



# Federal Register

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**Wednesday,  
July 27, 2005**

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**Part III**

## **Securities and Exchange Commission**

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**17 CFR Parts 232, 239, 249 et al.  
Rulemaking for EDGAR System; Final  
Rule**

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 239, 249, 259, 269, 270, and 274

[Release Nos. 33-8590; 34-52052; 35-28002; 39-2437; IC-26990 File No. S7-16-04]

RIN 3235-AH79

### Rulemaking for EDGAR System

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission today is expanding the information that we require certain investment company filers to submit to us electronically through our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system and making certain technical changes to that system. We are requiring that certain open-end management investment companies and insurance company separate accounts identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts). In addition, we are adding two investment company filings to the list of those that must be filed electronically and making several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR. These amendments are intended to keep EDGAR current technologically and to make it more useful to the investing public and Commission staff.

**DATES:** Effective September 19, 2005; except §§ 232.11; 232.101(b); 232.313; 239.64, 249.444, 259.603, 269.8, and 274.403 (Form SE); and 239.65, 249.447, 259.604, 269.10, and 274.404 (Form TH) are effective February 6, 2006; and §§ 232.101(a) and 232.101(c) are effective June 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the rules, please contact one of the following members of our staff: In the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel; or Carolyn A. Miller, Senior Financial Analyst, at (202) 551-6989; 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:** Today we adopt amendments to the following rules relating to electronic filing on the EDGAR system: <sup>1</sup> Rules 11, 102, 201,

and 311 of Regulation S-T<sup>2</sup> and Forms SE<sup>3</sup> and TH<sup>4</sup> under the Securities Act of 1933 (Securities Act or 1933 Act),<sup>5</sup> the Securities Exchange Act of 1934 (Exchange Act),<sup>6</sup> the Public Utility Holding Company Act of 1935 (Public Utility Holding Company Act),<sup>7</sup> the Trust Indenture Act of 1939 (Trust Indenture Act),<sup>8</sup> and the Investment Company Act of 1940 (Investment Company Act).<sup>9</sup> We also adopt new Rule 313 under Regulation S-T.

Over the past several years, we have 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>10</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 stated in that release 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>11</sup> In May 2003, we adopted rules requiring electronic filing of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a)<sup>12</sup> of the Exchange Act.<sup>13</sup> In February 2005, we adopted rule amendments to enable registrants to submit voluntarily supplemental tagged financial information using the eXtensible Business Reporting Language

33-8401 (Mar. 16, 2004) [69 FR 13690] (the S/C proposing release).

<sup>2</sup> 17 CFR 232.11, 232.102, 232.201, and 232.311.

<sup>3</sup> 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

<sup>4</sup> 17 CFR 239.65, 249.447, 259.604, 269.10, and 274.404.

<sup>5</sup> 15 U.S.C. 77a *et seq.*

<sup>6</sup> 15 U.S.C. 78a *et seq.*

<sup>7</sup> 15 U.S.C. 79a *et seq.*

<sup>8</sup> 15 U.S.C. 77sss *et seq.*

<sup>9</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>10</sup> See Rulemaking for EDGAR System, Release No. 33-7855 (Apr. 24, 2000) [65 FR 24788] (the modernization adopting release). See also Release No. 33-7803 (Feb. 25, 2000) [65 FR 11507] (the modernization proposing release).

<sup>11</sup> See Mandated EDGAR Filing for Foreign Issuers, Release No. 33-8099 (May 14, 2002) [67 FR 36678].

<sup>12</sup> 15 U.S.C. 78p(a).

<sup>13</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).

(XBRL) format as exhibits to specified EDGAR filings.<sup>14</sup>

Today we are adopting amendments that will require that open-end investment companies and insurance company separate accounts issuing variable annuity contracts or variable life insurance policies (collectively referred to as contracts) to electronically identify in their filings to which of their series and classes (or contracts) the filing relates. In addition, we are adding two investment company filings to the list of those that must be filed electronically and making several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR.

