

## **SECURITIES AND EXCHANGE COMMISSION**

17 CFR Chapter II

[Release Nos. 33-9000, 34-59248, 39-2460, IC-28600, IA-2830; File No. S7-03-09]

### **List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of list of rules scheduled for review.

**SUMMARY:** The Securities and Exchange Commission is today publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on them.

**DATES:** Comments should be submitted by February 25, 2009.

**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/other.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-03-09 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 Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File No. S7-03-09. 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/other.shtml>). Comments also are 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 a.m. and 3:00 p.m. 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:** Anne Sullivan, Office of the General Counsel, 202-551-5019.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 600-611, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a).

The RFA sets forth specific considerations that must be addressed in the review of each rule:

- the continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;
- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. (5 U.S.C. 610(c))

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility.<sup>1</sup> The list below is therefore broader than that required by the RFA, and may include rules that do not have a substantial impact on a significant number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list. The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted.

The rules and forms listed below are scheduled for review by staff of the Commission during the next twelve months. The list includes rules from 1998, 1997, 1996 and 1995.

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<sup>1</sup> When the Commission implemented the Act in 1980, it stated that it “intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission.” Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981).

The rules are grouped according to which Division or Office of the Commission recommended their adoption.

**Division of Corporation Finance**

Title: Plain English Disclosure

Citation: 17 CFR 230.421, 17 CFR 230.481

Authority: 15 U.S.C. 77a et seq.

Description: This rule requires that issuers write the cover page, summary and risk factors sections of prospectuses in plain English.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7497, which was approved by the Commission on January 28, 1998, which amended Rules 421 and 481. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Regulation S

Citation: 17 CFR 230.900 -905

Authority: 15 U.S.C. 77a et seq.

Description: This rule provides a safe harbor from the term “offer” for certain offshore communications made by a registrant.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7470, which was approved by the Commission on October 10, 1997. Rule 902 was originally adopted as part of Regulation S in Release No. 33-6863, containing a Final Regulatory Flexibility Analysis which was approved by the Commission on April 24, 1990. Comments to the proposing releases and Initial Regulatory Flexibility Analyses were considered at those times.

\* \* \* \* \*

Title: Rule 135e: Offshore press conferences, meetings with issuer representatives conducted offshore, and press-related material released offshore.

Citation: 17 CFR 230.135e

Authority: 15 U.S.C. 77a et seq.

Description: This rule provides a safe harbor from the term “offer” for certain offshore communications made by a registrant.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7470, which was approved by the Commission on October 10, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title:

Rule 12a-8: Exemption of depositary shares

Rule 15d-3: Reports for depositary shares registered on Form F-6.

Citation:

17 CFR 240.12a-8, 17 CFR 240.15d-3

Authority:

15 U.S.C. 78a et seq.

Description:

These rules are designed to provide exemptions for depositary shares from section 12(a) of the Securities Act and from certain reporting requirements.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7431, which was approved by the Commission on July 18, 1997. Comments to the

proposing release and Initial Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Item 305 of Regulation S-K  
Citation: 17 CFR 229.305  
Authority: 15 U.S.C. 77a et seq.  
Description: This rule requires quantitative and qualitative disclosures about market risk.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7386, which was approved by the Commission on January 31, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Delivery of Prospectus.  
Citation: 17 CFR 240.15c2-8  
Authority: 15 U.S.C. 78a et seq.  
Description: This rule establishes the requirements for brokers and dealers to deliver a prospectus to purchasers of securities.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7168, which was approved by the Commission on May 11, 1995. Comments to the proposing release and Initial Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title:

Exemption for Certain California Limited Issues

Citation:

17 CFR 230.1001

Authority:

15 U.S.C. 77a et seq.

Description:

The rule exempts from the registration requirements of the Securities Act offers and sales up to \$5 million that are exempt from state qualification under paragraph (n) of Section 25102 of the California Corporations Code. The purpose of the rule is to assist small businesses' capital raising ability by creating a federal exemption for offering of up to \$5 million that meet the qualifications of a California exemption.

