0-2 and Regulation S-T's Rule 201 are intended to simplify the requirements for submitting applications and facilitate more efficient transmission, analysis, storage and retrieval of information. This should improve the accessibility and usefulness of information available to all applicants and the public, including those wishing to request a hearing on an application. It may make the investment products offered by applicants more competitive, since all applicants would have ready access to the applications of others. The proposed rules would also improve the accessibility of information available to the public about the operation of investment companies and improve investors' ability to make informed investment decisions. We believe the proposed amendments would not impose a burden on competition and would not have an adverse impact on capital formation. The proposed amendments regarding mandated electronic filings under Regulation E by small business investment companies and business development companies are intended to facilitate more efficient transmission, analysis, storage and retrieval of information. This should improve the accessibility and usefulness of information available for use by filers, investors, and the public. It may make the investment products offered by filers more competitive, since all filers would have immediate on-line access to Regulation E filings of their competitors. We believe that the proposed rules would also improve the accessibility of information available to the public about the operation of small business investment companies and business development companies and thereby improve investors' ability to make informed investment decisions. We believe the

proposed amendments would not impose a burden on competition and would not have an adverse impact on capital formation.

We request comment on the impact the proposed rule would have on efficiency, competition and capital formation. We request comment on whether the proposed amendments, if adopted, would impose a burden on competition and whether they would promote efficiency, competition, and capital formation. We also request commenters to provide empirical data and other factual support for their views if possible.

### **VIII. INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS**

This Initial Regulatory Flexibility Act Analysis (Analysis) has been prepared in accordance with 5 U.S.C. 603. It relates to our proposed amendments to add applications for orders under the Investment Company Act to the list of submissions that must be made electronically, including proposals to amend Rule 0-2 and make unavailable to applicants the provision for temporary hardship exemptions in Rule 201 of Regulation S-T, and to add Regulation E filings to the list of those that must be filed electronically through EDGAR.

#### **A. Reasons for, and Objectives of, Proposed Amendments**

The proposals would require applications for orders under any section of the Investment Company Act to be submitted electronically on EDGAR. The proposed amendments to Rule 0-2 would remove the requirements for notarization and provision of a draft notice, and the proposed amendments to Rule 201 of Regulation S-T would make applications ineligible for temporary hardship exemptions. We make these proposals because the absence of an electronic system for submitting applications for orders limits the usefulness of the information collected.

The proposals would add Regulation E filings made by small business investment companies and business development companies to the list of those that must be filed electronically through EDGAR. We also make this proposal because the absence of an electronic system for submitting Regulation E filings limits the usefulness of the information collected.

### **B. Legal Basis**

We are proposing amendments to Rules 101, and 201 of Regulation S-T and Rule 0-2 under the Investment Company Act pursuant to authority set forth in Sections 6, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a)], Sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act [15 U.S.C. 78c, 78j, 78m, 78n, 78o(d), 78w(a), and 78ll], and Sections 8, 30, 31 and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37].

### **C. Small Entities Subject to the Rule**

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>58</sup> Approximately 164 registered investment companies meet this definition.<sup>59</sup> Approximately 51 business development companies may be considered small entities.<sup>60</sup> We estimate that few, if any,

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<sup>58</sup> Rule 0-10(a) under the Investment Company Act [17 CFR 240.0-10(a)].

<sup>59</sup> The estimated number of reporting investment companies that may be considered small entities is based on December 2006 data from the Commission's EDGAR database and a third-party data provider.

<sup>60</sup> This estimate is based on analysis by the Division of Investment Management staff of information

separate accounts registered on Form N-3, N-4, or N-6 are small entities.<sup>61</sup>

#### **D. Reporting, Recordkeeping, and Other Compliance Requirements**

The proposed amendments would require applicants to submit requests for orders and small business investment companies and business development companies to submit Regulation E filings electronically on the EDGAR system. The Commission estimates some one-time formatting and ongoing burdens that would be imposed on all applicants and Regulation E filers, including those that are small entities. We note, however, that all Regulations E filers and many applicants currently make other filings on EDGAR. Furthermore, we believe that non-investment company applicants would have no greater burden than that of those filers of Section 16 reports or Schedules 13D and 13G<sup>62</sup> who would not otherwise make EDGAR filings and that the electronic submission should create only a de minimis burden.

There would be no change in reporting or recordkeeping requirements. The proposed amendments to Rule 0-2 would reduce compliance requirements to the extent that they would remove the requirements for notarization of the application and provision of a draft notice with the application.