In the S/C proposing release, we requested comment on the impact and feasibility of our proposal to require 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). We asked commenters to provide detailed information on any difficulties and considerations unique to these proposed requirements. We asked commenters to address the issues of the general approach of the proposed requirements, the length of time it may take for investment companies to prepare for the proposed requirements, and the language of the new and amended rules. We asked for specific details and alternative approaches in the event commenters believed that any aspect of the proposed requirements would be burdensome.

We received three comment letters in response to our requests for comment. One commenter expressed only a concern about a technical software issue.<sup>15</sup> The other two commenters affirmatively supported our proposal to include series and class (contract) identifiers; one expressed some concerns in connection with the proposed new mandatory electronic filings. No commenter expressed objections to our proposed technical corrections to Regulation S-T electronic filing rules and forms. Each of the two substantive commenters requested clarification on technical points which we address later in this release. We

<sup>14</sup> See XBRL Voluntary Financial Reporting Program on the EDGAR System, Release No. 33-8529 (Feb. 3, 2005) [70 FR 6556].

<sup>15</sup> This commenter requested upgrading of the EDGAR software to be compatible with Windows XP, a step that we have already taken. See Adoption of Updated EDGAR Filer Manual, Release 33-8454 (Aug. 6, 2004) [69 FR 49803] (the EDGAR Filer Manual Release).

<sup>1</sup> We proposed these amendments in March 2004. See Rulemaking for EDGAR System, Release No.

received no substantive comments on the details of our approach to the identification of series and classes (contracts), and we are adopting these amendments largely as proposed. We are adopting our proposal to add mandatory electronic filings with changes to reflect commenters' concerns. We are adopting our proposal to make technical corrections to Regulation S-T electronic filing rules and forms as proposed.

We take this action in light of the primary goals of the EDGAR system since its inception, to facilitate the rapid dissemination of financial and business information in connection with filings, including filings by investment companies. We believe that requiring these entities to identify the series and classes (or contracts) to which filings relate will benefit members of the investing public and the financial community by making information contained in Commission filings more easily searchable and readily available to them.

We also are adding two investment company filings to the list of filings that must be made electronically and making a number of technical amendments to rules and forms in connection with filing on the EDGAR system.

### **I. Identification of Open-End Management Investment Company Series and Classes and Contracts Issued by Insurance Company Separate Accounts**

#### *A. Background*

In the modernization adopting and proposing releases, we requested comment on the use of eXtensible Markup Language (XML) for EDGAR tagging in EDGAR submissions. We requested comment on the impact of our requiring, where applicable, that filers provide XML tagging concerning fee-related data; for investment companies, identification of individual series (portfolios) and classes; and for variable insurance products, identification of contracts issued by separate accounts. Commenters agreed that XML tagging will be useful and potentially a very powerful tool.<sup>16</sup>

In this age of information, we believe that filings made with us are of much greater use to investors if they are readily available in electronic form. We today, therefore, adopt rules that will allow the investing public and our staff to more easily track filings made with regard to series and classes of mutual funds and individual contracts of insurance company separate accounts.

Our rules will accomplish this technologically through expanded use of XML tagging.

Many open-end investment companies, commonly known as mutual funds, registering on Form N-1A<sup>17</sup> are organized as single registrants with several series (sometimes referred to as portfolios) under Sections 18(f)(1) and (2)<sup>18</sup> of the Investment Company Act and its Rule 18f-2.<sup>19</sup> Each series may also issue more than one class of securities under Rule 18f-3<sup>20</sup> under the Investment Company Act. Classes typically differ based on fee structure, with each class having a different sales load and distribution fee. Series and classes of a registrant are often marketed separately, without reference to other series or classes or to the registrant's name.