Prior Commission

Determination Under



5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7285, which was approved by the Commission on May 1, 1996. Comments to the proposing release and Initial Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Settlement Cycle.

Citation: 17 CFR 240.15c6-1

Authority: 15 U.S.C. 77a et seq.

Description: This rule imposes a time requirement for brokers and dealers to complete the settlement of a securities transaction.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7168, which was approved by the Commission on May 11, 1995. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

## **Division of Investment Management**

Title : Rule 203A-1

Citation: 17 CFR 275.203A-1

Authority: 15 U.S.C. 80b-3a(a)(1)(A), 15 U.S.C. 80b-3a(c), 15 U.S.C. 80b-11(a)

Description: The Commission adopted rule 203A-1 to implement the Investment Advisers Supervision Coordination Act, which, among other things, reallocated the responsibilities for regulating investment advisers between the Commission and the state securities regulatory authorities. The rule increases the threshold for state registered advisers to switch to Commission registration to \$30 million in assets under management and requires that advisers to registered investment companies be registered with the Commission. The rule also provides state registered advisers with assets under management between \$25 million and \$30 million an option to remain registered with the states or to switch to Commission registration. In addition, the rule contains provisions prescribing procedures for switching registration from states to the Commission or vice versa.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA-1633, which was approved by the Commission on May 15, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

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Title :

Rule 203A-2

Citation:

17 CFR 275.203A-2

Authority:

15 U.S.C. 80b-3a(c)

Description:

The Commission adopted rule 203A-2 to implement the Investment Advisers Supervision Coordination Act, which, among other things, reallocates the responsibilities for regulating investment advisers between the Commission and the state securities regulatory authorities. The rule exempts certain types of investment advisers from the prohibition on Commission registration. As a result, the following investment advisers are not prohibited from registering with the Commission: nationally recognized statistical rating organizations, pension consultants,

investment advisers controlling, controlled by, or under common control with an investment adviser registered with the Commission, investment advisers expecting to be eligible for Commission registration within 120 days, multi-state investment advisers, and internet investment advisers.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA-1633, which was approved by the Commission on May 15, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title :

Rule 203A-3

Citation:

17 CFR 275.203A-3

Authority:

15 U.S.C. 80b-2a(17), 15 U.S.C. 80b-11(a)

Description:

The Commission adopted rule 203A-3 to implement the Investment Advisers Supervision Coordination Act, which, among other things, reallocates the responsibilities for regulating investment advisers between the Commission

and the state securities regulatory authorities. The rule defines certain terms for purposes of section 203A of the Investment Advisers Act (15 U.S.C. 80b-3a) and the rules thereunder. The terms defined in this rule include: “investment adviser representative,” “excepted person,” “impersonal investment advice,” “place of business,” and “principal office and place of business.”

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA-1633, which was approved by the Commission on May 15, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title : Rule 203A-4

Citation: 17 CFR 275.203A-4

Authority: 15 U.S.C. 80b-11(a)

Description: The Commission adopted rule 203A-4 to implement the Investment Advisers Supervision Coordination Act, which, among other things, reallocates the responsibilities for

regulating investment advisers between the Commission and the state securities regulatory authorities. The rule states that the Commission shall not assert a violation of section 203 of the Investment Advisers Act of 1940 (15 U.S.C 80b-3) by a state registered adviser for failure to register with the Commission if the adviser reasonably believes that it does not have assets under management of at least \$30 million and is therefore not required to register with the Commission.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IA-1633, which was approved by the Commission on May 15, 1997. Comments to the proposing release and Initial Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title:

Rule 2a51-1

Citation:

17 CFR 270.2a51-1

Authority:

15 U.S.C. 80a-1 et seq., 80a-2(a)(51)(B), 80a-6(c), 80a-37(a)

Description: Rule 2a51-1 under the Investment Company Act of 1940 (“Act”) defines the term “investment” for purposes of section 2(a)(51) of the Act, and section 3(c)(7) of the Act, which excludes from regulation under the Act privately offered companies that sell their securities to “qualified purchasers” owning or investing on a discretionary basis a specified amount of “investments.”

