

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-8633; 34-52708; 35-28053; 39-2440; IC-27139]

RIN 3235-AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual, Volume II: “EDGAR Filing” to reflect updates to the EDGAR system. The revisions are being made primarily to support the amended rules and forms adopted by the Commission to address the use of Form S-8, Form 8-K, and Form 20-F by Shell Companies and the changes necessary to support the Securities Offering Reform, which will modify and advance significantly the registration, communications, and offering processes under the Securities Act of 1933. The revisions to the Filer Manual reflect changes within Filer Manual, Volume II: “EDGAR Filing,” Version 2 (November 2005). The updated manual will be incorporated by reference into the Code of Federal Regulations. EDGAR Filer Manual, Volume I: “General Information,” Version 1 (September 2005) and Volume III: “N-SAR Supplement,” Version 1 (September 2005) have not been changed.

EFFECTIVE DATE: November 7, 2005. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of November 7, 2005.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Rick Heroux, at (202) 551-8800; for questions concerning the Division of Corporation Finance filings, in the Division of Corporation Finance, Herbert Scholl, Office Chief, EDGAR and

Information Analysis, at (202) 942-2940; for questions concerning the Division of Investment Management filings, in the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel, at (202) 551-6989; and, in the Office of Filings and Information Services, Barbara Stance, at (202) 551-7209.

SUPPLEMENTARY INFORMATION: Today we are adopting an updated EDGAR Filer Manual (Filer Manual), Volume II: “EDGAR Filing.” The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.¹ It also describes the requirements for filing using EDGARLink² and the Online Forms/XML Web site.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.³ Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.⁴

¹ We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33-6986 (April 1, 1993) [58 FR 18638]. The Commission granted the authorization to publish the release adopting the reorganized EDGAR Filer Manual, Release No. 33-8612 (September 21, 2005) [70 FR 57130].

² This is the filer assistance software we provide filers filing on the EDGAR system.

³ See Rule 301 of Regulation S-T (17 CFR 232.301).

⁴ See Release Nos. 33-6977 (February 23, 1993) [58 FR 14628], IC-19284 (February 23, 1993) [58 FR 14848], 35-25746 (February 23, 1993) [58 FR 14999], and 33-6980 (February 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. See also Release No. 33-7122 (December 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33-7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33-7472 (October 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34-40934 (January 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33-7684

The revisions are being made primarily to support the following rules adopted by the Commission:

(1) Use of Form S-8, Form 8-K, and Form 20-F by shell companies

Changes to incorporate this rule include:

- Add new 8-K Item 5.06 “Change in Shell Company Status.”
- Add new submission header field “Shell Company” to Forms 10-K, 10-KSB, and 20-F to allow filers to indicate if they meet the shell company criteria as specified in the rule.

(2) Securities Offering Reform

Changes to incorporate this rule include:

- Allow eligible well-known seasoned issuers to register unspecified amounts of different specified types of securities on Form S-3 or Form F-3 registration statements using new EDGAR submission form types S-3ASR and F-3ASR, which are immediately effective upon filing (i.e., automatic shelf registration). Include

(May 17, 1999) [64 FR 27888], in which we adopted amendments to implement the first stage of EDGAR modernization; Release No. 33-7855 (April 24, 2000) [65 FR 24788], in which we implemented EDGAR Release 7.0; Release No. 33-7999 (August 7, 2001) [66 FR 42941], in which we implemented EDGAR Release 7.5; Release No. 33-8007 (September 24, 2001) [66 FR 49829], in which we implemented EDGAR Release 8.0; Release No. 33-8224 (April 30, 2003) [66 FR 24345], in which we implemented EDGAR Release 8.5; Release Nos. 33-8255 (July 22, 2003) [68 FR 44876] and 33-8255A (September 4, 2003) [68 FR 53289] in which we implemented EDGAR Release 8.6; Release No. 33-8409 (April 19, 2004) [69 FR 21954] in which we implemented EDGAR Release 8.7; Release No. 33-8454 (August 6, 2004) [69 FR 49803] in which we implemented EDGAR Release 8.8; Release No. 33-8528 (February 3, 2005) [70 FR 6573] in which we implemented EDGAR Release 8.10; and Release No. 33-8573 (May 19, 2005) [70 FR 30899] in which we implemented EDGAR Release 9.0; and Release No. 33-8612 (September 21, 2005) [70 FR 57130] in which the Commission granted the authorization to publish the release adopting the reorganized EDGAR Filer Manual.