Insurance company separate accounts frequently register and issue multiple contracts. Each separate account is a registrant under the Investment Company Act. Generally, each contract issued by a separate account is separately registered under the 1933 Act and is assigned a separate 1933 Act file number. Insurance company separate accounts and the contracts issued by them are registered on Form N-3<sup>21</sup> (management investment companies that issue variable annuities), Form N-4<sup>22</sup> (unit investment trusts that issue variable annuities), or Form N-6<sup>23</sup> (unit investment trusts that issue variable life insurance). Insurance company separate accounts organized as management investment companies registering on Form N-3 may have multiple series.

Any particular filing for a single registrant may be filed for only some of its series and classes (or contracts, in the case of separate accounts). A single registrant may make multiple filings of the same type (for example, post-effective amendment filings), each covering different series and/or classes (or contracts) of that registrant. We keep records of filings on an investment company registrant basis, but the EDGAR system currently does not generate a record of filings on a series, class or contract basis.<sup>24</sup> Funds must currently provide information in the text of their filings identifying for which series or classes (or contracts) their filings are being made, but currently

they do not provide this information as part of the electronic identifying data they enter in the EDGAR submission template. Today we are adopting rules that will require that open-end management investment companies and separate accounts that register on Forms N-1A, N-3, N-4, and N-6 (collectively, S/C Funds) obtain identifiers for their series and classes (or contracts, in the case of separate accounts) and electronically identify for which series and classes (or contracts) of the S/C Fund a particular filing is made.

#### **1. Implementation of Requirement for Series and Class (Contract) Identifiers—Existing Series and Classes (Contracts)**

We are implementing the requirement for S/C funds to identify their series and classes (contracts) by having all S/C Funds enter their existing series and class (and contract) identification onto a special section of the EDGAR Filing Web site<sup>25</sup> (the Series and Classes (Contracts) Information Page).<sup>26</sup> Each S/C Fund will enter information for each of its existing series and classes (or contracts) at this Web site page; each will provide series names,<sup>27</sup> class (or contract) names,<sup>28</sup> and ticker symbols, if

<sup>25</sup> The address for the EDGAR Filing Web site is <https://www.edgarfiling.sec.gov/>.

<sup>26</sup> Each S/C Fund will enter information on the Series and Classes (Contracts) Information Page concerning only their series and classes (contracts) currently in existence. Series and classes (contracts) which come into existence on or after the Mandatory Series/Class (Contract) Identification Date (discussed below) will enter the information for their new series and classes (contracts) in a separate section of the EDGAR submission template of the initial registration statement or post-effective amendment filing by which they add the new series or class (contract).

A S/C Fund that is not organized as a series company and that has no separate classes will be deemed to have one series and class. See footnotes 54 and 57 and accompanying text.

<sup>27</sup> A S/C Fund must enter a unique name for each of its series, *i.e.*, a S/C Fund may not enter duplicate series names for its own series (although a series might have the same name as series of other S/C Funds). For each of its series, the S/C Fund should enter the name by which that series is most commonly known. For example, if the "Acme Trust" complex has a series named the "Bond Fund" which is known and marketed as "the Acme Bond Fund," the fund should enter the name "Acme Bond Fund" as the name of the series.

<sup>28</sup> A S/C Fund must enter a unique name for each of its classes (contracts) existing under each series, *i.e.*, a S/C Fund may not enter duplicate class (contract) names for classes (contracts) of the same series. Most class names are letters or names such as "Institutional" or "Retail." Class A, for example, typically has a front-end sales load; Class B often has a deferred sales load and a higher annual distribution fee. For each contract issued by an insurance company separate account, the separate account should enter the name by which that contract is most commonly known to the public (*i.e.*, the name by which it is marketed). For example, if the "Acme Insurance Company Variable Account C" issues a contract called "Acme

<sup>16</sup> See discussion under "EDGAR Tags" in Section LL of the modernization proposing release.

<sup>17</sup> 17 CFR 239.15A and 274.11A.