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-22597, which was approved by the Commission on April 3, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Rule 2a51-2

Citation: 17 CFR 270.2a51-2

Authority: 15 U.S.C. 80a-1 et seq., 80a-2(a)(51)(B), 80a-6(c), 80a-37(a)

Description: Rule 2a51-2 under the Investment Company Act of 1940 (“Act”) defines the term “beneficial owner” for purposes of

section 2(a)(51) of the Act and section 3(c)(7)(B) of the Act, which permitted unregulated private companies that, on or before September 1, 1996, relied on section 3(c)(1) of the Act (which excludes from regulation under the Act privately offered companies with 100 or fewer “beneficial owners”) to convert to unregulated private companies in reliance on section 3(c)(7) of the Act (which excludes from regulation under the Act privately offered companies that sell their securities to “qualified purchasers” owning or investing on a discretionary basis a specified amount of “investments”). Section 3(c)(7) of the Act was enacted in 1996.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-22597, which was approved by the Commission on April 3, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title:

Rule 2a51-3



Citation: 17 CFR 270.2a51-3

Authority: 15 U.S.C. 80a-1 et seq., 80a-2(a)(51)(B), 80a-6(c), 80a-37(a)

Description: Rule 2a51-3 under the Investment Company Act of 1940 (“Act”) provides that a company cannot be a “qualified purchaser” for purposes of section 3(c)(7) of the Act (which excludes from regulation under the Act privately offered companies that sell their securities to “qualified purchasers” owning or investing on a discretionary basis a specified amount of “investments” (“private fund”)) if it was formed for the specific purpose of acquiring the securities offered by a private fund unless each beneficial owner of the company’s securities is a qualified purchaser.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-22597, which was approved by the Commission on April 3, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

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Title: Rule 3c-1  
Citation: 17 CFR 270.3c-1  
Authority: 15 U.S.C. 80a-1 et seq., 80a-6(c), 80a-37(a)  
Description: Rule 3c-1 under the Investment Company Act of 1940 (“Act”) defines the term “beneficial owner” for purposes of section 3(c)(1) of the Act, which excludes from regulation under the Act privately offered companies with 100 or fewer “beneficial owners.”

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC- 22597, which was approved by the Commission on April 3, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Rule 3c-5  
Citation: 17 CFR 270.3c-5  
Authority: 15 U.S.C. 80a-1 et seq., 80a-6(c), 80a-37(a)  
Description: Rule 3c-5 under the Investment Company Act of 1940 (“Act”) permits “knowledgeable employees” of a privately

offered company (or knowledgeable employees of the company's affiliates) to invest in the company without causing the company to lose its exclusion from regulation under section 3(c)(1) or section 3(c)(7) of the Act. Section 3(c)(1) of the Act excludes from regulation under the Act privately offered companies with 100 or fewer "beneficial owners." Section 3(c)(7) of the Act excludes from regulation under the Act privately offered companies that sell their securities to "qualified purchasers" owning or investing on a discretionary basis a specified amount of "investments."

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC- 22597, which was approved by the Commission on April 3, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title:

Rule 3c-6

Citation:

17 CFR 270.3c-6

Authority: 15 U.S.C. 80a-1 et seq., 80a-3(c) (1), 80a-3(c) (7), 80a-6(c), 80a-37(a)

Description: Rule 3c-6 under the Investment Company Act of 1940 (“Act”) treats persons who acquire securities of a privately offered company that is excluded from regulation under the Act in reliance on section 3(c)(7) of the Act as qualified purchasers for purposes of those securities if the acquisition is in accordance with the rule. Section 3(c)(7) of the Act excludes from regulation under the Act privately offered companies that sell their securities to “qualified purchasers” owning or investing on a discretionary basis a specified amount of “investments.”