- submission header field to allow issuers using an automatic shelf registration statement to indicate whether the filing fees are paid in advance or on a “pay-as-you-go” basis on the shelf registration statement.
- Allow eligible well-known seasoned issuers to add additional securities or classes of securities and eligible majority-owned subsidiaries as additional registrants after an automatic shelf registration statement is effective using new submission form type POSASR. Include a submission header field to allow issuers using an automatic shelf registration statement to indicate whether the filing fees are paid in advance or on a “pay-as-you-go” basis on the shelf registration statement.
 - Allow well-known seasoned issuers to file a prospectus supplement (submission form types 424B1, 424B2, 424B3, 424B4, 424B5, and 424B7) that includes a calculation of registration fee table. Add new submission header field to allow a well-known seasoned issuer to indicate whether the filing fees are paid in advance or on a “pay-as-you-go” basis.
 - Allow all issuers to indicate that a prospectus supplement is being filed late using new submission form type 424(b)(8). Well-known seasoned issuers can include a calculation of registration fee table in the filing. Include a submission header field to allow a well-known seasoned issuer to indicate whether the filing fees are paid in advance or on a “pay-as-you-go” basis.
 - Allow an issuer to file a free writing prospectus (FWP) using new submission form type FWP. Include new submission header fields to indicate the filing is made pursuant to Rule 163, Rule 433, or both. Include new submission header “First Issuing Entity Filing” checkbox to indicate that the FWP is the first filing for an asset-backed security issuing entity.

- Allow filers to indicate on submission form type 425 whether the communications also is being filed pursuant to Rule 433, Rule 163, or both.
- Add new submission header fields to submission form types 10-K, 10-KT, and 20-F for filers to indicate if they are well-known seasoned issuers.
- Add new submission header fields to submission form types 10-K, 10-KT, and 20-F for filers, other than investment companies, to indicate that they are not required to file reports pursuant to Section 13 and Section 15(d) of the Securities Exchange Act of 1934.
- Rescind Forms F-2 and S-2 as these forms were eliminated effective December 1, 2005.

For EDGAR Release 9.2, the EDGARLink software and submission templates 1, 2, and 3 will be updated to support the aforementioned forms and submission form type changes. It is highly recommended that filers download, install, and use the new EDGARLink software and submission templates to ensure that submissions will be processed successfully. Previous versions of the templates may not work properly. Notice of the update has previously been provided on the EDGAR Filing Web site and on the Commission's public Web site. The discrete updates are reflected on the EDGAR Filing Web site and in the updated Filer Manual Volume II.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE, Room 1580, Washington DC 20549. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You may also obtain copies from Thomson Financial, the paper document contractor for the Commission, at (800) 638-8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA)⁵. It follows that the requirements of the Regulatory Flexibility Act⁶ do not apply.

The effective date for the updated Filer Manual and the rule amendments is November 7, 2005. In accordance with the APA⁷, we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 9.2 is scheduled to become available on November 7, 2005. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S-T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,⁸ Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,⁹ Section 20 of the Public Utility Holding Company Act of 1935,¹⁰ Section 319 of the Trust Indenture Act of 1939,¹¹ and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.¹²

⁵ 5 U.S.C. 553(b).

⁶ 5 U.S.C. 601- 612.

⁷ 5 U.S.C. 553(d)(3).

⁸ 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

⁹ 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

¹⁰ 15 U.S.C. 79t.

¹¹ 15 U.S.C. 77sss.

¹² 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

TEXT OF THE AMENDMENT

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is 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), 79t(a), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

2. Section 232.301 is revised to read as follows:

§232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: “General Information,” Version 1 (September 2005). The requirements for filing on EDGAR are set forth in the EDGAR Filer Manual, Volume II: “EDGAR Filing,” Version 2 (November 2005). Additional provisions applicable to Form N-SAR filers are set forth in the EDGAR Filer Manual, Volume III: “N-SAR Supplement,” Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain

paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE, Room 1580, Washington, DC 20549 or by calling Thomson Financial at (800) 638-8241. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You can also photocopy the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

By the Commission.

Jonathan G. Katz
Secretary

November 1, 2005