<sup>18</sup> 15 U.S.C. 80a-18(f)(1) and (2).

<sup>19</sup> 17 CFR 270.18f-2.

<sup>20</sup> 17 CFR 270.18f-3.

<sup>21</sup> 17 CFR 239.17A and 274.11b.

<sup>22</sup> 17 CFR 239.17b and 274.11c.

<sup>23</sup> 17 CFR 239.17c and 274.11d.

<sup>24</sup> As indicated above, generally, each contract issued by a separate account is assigned a separate 1933 Act file number.

any.<sup>29</sup> After this information is entered, we will issue series and class identifiers. These identifiers will be ten characters in length (nine numbers preceded by an "S" for series identifiers and a "C" for class (contract) identifiers) and will uniquely, and persistently, identify each series and/or class (or contract). These identifiers will be available to the public. Information filed with us containing these identifiers will be searchable by the public and our staff using the series and class (contract) identifiers and also using the series and class (contract) names without the need for reference to the S/C Fund issuing the series and/or class (contract). The information relating to its series and classes (contracts), including their identifiers, will be available to the S/C Fund quickly via e-mail notification following the entering of information and at the EDGAR Filing Web site, from which the S/C Fund may copy it as needed. The S/C Fund will also use the Series and Classes (Contracts) Information Page to update series and class (contract) information as required upon specified events, such as name change and deactivation, liquidation, or other events resulting in the elimination of a series or class or deregistration of the S/C Fund.

For insurance company separate accounts, only separate accounts registered as management investment companies (e.g., Form N-3 filers) with multiple series (portfolios) within the separate account will be able to have more than one series (and therefore be issued more than one series identifier). In those cases, each series (portfolio) within the separate account would be required to obtain its own series identifier. A separate account organized as a unit investment trust (e.g., Forms N-4 and N-6 filers) will be deemed to have a single series; this single series will have the same name as the separate account, notwithstanding any division of the separate account into sub-accounts corresponding to underlying investment options available under a contract. In addition, a separate account will be deemed to have multiple classes corresponding to the different contracts issued by the separate account and will be required to obtain class (contract) identifiers for each contract. Sub-accounts corresponding to different accumulation unit values under a single

Retirement Strategies II Deferred Variable Annuity," which is known and marketed as "Acme Retirement Strategies II," the separate account should enter the name "Acme Retirement Strategies II" as the name of the contract.

<sup>29</sup> S/C Funds will enter their ticker symbols, if any, at the class (contract) level (in addition to their class name).

contract would not be considered different "classes" for purposes of obtaining identifiers under this rule.

The Series and Classes (Contracts) Information Page on the EDGAR Filing Web site is currently open for entry of information for existing series and classes on a voluntary basis. All S/C Funds will be required to have entered information for their existing series and classes (contracts) and received their series and class (or contract) identifiers no later than February 6, 2006. We have set that February 6, 2006, as the date on and after which EDGAR will not accept specified filings without required series and class (contract) identifiers (the "Mandatory Series/Class (Contract) Identification Date"). Appendix J to the EDGARLink Filer Manual outlines the specifics and formatting requirements of the information the S/C Funds are to enter onto the system, and the Filer Manual will specify information that they will need to include in specified filings on and after the Mandatory Series/Class (Contract) Identification Date.

## 2. Implementation of Requirement for Series and Class (Contract) Identifiers—New Series and Classes (Contracts)

If a S/C Fund adds a new series or class (contract) on or after the Mandatory Series/Class (Contract) Identification Date, the S/C Fund is not to enter information concerning the new series or class (contract) on the Series and Classes (Contracts) Information Page on the EDGAR Filing Web site.<sup>30</sup> Instead, the S/C Fund must enter information concerning its new series or classes (contracts) which come into existence on or after the Mandatory Series/Class (Contract) Identification Date in a separate area of the EDGAR submission template as part of the substantive filing by which it adds the new series or class (contract). For example, on and after the Mandatory Series/Class (Contract) Identification Date, a newly registered open-end management investment company (mutual fund) filing on Form N-1A will add its new series and/or classes (contracts) in its initial "N-1A" submission template and, where necessary, in a pre-effective amendment