We solicit comment on the effect the proposed amendments would have on small entities.

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from databases compiled by third-party information providers, including Morningstar, Inc. and Lipper Inc.

<sup>61</sup> This estimate is based on figures compiled by the Division of Investment Management staff regarding separate accounts registered on Forms N-3, N-4, and N-6. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Rule 0-10(b) under the Investment Company Act [17 CFR 270.0-10(b)].

<sup>62</sup> 17 CFR 240.13d-101 and 13d-102.

**E. Duplicative, Overlapping or Conflicting Federal Rules**

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed amendments.

**F. Significant Alternatives**

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, the Commission considered the following alternatives: (i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. Different requirements for applicants or Regulation E filers that are small entities could make it more difficult for the public to locate Commission filings and disclosure documents for these applicants. We believe it is important that the benefits resulting from the proposal be provided to the public for all applications and Regulation E filings, not just the ones from those that are not considered small entities.

We have endeavored throughout the proposed amendments to minimize the regulatory burden on all applicants and Regulation E filers, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach

to the proposed amendments to the same degree as others. The Commission preliminarily believes that further clarification, consolidation, or simplification of the proposals for those that are small entities would be inconsistent with the Commission's concern for investor protection. Further clarification, consolidation, or simplification of the proposals for those that are small entities would result in less information available for them. Similarly, we preliminarily conclude that using performance rather than design standards would not be consistent with our statutory mandate of investor protection. We believe that the standard provided in the proposal (EDGAR filing) is already sufficiently clear and appropriately simple. A major goal of making these mandatory EDGAR submissions is a more complete and searchable EDGAR database of filings; we do not believe that there is a comparable performance standard that would achieve this goal.

#### **G. Solicitation of Comments**

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Act Analysis if the proposed rule amendments are adopted, and will be placed in the same public file as comments on the proposal.

#### **IX. PAPERWORK REDUCTION ACT**

The proposed rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").<sup>63</sup> We are submitting the

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<sup>63</sup> 44 U.S.C. 3501 *et seq.*

proposed collection of information to the Office of Management and Budget (“OMB”) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

**A. Rule 0-2**

The title for the collection of information is “General Requirements of Papers and Applications.”<sup>64</sup> Provision of information under the rule is necessary to obtain a benefit. The information is not kept confidential. Respondents to the collection are applying for orders of the Commission under the Investment Company Act. Applicants for orders under the Investment Company Act can include registered investment companies, affiliated persons of registered investment companies, and issuers seeking to avoid investment company status, among other entities.<sup>65</sup> The Commission uses the information required by rule 0-2 to decide whether the applicant should be deemed to be entitled to the action requested by the application. The proposed amendments to rule 0-2 would eliminate the requirement to have verifications of applications and statements of facts made in connection with applications notarized<sup>66</sup> and would

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<sup>64</sup> Rule 0-2 is a collection of information currently in use without a control number. We are submitting the rule to OMB for approval under the PRA.

<sup>65</sup> There are several sections of the Investment Company Act pursuant to which entities may make applications for relief. Section 6(c) provides the Commission with authority to exempt persons, securities or transactions from any provision of the Investment Company Act, or the regulations thereunder, if and to the extent that such exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.

<sup>66</sup> See Rule 0-2(d).

eliminate the requirement that applicants include draft notices as exhibits to applications.<sup>67</sup>

### **Burden Estimate for Rule 0-2**

Applicants file applications as they deem necessary. The Commission receives approximately 125 applications per year under the Investment Company Act of 1940. Although each application typically is submitted on behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single applicant for purposes of this analysis.

Much of the work of preparing an application is performed by outside counsel. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required for preparation. Based on conversations with applicants and attorneys, the cost ranges from approximately \$7,000 for preparing a well-precedented, routine application to approximately \$80,000 to prepare a complex and/or novel application. We estimate that the Commission receives 20 of the most time-consuming applications annually, 80 applications of medium difficulty, and 25 of the least difficult applications. This distribution gives a total estimated annual cost burden to applicants of filing all applications of \$5,255,000  $[(20 \times \$80,000) + (80 \times \$43,500) + (25 \times \$7,000)]$ .