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-22597, which was approved by the Commission on April 3, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Rule 3a-4

Citation: 17 CFR 270.3a-4

Authority: 15 U.S.C. 80a-1 et seq., 80a-6(c), 80a-37(a)

Description: Rule 3a-4 under the Investment Company Act of 1940 (“Act”) provides a nonexclusive safe harbor from the definition of investment company for certain investment advisory programs. Under the rule, an investment program organized and operated in accordance with the rule’s provisions is deemed not to be an investment company within the meaning of the Act.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-22579, which was approved by the Commission on March 24, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Rule 17f-6

Citation: 17 CFR 270.17f-6

Authority: 15 U.S.C. 80a-1 et seq., 80a-6(c), 80a-37(a)

Description: Rule 17f-6 under the Investment Company Act of 1940 permits registered investment companies to maintain their assets with futures commission merchants and certain other entities in connection with futures contracts and commodity options traded on U.S. and foreign exchanges.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-22389, which was approved by the Commission on December 11, 1996. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Rule 17a-9

Citation: 17 CFR 270.17a-9

Authority: 15 U.S.C. 80a-1 et seq., 80a-6(c), 80a-37(a)

Description: Rule 17a-9 under the Investment Company Act of 1940 (the “Act”) specifies conditions under which, notwithstanding section 17(a) of the Act, a money market fund affiliate may purchase from the money market fund

securities that are no longer “eligible securities” for purposes of rule 2a-7.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-21837, which was approved by the Commission on March 21, 1996. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

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Title:

Form 24F-2

Citation:

17 CFR 274.24

Authority:

15 U.S.C. 60a-1 et seq.

Description:

Rule 24f-2 requires every open-end management investment company, face amount certificate company, or unit investment trust that is deemed to have registered an indefinite amount of securities pursuant to Section 24(f) of the Investment Company Act to file form 24F-2, Annual Notice of Securities Sold Pursuant to Rule 24f-2.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7208, which the Commission approved on September 1, 1995. Comments to the proposing release and Initial Flexibility Analysis were considered at that time.

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Title:

Rule 18f-3

Citation:

17 CFR 270.18f-3

Authority:

15 U.S.C. 80a-1 et seq., 80a-37, 80a-39

Description:

Rule 18f-3 under the Investment Company Act of 1940 (“Act”) specifies conditions under which, notwithstanding sections 18(f)(1) and 18(i) of the Act, a registered open-end management investment company or series or class thereof established in accordance with section 18(f)(2) of the Act whose shares are registered on Form N-1A may issue more than one class of voting stock.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-7143, which was approved by



the Commission on February 23, 1995. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title: Rule 6c-10

Citation: 17 CFR 270.6c-10

Authority: 15 U.S.C. 80a-1 et seq., 80a-37, 80a-39

Description: Rule 6c-10 under the Investment Company Act of 1940 (“Act”) specifies conditions under which, notwithstanding sections 2(a)(32), 2(a)(35), and 22(d) of the Act, a registered open-end management investment company or series or class thereof may permit a contingent deferred sales load to be imposed on shares issued by the company.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. IC-20916, which was approved by the Commission on February 23, 1995. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

## **Division of Trading and Markets**

Title: Regulation of Exchanges and Alternative Trading Systems

Citation: 17 CFR Parts 202, 240, 242 and 249

Authority: 15 U.S.C. 78 et seq., particularly Sections 78c(b), 78e, 78f, 78k-1, 78o, 78q(a), 78q(b), 78s, 78w(a), and 78mm.

Description: The Commission adopted new rules and rule amendments to allow alternative trading systems to choose whether to register as national securities exchanges, or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume. The Commission also adopted amendments to rules regarding registration as a national securities exchange, repealing rule 17a-23, and amending the books and records rules by transferring the recordkeeping requirements from rule 17a-23 to rules 17a-3 and 17a-4 as they apply to broker-dealer internal trading systems. Finally, the Commission excluded from the rule filing requirements for self-regulatory organizations certain pilot trading systems operated by national securities exchanges and national securities associations. These rules integrated the growing number of alternative trading systems into the national market system, accommodated the registration of proprietary alternative trading systems as

exchanges, and provided an opportunity for registered exchanges to better compete with alternative trading systems.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-40760, which was approved by the Commission on December 11, 1998. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

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Title:

Amendment to Rule Filing Requirements For Self-Regulatory Organizations Regarding New Derivative Securities Products

Citation:

17 CFR 240.19b-4(e)

Authority:

15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11.