<sup>30</sup> If a S/C Fund makes a filing on behalf of a new series or class (contract) before the Mandatory Series/Class (Contract) Identification Date, the S/C Fund will enter the information concerning that new series or class (contract) on the Series and Classes (Contracts) Information Page on the EDGAR Filing Web site after the first filing made on behalf of the new series or class (contract); this is consistent with the procedure for other series and classes (contracts) in existence before the Mandatory Series/Class (Contract) Identification Date.

("N-1A/A" submission); an existing mutual fund must add its new series in the "485APOS" EDGAR submission template for its filing under Securities Act Rule 485(a) and will add its new classes in a "485APOS" submission template; a newly registered separate account organized as a management investment company filing on Form N-3 must add its new series and/or contract information in its initial "N-3" submission template; and newly registered separate accounts filing on Forms N-4 and N-6 must add their new contract information in the initial "N-4" or "N-6" submission template, respectively, filed to register the new contract. The identifiers for new series and classes added via the submission template will be available to the S/C Fund quickly via e-mail notification following the filing in which the information was entered.<sup>31</sup> These identifiers will also be available at the EDGAR Filing Web site. The identifiers may be copied from this site by the S/C Fund. This site may also be utilized for required updates of series and class (contract) information as required upon specified events, such as name change and deactivation of a series or class or deregistration of the S/C Fund.

## 3. Mandatory Series/Class (Contract) Identification Date

We are requiring that funds receive their series and class (contract) identifiers for existing series and classes no later than February 6, 2006, the Mandatory Series/Class (Contract) Identification Date. Since third party filers, including parties to mergers, will need to use this information in filings, all S/C Funds will need to ensure that the information concerning their existing series and classes (contracts) has been entered prior to the Mandatory Series/Class (Contract) Identification Date.

After the Mandatory Series/Class (Contract) Identification Date, we will post notice on the "Information for EDGAR Filers" page of the Commission's Public Web site ([www.sec.gov](http://www.sec.gov)) and the EDGAR Filing Web site ([www.edgarfiling.sec.gov](http://www.edgarfiling.sec.gov)) as to the date on which we will close the Series and Classes (Contracts) Information Page for entry of information concerning existing series

<sup>31</sup> The notice of acceptance or suspension for any submission requiring series and class (contract) identifiers will contain the included existing identifier(s) and series and class (contract) name(s) in addition to the information that is currently contained in the notice. A notice of acceptance will also contain new identifiers, if any, added in the filing; a notice of suspension will necessarily not include identifiers that were to have been added with the intended filing.

and classes. On and after that date, the Series and Classes (Contracts) Information Page will be used only for retrieving and editing series and class (contract) information. After the closing of the Series and Classes (Contracts) Information Page for entry of data for existing series and classes (contracts), if a S/C Fund fails to enter its information in a timely manner and receive its identifiers, the staff may require the S/C Fund to file a post-effective amendment to generate the identifiers via the submission template. Until the S/C Fund provides the information concerning its series and classes (contracts) and is issued identifiers, it will be unable to make other filings that require series and class (contract) identifiers.

We believe that this method for S/C Funds to obtain identifiers for their existing series and classes (contracts) will provide the most flexibility for S/C Funds. This method will allow S/C Funds an extended period of time in which to provide the information and obtain the identifiers. A S/C Fund may choose to obtain its identifiers for all its existing series and classes at one time via the Series and Classes (Contracts) Information Page. Or, a S/C Fund may choose to spread out its entering of information and receipt of identifiers through the period prior to than February 6, 2006. Each S/C Fund will need to make sure, however, that it has obtained its identifiers for all its series and classes (contracts) in existence prior to the Mandatory Series/Class (Contract) Identification Date.