In addition, based on conversations with applicants, we estimate that in-house counsel would spend from ten to fifty hours helping to draft and review an application. We estimate a total annual hour burden to all respondents of 3,650 hours (50 hours x 20 applications) + (30 hours x 80 applications) + (10 hours x 25 applications). We are proposing to decrease the burden associated with the existing collection of information for Rule 0-2 to reflect the proposed

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<sup>67</sup> See Rule 0-2(g).

amendments. The proposed amendments to Rule 0-2 would, if adopted, eliminate the requirement to have verifications of applications and statements of facts made in connection with applications notarized. The notary service would be provided by a secretary or similar administrative employee of the applicant or the outside counsel preparing the application and would represent a negligible cost or hour burden to the applicant, so elimination of the notarization requirement would not be likely to decrease the burden measurably.

The proposed amendments would also eliminate the requirement that applicants include proposed notices as exhibits to applications. A proposed notice is merely a summary of the statements in the application. We estimate that preparation of the proposed notice by outside counsel represents approximately 1% of the cost of preparing an application. Elimination of this requirement would reduce the estimated cost burden by approximately \$52,550 (1% of \$5,255,000). The proposed amendments will not change the hour burden.

If the proposed amendments are adopted, we estimate the total reduction in the burden would be approximately \$52,550.

#### **B. Regulation S-T**

The title for the collection of information is “General Rules and Regulations for Electronic Filing.” (OMB Control No. 3235-0424). The purpose of Regulation S-T is to implement the Commission’s EDGAR system. The EDGAR system enables the Commission to receive, store, process and disseminate information filed with the Commission under the provisions of the federal securities laws. The Commission’s forms and rules require filings that make information available to the investing public and that permit the Commission to verify compliance with the federal securities laws. Electronic filing improves the availability to the

public and to the Commission of information filed with the Commission. Regulation S-T specifies the requirements that govern the electronic submission of documents to the Commission. Provision of the information required by the Regulation is mandatory. Responses are not kept confidential.

### **Burden Estimate for Regulation S-T**

The proposed amendments to Regulation S-T would revise rule 101 under Regulation S-T to require electronic filing of applications for orders of the Commission under the Investment Company Act and of forms required by Regulation E under the Securities Act of 1933. The burden associated with the filing of applications under rule 0-2, as proposed to be amended, will be reflected in the collection of information entitled “General Requirements of Papers and Applications.” We are not proposing to amend Regulation E. The burden associated with the filing of documents required by Regulation E is reflected in the collections of information required by Regulation E, and will not change as a result of the proposed amendments to Regulation S-T.

We are also proposing to amend rule 201 under Regulation S-T, which governs temporary hardship exemptions from electronic filing. Rule 201 is part of Regulation S-T and does not impose any burden on respondents separate from Regulation S-T. The proposed amendments to rule 201 will not change the burden of Regulation S-T. The Paperwork Reduction Act requires that we obtain OMB approval for a collection of information, whether the collection has a burden or not. Regulation S-T is a collection of information with no burden to respondents. OMB requires us to assign a burden of one hour to Regulation S-T and to indicate that the Regulation has one respondent so the automated OMB system will be able to

handle approval of the Regulation. OMB has already approved a burden of one hour for one respondent to the Regulation.

### **C. Form ID**

The Commission estimates that each year a small number of applicants would need to file a Form ID (OMB Control Number 3235-0328) with the Commission in order to gain access to EDGAR. Form ID is used to request the assignment of access codes to file on EDGAR. Most applicants would not need to file a Form ID because any applicant that has made at least one filing with the Commission since 2002 has been entered into the EDGAR system by the Commission and would not need to file Form ID to file electronically on EDGAR. However, applicants that have never made a filing with the Commission would need to file Form ID.

The Commission estimates that it would receive approximately 10 Forms ID a year under the proposed amendments. This number fits within the current number of respondents that file a Form ID each year because the actual number of Forms ID the Commission receives is less than the current estimate.

### **D. Request for Comments**

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments as to: (i) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection

techniques or other forms of information technology.

The Commission has submitted the proposed collections of information to OMB for approval. Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-0609, with reference to File No. S7-25-07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-25-07, and be submitted to the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE, Washington, DC 20549. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

#### **X. CONSIDERATION OF IMPACT ON THE ECONOMY**

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>68</sup> a rule is “major” if it results or is likely to result in:

- an annual effect on the economy of \$100 million or more;
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment, or innovation.

We request comment on and information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, comments should address

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<sup>68</sup> Pub. L. No. 104-21, title II, 110 Stat. 857 (1996).

whether the proposed changes, if adopted, would have a \$100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovation. We request that commenters provide empirical data to support their views.