Description: The Commission amended rule 19b-4 under the Securities Exchange Act of 1934 to permit self-regulatory organizations to list and trade new derivative securities products pursuant to existing self-regulatory organization trading rules, procedures, surveillance programs and listing standards without submitting a proposed rule change pursuant to Section 19(b).

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-40761, which was approved by the Commission on December 8, 1998. The Commission received no comments on the Initial Regulatory Flexibility Analysis.

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Title: OTC Derivatives Dealers

Citation: 17 CFR 200.30-3, 240.3b-12, 240.3b-13, 240.3b-14, 240.3b-15, 240.8c-1, 240.11a1-6, 240.15a-1, 240.15b1-1, 240.15c2-1, 240.15b9-2, 240.15c2-5, 240.15c3-1, 240.15c3-2, 240.15c3-3, 240.15c3-4, 240.17a-3, 240.17a-4,

240.17a-5, 240.17a-11, 240.17a-12, 240.36a1-1, 240.36a1-2, and 249.617.

Authority: 15 U.S.C. 78a et seq.) (3(b), 11(a), 15(a), 15(b), 15(c), 17(a), 23, and 36) (15 U.S.C. 78c(b), 78k(a), 78o(a), 78o(b), 78o(c), 78q(a), 78w, and 78mm)).

Description: The Commission adopted new rules and rule amendments to tailor capital, margin, and other broker-dealer regulatory requirements to a class of registered dealers, called OTC derivatives dealers, that are active in over-the-counter derivatives markets. Registration as an OTC derivatives dealer under these rules is optional and is an alternative to registration as a broker-dealer under the traditional broker-dealer regulatory structure. It is available only to entities that engage in dealer activities in eligible over-the-counter derivative instruments and that meet certain financial responsibility and other requirements.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-40594, which was approved by the Commission on October 23, 1998. The Commission

received no comments on the Initial Regulatory Flexibility Analysis.

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Title: Lost Securityholders

Citation: 17 CFR 240.17Ad-17, 240.17Ad-7, and 249b.102

Authority: 15 U.S.C. 77a et seq., 15 U.S.C. 78a *et seq.*, 15 U.S.C. 79a et seq., 15 U.S.C. 80a et seq.

Description: The Commission adopted rules 17Ad-17 and 17a-24<sup>2</sup> under the Securities Exchange Act of 1934, and amended form TA-2 and rule 17Ad-7 under the Securities Exchange Act. Rule 17Ad-17 (designed to reduce the number of “lost securityholders”) requires transfer agents to conduct searches in an effort to locate lost securityholders. The amendment to rule 17Ad-7 set forth the retention time period for the records relating to compliance with rule 17Ad-17, and the amendments to form TA-2 provide the means for transfer agents to report required information to the Commission.

Prior Commission

Determination Under

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<sup>2</sup> The Commission rescinded rule 17a-24 in a revised transfer agent rule, Release No. 34-42892 (July 9, 2000).

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-39176, which was approved by the Commission on October 1, 1997. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

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Title:

Net Capital Rule

Citation:

17 CFR 240.15c3-1

Authority:

15 U.S.C. 77a et seq., 15 U.S.C. 78a et seq., 15 U.S.C. 79a et seq., 15 U.S.C. 80a et seq.

Description:

The Commission amended rule 15c3-1 (“Net Capital Rule”) under the Securities Exchange Act of 1934 to permit broker-dealers to employ theoretical option pricing models in determining net capital requirements for listed options and related positions. Alternatively, the rule permits broker-dealers to elect a strategy-based methodology. The amendments simplified the Net Capital Rule’s treatment of options for capital purposes and were designed to more accurately reflect the risk inherent in broker-dealer options positions.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-38248, which was approved by the Commission on February 6, 1997. The Commission received no comments on the Initial Regulatory Flexibility Analysis.

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Title:

Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934

Citation:

17 CFR 240.17a-4

Authority:

15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11.

Description:

The Commission amended the broker-dealer record preservation rule to allow broker-dealers to employ, under certain conditions, electronic storage media to maintain records required to be retained. The Commission also issued an interpretation of its record preservation rule relating to the treatment of electronically generated communications.