#### 4. Requirement To Include Series and Class (Contract) Identifiers in EDGAR Filings; Consequence of Non-Compliance

On and after the Mandatory Series/Class (Contract) Identification Date, S/C Funds must use series and class (contract) identifiers in certain EDGAR submissions specified in the EDGAR Filer Manual. We are adding the series and class (or contract) identification requirement to the EDGARLink header templates of certain investment company EDGAR submissions.<sup>32</sup> We believe the method we have chosen for

<sup>32</sup> Filings using the following EDGAR submission types will be subject to series and class (contract) identification: N-1A, N-1A/A, N-3, N-3/A, N-4, N-4/A, N-6, N-6A, 485APOS, 485BPOS, 485BXT, POS AMI, 497, 497K1, 497K2, 497K3A, 497K3B, 497, 497AD, N-14, N-14/A, N-14AE, N-14AE/A, N-30D, N-30D/A, N-30B-2, N-CSR, N-CSR/A, N-CSR/S, N-CSR/A, NT-NCSR, NT-NCSR/A, N-PX, N-PX/A, 24F-2NT, 24F-2NT/A, NSAR-A, NSAR-A/A, NSAR-AT, NSAR-AT/A, NSAR-B, NSAR-B/A, NSAR-BT, NSAR-BT/A, NSAR-U, NSAR-U/A, NT-NSAR, NT-NSAR/A, N-Q, N-Q/A and all proxy submission types that may be filed by or with respect to investment companies.

S/C Funds to obtain identifiers for their existing series and classes (contracts) will help ensure that identifiers are assigned to existing series and classes (contracts) well in advance of EDGAR filings requiring them. The only instances in which identifiers will be generated at the time of a filing by entry of information via the EDGAR submission template will be when a new S/C Fund comes into existence or when an existing S/C Fund adds new series or classes (contracts).<sup>33</sup> The S/C Fund will be able to “cut and paste” the series and class (contract) identifying information from the Web site into filings as needed.<sup>34</sup> We are requiring that S/C Funds include the identifiers in all filings relating to the series and classes (contracts).<sup>35</sup> Indeed, the identifiers will be a substantive requirement of the filing. Consequently, failure of a S/C Fund to include correctly the required identifiers will mean that a filing for that series and/or class (or contract) has not been made.<sup>36</sup> On and after the than February 6, 2006, Mandatory Series/Class (Contract) Identification Date, filings requiring series and class (contract) identifiers will be suspended if the identifiers are not included in the EDGAR filing or if the identifiers are not identifiers associated with the CIK<sup>37</sup> of the S/C

<sup>33</sup> The following EDGAR submission types will allow for entry of information for new series: N-1A, N-1A/A, N-3, N-3/A, N-4, N-4/A, N-6, N-6/A, 485APOS, and POS AMI. The following submission types will allow for the entry of information for new classes (contracts): N-1A, N-1A/A, N-3, N-3/A, N-4, N-4/A, N-6, N-6/A, 485APOS, 485BPOS, and POS AMI. We note that these are the characteristics of the EDGAR submission types; nevertheless, S/C Funds should use only those EDGAR submission types that correspond to the form and rule under which the S/C Fund makes its substantive filing.

<sup>34</sup> Filers will also be able to cut and paste from any compatible source. For example, if filers have a listing of series and classes (contracts) in a word processing document, they should be able to cut and paste from that document. However, if filers do so, they must ensure that the secondary documents are kept up-to-date with the most current series and class data.

<sup>35</sup> We received comment requesting that we provide electronic notice of acceptance or rejection, describing the status of the filing and indicating the names of the series and classes (or contracts) and their corresponding identifiers. Companies will receive notices with this information, provided that they have entered a current e-mail address in their company information on our EDGAR filing Web site.