## **XI. STATUTORY BASIS**

We propose the rule amendments outlined above under Sections 6, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a)], Sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act [15 U.S.C. 78c, 78l, 78m, 78n, 78o(d), 78w(a), and 78ll], and Sections 8, 30, 31 and 38 of the Investment Company Act [15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37].

### **List of Subjects**

17 CFR Part 232

Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

### **TEXT OF THE PROPOSED RULE AMENDMENTS**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

#### **PART 232 – REGULATION S-T – GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS**

1. The authority citation for part 232 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll (d), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

\* \* \* \* \*

2. Section 232.101 is amended by:

- a. Revising paragraphs (a)(1)(iv) and (v), the introductory text of paragraph (a)(2), paragraph (a)(2)(i), the first sentence of paragraph (a)(3), and paragraph (c)(6); and
- b. Removing and reserving paragraph (c)(11).

The revisions read as follows:

**§232.101 Mandated electronic submissions and exceptions.**

(a) \* \* \*

(1) \* \* \*

(iv) Documents filed with the Commission pursuant to sections 8, 17, 20, 23(c), 24(b), 24(e), 24(f), and 30 of the Investment Company Act (15 U.S.C. 80a-8, 80a-17, 80a-20, 80a-23(c), 80a-24(b), 80a-24(e), 80a-24(f), and 80a-29) and any application for an order under any section of the Investment Company Act (15 U.S. C. 80a-1 et seq.);

(v) Documents relating to offerings exempt from registration under the Securities Act filed with the Commission pursuant to Regulation E (§§230.601 - 230.610a of this chapter);

\* \* \* \* \*

(2) The following amendments to filings and applications, including any related correspondence and supplemental information except as otherwise provided, shall be submitted as follows:

(i) Any amendment to a filing or application submitted by or relating to a registrant or an applicant that is required to file electronically, including any amendment to a paper filing or application, shall be submitted in electronic format;

\* \* \* \* \*

(3) Supplemental information, including documents related to applications under any section of the Investment Company Act, shall be submitted in electronic format except as provided in paragraph (c)(2) of this section. \* \* \*

\* \* \* \* \*

(c) \* \* \*

(6) Except as provided in paragraph (a)(1)(v) of this section, filings relating to offerings exempt from registration under the Securities Act, including filings made pursuant to Regulation A (§§230.251 - 230.263 of this chapter) and Regulation D (§§230.501 - 230.506 of this chapter), as well as filings on Form 144 (§§239.144 of this chapter) where the issuer of the securities is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively);

\* \* \* \* \*

3. Amend §232.201 by revising paragraph (a).

**§232.201 Temporary hardship exemption.**

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing other than a Form 3 (§249.103 of this chapter), a Form 4 (§249.104 of this chapter), a Form 5 (§249.105 of this chapter), a Form ID (§§239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA-1 (§249.100 of this chapter), a Form TA-2 (§249.102 of this chapter), a Form TA-W (§249.101 of this chapter), or an application for an order under any section of the Investment Company Act (15 U.S.C. 80a-1 et seq.), the electronic filer may file the subject filing, under cover of Form TH (§§239.65,

249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

\* \* \* \* \*

**PART 270 -- RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

4. The authority citation for Part 270 continues to read in part as follows:

**Authority:** 15 U.S.C. 80a-1 et seq., 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

\* \* \* \* \*

5. Amend §270.0-2 by:

- a. Removing the authority citation following the section;
- b. Removing the last sentence in paragraph (b);
- c. Revising paragraph (d);
- d. Removing paragraph (g); and
- e. Redesignating paragraph (h) as paragraph (g).

The revision reads as follows:

**§ 270.0-2 General requirements of papers and applications**

\* \* \* \* \*

(d) Verification of applications and statements of fact. Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and every amendment to such application, and every statement of fact formally filed in support

of, or in opposition to, any application or declaration shall be verified by the person executing the same. An instrument executed on behalf of a corporation shall be verified in substantially the following form, but suitable changes may be made in such form for other kinds of companies and for individuals:

The undersigned states that he or she has duly executed the attached \_\_\_\_\_ dated \_\_\_\_\_, 20 \_\_\_\_ for and on behalf of (name of company); that he or she is (title of officer) of such company; and that all action by stockholders, directors, and other bodies necessary to authorize the undersigned to execute and file such instrument has been taken. The undersigned further states that he or she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his or her knowledge, information and belief.

\_\_\_\_\_  
(Signature)

\* \* \* \* \*

By the Commission.

Nancy M. Morris  
Secretary

Dated: November 1, 2007