Prior Commission

Determination Under



5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-38245, which was approved by the Commission on January 31, 1997. The Commission received no comments on the Initial Regulatory Flexibility Analysis.

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Title :

Anti-Manipulation Rules Concerning Securities Offerings

Citation:

17 CFR 228.502, 228.508, 229.502, 229.508, 230.418, 230.461, 240.10b-18, 240.11a-1, 240.13e-4, 240.13e-102, 240.14d-102, 240.17a-2, and 17 CFR Part 242

Authority:

15 U.S.C. 77a et seq., 15 U.S.C. 78a et seq., 15 U.S.C. 79a et seq., 15 U.S.C. 80a et seq.

Description:

The Commission adopted new Regulation M governing the activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities.

Regulation M was intended to preclude manipulative conduct by persons with an interest in the outcome of an offering. Regulation M significantly eased regulatory burdens on offering participants by eliminating the trading restrictions for underwriters of actively-traded securities; reducing the scope of coverage for other securities;

reducing restrictions on issuer plans; providing a more flexible framework for stabilizing transactions; and deregulating rights offerings. Consisting of five new rules, plus a new definitional rule, Regulation M replaced rules 10b-6, 10b-6A, 10b-7, 10b-8, and 10b-21 (“trading practices rules”) under the Securities Exchange Act of 1934 (“Exchange Act”), which were rescinded. In addition, related amendments were made to Items 502(d) and 508 of Regulations S-B and S-K, and to rules 10b-18 and 17a-2 under the Exchange Act. Conforming changes to various rules under the Securities Act of 1933 and the Exchange Act were made to reflect the repeal of the trading practices rules and the adoption of Regulation M.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-38067, which the Commission approved on December 20, 1996. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title :

Odd-Lot Tender Offers by Issuer

Citation: 17 CFR 240.13e-4,

Authority: 15 U.S.C. 77a et seq., 15 U.S.C. 78a et seq., 15 U.S.C. 79a et seq., 15 U.S.C. 80a et seq.

Description: The Commission adopted an amendment to rule 13e-4 under the Securities Exchange Act of 1934 (“Exchange Act”). The amendment removed the rule's requirement that an issuer cash tender offer made to odd-lot holders specify a record date of ownership for eligibility to tender into the offer. The amendment enabled issuers to conduct continuous, periodic, or extended odd-lot offers for their equity securities. The Commission also granted a class exemption from rule 10b-13,<sup>3</sup> and a temporary class exemption from rule 10b-6,<sup>4</sup> under the Exchange Act to permit issuers to conduct odd-lot offers, to “round-up” odd-lots on behalf of odd-lot holders, and to make purchases of their securities otherwise than pursuant to the odd-lot offer.

Prior Commission

Determination Under

5 U.S.C. 601: The Chairman of the Commission certified in connection with the Proposing Release that the proposed amendment to

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<sup>3</sup> The Commission replaced rule 10b-13 with new rule 14e-5 in adopting regulations on cross-border tender offers, Release No. 33-7760, 64 FR 61408 (Nov. 14, 1999).

<sup>4</sup> The Commission withdrew and replaced rule 10b-6 in adopting Regulation M, infra.

Rule 13e-4 and the proposed class exemptions from Rules 10b-6 and 10b-13, if adopted, would not have a significant impact on a substantial number of small entities. The Commission received no comments on this certification.

\* \* \* \* \*

Title : Order Execution Obligations (Rules 11Ac1-4 and 11Ac1-1)<sup>5</sup>

Citation: 17 CFR 240.11Aa3-1, 240.11Ac1-1 and 240.11Ac1-4 (renamed 17 CFR 242.601(a), 242.602(a)(1) and 242.604)

Authority: 15 U.S.C. 77a et seq., 15 U.S.C. 78a et seq., 15 U.S.C. 79a et seq., 15 U.S.C. 80a et seq.

