

# Full Disclosure System

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*The full disclosure system's goals are to:*

- *foster investor confidence;*
- *provide investors with material information;*
- *contribute to the maintenance of fair and orderly markets;*
- *reduce the costs of capital raising; and*
- *inhibit fraud in the public offering, trading, voting, and tendering of securities.*

*The Division of Corporation Finance achieves these goals by reviewing the financial and non-financial disclosure made by companies in their periodic reports and transactional filings. The Division also achieves its goal by recommending to the Commission rules that facilitate and enhance corporate disclosure and interpreting these rules.*

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## What We Did

- Completed reviews of the year-end financial statements of 2,400 reporting issuers and 1,195 new issuers.
- Adopted a new rule providing safe harbors from integration for a registered offering following an abandoned private offering or a private offering following an abandoned registered offering.
- Proposed rules to require companies to disclose securities authorized under compensation plans to address investors' concerns about increased use of

equity compensation, particularly in the form of stock options.

- Proposed rule and form amendments that would require foreign private issuers and foreign governments to file their securities documents electronically through our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.
  - Issued an exemptive order enabling companies to make option exchange offers to employees for compensatory purposes without complying with certain Commission tender offer rules.
  - Initiated several special relief actions in the wake of the September 11, 2001 terrorist attacks.
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## **2001 Statistics**

Companies filed registration statements with the Commission covering \$2.3 trillion in proposed securities offerings during the year, approximately the same as in 2000. Offerings filed by first-time registrants (IPOs) totaled approximately \$154 billion, 17% less than in 2000.

**Registration Statements Filed  
(in billions of dollars)**

<u>Security</u>	<u>2001 Value</u>	<u>2000 Value</u>	<u>Change</u>
Common stock	\$1,242.4	\$1,570.4	-21 %
Asset backed	167.0	145.8	+14 %
Debt	609.3	372.5	+64 %
Unallocated shelf *	294.3	171.6	+71 %
Other equity	31.8	40.0	-20 %
Total	\$2,344.8	\$2,300.3	+2 %

\* A transactional filing where the issuer registers a dollar amount of securities without specifying the particular amount of each different type of security to be issued.

## Review of Filings

The following table summarizes the principal filings reviewed by the staff during the last five years.

## Full Disclosure Reviews

<u>Major Filing Reviews</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Securities Act Filings					
Initial Public Offerings	1,255	1,320	1,010	1,350	745
Repeat Issuers	723	720	510	270	620
P/E Amdts. <u>a/</u>	41	28	10	10	25
Regulation A	111	81	65	70	50
Exchange Act					
Initial Registrations	349	338	680	1,015	400
Annual Report Reviews					
Full <u>b/</u>	1,949	1,527	1,375	595	880
Full Financial	1,208	997	960	550	1,400
Tender Offers (14D-1)	234	259	355	300	225
Going Private Schedules	94	115	180	115	145
Contested Proxy					
Solicitations	83	59	70	90	58
Proxy Statements					
Merger/Going Private	233	219	195	75	65
Others w/Financials	238	257	190	150	90
Reporting Issuer Reviews <u>c/</u>	3,513	2,828	2,550	1,535	2,400
New Issuer Reviews <u>d/</u>	1,715	1,739	1,755	2,435	1,195
Total Issuer Reviews	4,228	4,567	4,305	3,970	3,595

a/ Post-effective amendments with new financial statements.

b/ Includes annual reports reviewed in connection with the review of other filings that incorporated financial statements by reference.

c/ Includes companies subject to Exchange Act reporting whose financial statements were reviewed during the year.

d/ Includes reviews of Securities Act registration statements and Exchange Act registrations by non-Exchange Act reporting companies. Includes reviews of Regulation A filings.

With the decline in corporate merger activity and IPOs, the Division focused more of its resources on reviewing Securities Exchange Act of 1934 reports rather than transactional filings. During 2001, we reviewed fewer transactional filings than in 2000, 1,595 as compared with 1,925, but nearly twice as many Exchange Act reports, 2,280.

## **International Activities**

Foreign companies' participation in the U.S. public markets continued to grow in 2001. During the year, approximately 130 foreign companies from 29 countries entered the U.S. public markets for the first time. At year-end, there were over 1,300 foreign companies from 59 countries filing reports with us. Public offerings filed by foreign companies in 2001 totaled over \$267 billion as compared with \$211 billion.