Description: The Commission adopted new rule 11Ac1-4 ("Display Rule") under the Securities Exchange Act of 1934 ("Exchange Act") to require the display of customer limit orders priced better than a specialist's or over-the-counter market maker's quote or that add to the size associated with such quote. The Commission also adopted amendments to rule 11Ac1-1 ("Quote Rule") under the Exchange Act to require a market maker to publish quotations for any listed security when it is responsible for more than 1% of the aggregate trading volume for that security and to make

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<sup>5</sup> The Commission renumbered rules 11Ac1-1 and 11Ac1-4 in adopting Regulation NMS, Release No. 34-51808, 70 FR 37496 ( June 29, 2005). They are now at 17 CFR 242.602 and 242.604, respectively.

publicly available any superior prices that a market maker privately quotes through certain electronic communications networks. These rules were designed to address growing concerns about the handling of customer orders for securities. Finally, the Commission deferred action on proposed rule 11Ac1-5. The substance of this regulation remains largely intact in rules 602 and 604 of Regulation NMS. See Release No. 34-51808, 69 FR 37496 (June 29, 2005).

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-37619A, which was approved by the Commission on September 6, 1996. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

\* \* \* \* \*

Title:

Unlisted Trading Privileges

Citation:

17 CFR 240.12f-1, 17 CFR 240.12f-2, 17 CFR 240.12f-3, 17 CFR 240.12f-5, 17 CFR 240.12f-6.

Authority:

15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78a, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o,

78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11.

Description:

The Commission adopted new rules and rule amendments to reduce the period that exchanges must wait before extending Unlisted Trading Privileges (“UTP”) to any listed initial public offering, from the third trading day in the security to the second trading day in the security. The rules also require exchanges to have rules and oversight mechanisms in place to ensure fair and orderly markets and the protection of investors with respect to UTP in any security.

Prior Commission

Determination Under

5 U.S.C. 601:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-35637, which was approved by the Commission on April 21, 1995. Comments to the proposing release and Initial Regulatory Flexibility Analysis were considered at that time.

**Office of General Counsel**

Title :

Rules of Practice

Citation: 17 CFR Parts 200 and 201

Authority: 5 U.S.C. 551, 554, 556, and 557.

Description: The Commission comprehensively revisited its Rules of Practice ("Rules"), the procedural rules that govern Commission administrative proceedings. The proceedings include enforcement proceedings initiated by the Commission and review of disciplinary proceedings brought by self-regulatory organizations. They also cover administrative temporary cease-and-desist and disgorgement orders. The Rules implemented revised procedures for the conduct of hearings, including simplified service of orders instituting proceeding, expanded use of prehearing conferences, codification of policies on the availability of certain investigation files to respondents in enforcement and disciplinary proceedings, issuance of subpoenas returnable prior to hearing and the consideration by administrative law judges of dispositive motions prior to hearing.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34- 35833, which was approved

the Commission on June 9, 1995. The Commission received no comments on the Initial Regulatory Flexibility Analysis.

**Office of the Chief Accountant**

Title: Amendments to Rule 102(e): Appearance and practice before the Commission

Citation: 17 CFR 201.102

Authority: 15 U.S.C. 78a et seq.

Description: These amendments to the Commission’s Rules of Practice clarify the Commission’s standard for determining when accountants engage in “improper professional conduct” such that the Commission can censure, suspend or bar accountants who appear and practice before it.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-40567, which was approved by the Commission on October 19, 1998. Comments to the proposing release and Initial Regulatory Flexibility analysis were considered at that time.



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Title: Rule 10A-1: Notice to the Commission pursuant to Section 10A of the Exchange Act

Citation: 17 CFR 240.10A-1

Authority: 15 U.S.C. 78a et seq.

Description: These rules are designed to implement the reporting requirements in Section 10A of the Securities Exchange Act of 1934.

Prior Commission

Determination Under

5 U.S.C. 601: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-38387, which was approved by the Commission on March 12, 1997. Comments to the proposing release and Initial Regulatory Flexibility analysis were considered at that time.

The Commission invites public comment on both the list and on the rules to be reviewed.

By the Commission.

Elizabeth M. Murphy  
Secretary

Dated: January 14, 2009