## **Recent Rulemaking, Interpretive and Related Matters**

Rulemaking is undertaken to protect investors, facilitate capital formation, improve and simplify disclosure, establish uniform requirements, and eliminate unnecessary regulation. The objective in rulemaking is to define regulatory requirements on a cost-effective basis. We provide general interpretive and accounting advice through interpretive releases, staff legal bulletins, staff accounting bulletins, no-action and interpretive letters, our current issues outline, and responses to telephone inquiries.

### **Integration Safe Harbors for Abandoned Offerings**

On January 26, 2001, the Commission adopted new Securities Act Rule 155 to provide safe harbors from integration for a registered offering following an abandoned private offering or a private offering following an abandoned registered offering.<sup>96</sup>

## Proposed Equity Compensation Plan Disclosure

On January 26, 2001, the Commission proposed amendments to our rules and forms that would require registrants to disclose, at least annually, information about the total number of securities that have been authorized for issuance under their equity compensation plans, whether or not the plans were approved by security holders.<sup>97</sup> The proposals are intended to address investor concerns about increased use of stock options as compensation, the potential dilutive effect of these options, and the absence of information regarding plans adopted without security holder approval.

## Mandated EDGAR Filing for Foreign Issuers Proposed

On September 28, 2001, the Commission proposed rule and form amendments that would require foreign private issuers and foreign governments to file their securities documents electronically through the EDGAR system.<sup>98</sup> Currently, Commission rules only permit, but do not require, foreign issuers to file their securities documents on EDGAR.

## International Disclosure Standards

On June 15, 2001, the Commission adopted technical amendments to Form 20-F, the basic Exchange Act registration statement and the annual report form used by foreign private issuers, and to Securities Act Forms F-2 and F-3.<sup>99</sup> The amendments clarify language in the forms that created confusion about the forms' disclosure requirements. The amendments also codify the longstanding practice of accepting two years audited income statements and statement of cash flows information if the financial statements are presented in accordance with U.S. Generally Accepted Accounting Principles.

## Option Exchange Offers

On March 21, 2001, pursuant to delegated authority from the Commission, the Division issued an exemptive order addressing employee stock option exchange offers.<sup>100</sup> The exemptive order permits issuers to make these exchange offers without the need to comply with the rules requiring tender offers to be extended to all security holders of a class at the same price. The order contains conditions designed to assure that this relief is given only in the context of compensatory offers and that adequate disclosure is provided to employees.

## Electronic Signatures in Global and National Commerce Act

On June 14, 2001, the Commission issued an interpretive release providing guidance on the application of the Electronic Signatures in Global and National Commerce Act (E-SIGN) to SEC recordkeeping requirements under the Securities Act, Exchange Act and Regulation S-T.<sup>101</sup> The release provides that, because E-SIGN is not applicable to authentication documents that are generated principally for governmental purposes, issuers should continue to retain paper copies of these documents. The release also provides that the other identified records may be retained in electronic form, as long as the method selected for retention provides the same assurances of accuracy and accessibility as are provided by paper retention.

## Special Relief Actions Taken in the Wake of the September 11, 2001 Terrorist Attacks

On September 14, 2001, the Commission issued an emergency order pursuant to Exchange Act section 12(k)(2) to respond to market developments.<sup>102</sup> The order covered several matters, including registrant repurchases of securities under Exchange Act rule 10b-18 and the profit recovery provisions of section 16(b) of the Exchange Act. The Commission also issued an interpretive release expressing our views on how to calculate the average

weekly reported volume of trading in securities under Securities Act rule 144.<sup>103</sup> Furthermore, on September 28, 2001, the Commission issued a press release outlining a series of administrative actions taken to provide temporary emergency relief from regulatory burdens to companies in the airline and insurance industries, and to help these companies quickly access the U.S. capital markets.

## **Conferences**

### **SEC/NASAA Conference Under Section 19(c) of the Securities Act**

The SEC conducted the 18th annual federal/state uniformity conference in April 2001 in Washington, D.C. Approximately 60 Commission officials met with approximately 60 representatives of the North American Securities Administrators Association, Inc. to discuss methods of achieving greater uniformity in federal and state securities matters. After the conference, a final report summarizing the discussions was prepared and distributed to interested persons and participants.

### **SEC Government-Business Forum on Small Business Capital Formation**

The SEC conducted the 20th annual Government-Business Forum on Small Business Capital Formation in Washington, D.C. in September 2001. This platform for small business is the only government-sponsored national gathering for small business, which offers annually the opportunity for small businesses to let government officials know how the laws, rules, and regulations are affecting their ability to raise capital.