<sup>36</sup> See amendments to Rule 11 of Regulation S-T, discussed in Section I.B below. The staff will not have the ability to change series and class (contract) data via post-acceptance corrections. The staff will, of course, consider filing date adjustments under Rule 13(b) of Regulation S-T [17 CFR 232.13(b)], and grant relief pursuant to delegated authority in appropriate instances, depending on the facts and circumstances of each request.

<sup>37</sup> A filer's CIK (or “central index key”) is a digit number uniquely identifying that filer.

Fund, necessitating a resubmission of the filing in question.<sup>38</sup>

By requiring that the S/C Fund electronically identify the series and classes (or contracts) for which a filing is made, we are facilitating the ability of the investing public and our staff to search easily for EDGAR filings made on behalf of specified series and classes (contracts). The electronic identification of series and classes (contracts) will enable the investing public to search our Web site for filings covering the series and classes (contracts) they need. We believe that our amendments today recognize that disclosures in filings are only as useful as they are available; we believe that our amendments will facilitate substantially the investing public's access to investment company information needed for their investment decisions. To this end, it is critical that S/C Funds obtain and include the correct identifying information in their filings.

#### 5. Requirement To Update Information

S/C Funds will also have a duty to update and keep current their series and class (or contract) information. For example, filers will be required to update their information via the Series and Classes (Contracts) Information Page for series and class (or contract) name changes, addition of ticker symbols, or deactivation (if a series is never offered or no longer makes filings because of a merger, liquidation or other means of elimination or if the S/C Fund has deregistered).

#### 6. Identification of Investment Company Type; Parties to a Merger

In conjunction with our rules to require the identification of series and classes (contracts), we are also adding to the submission templates of selected filings used by investment companies an additional field for identification of the type of investment company making the filing.<sup>39</sup> Companies may be required to check a box if they are investment companies (for certain submissions) and to select from a pull-down menu in the EDGAR submission template their investment company “type,” where type is chosen according to whether a company's last effective registration

<sup>38</sup> Because of the potential consequences of failure to correctly include identifiers in filings, we note that the duty to insert the identifiers, as well as the duty of electronic filing in general, should be assigned to a person who has sufficient knowledge of the EDGAR system and filing requirements and the fund's structure and not delegated exclusively to a filing agent.

<sup>39</sup> S/C Funds, which are required to obtain series and class (contract) identifiers via the Series and Classes (Contracts) Information Page, will also enter information concerning their type on that page.

statement was filed on Form N-1 (open-end management investment company separate account that does not offer variable annuity contracts), Form N-1A (open-end management investment companies), N-2 (closed-end management investment companies, including business development companies),<sup>40</sup> N-3 (separate accounts organized as management investment companies that offer variable annuities), N-4 (separate accounts organized as unit investment trusts that offer variable annuities), N-5 (small business investment companies),<sup>41</sup> N-6 (separate accounts organized as unit investment trusts that offer variable life insurance policies), S-1 (face amount certificate companies),<sup>42</sup> S-3 (face amount certificate companies),<sup>43</sup> or S-6 (unit investment trusts, other than those filing on Forms N-4 and N-6).<sup>44</sup> S/C Funds will also be required to supply electronic information in the EDGAR template concerning the acquiring fund and the target (and their series and classes or contracts, if any, in existence) in connection with merger-related filings on Form N-14,<sup>45</sup> under Rule 425,<sup>46</sup> and under the proxy rules.

#### 7. Identification Requirement Applicable to Non-Registrants Filing Proxies

We are also requiring non-registrant third parties making proxy filings with respect to investment companies to designate "type" of investment company and to include series and/or class (or contract) identifiers in designated proxy submission types. After the Mandatory Series/Class (Contract) Identification Date, when filings are made with series and class (contract) identifiers and specification of investment company type, this information will be available on the EDGAR page of our public Web site (<http://www.sec.gov>), as is currently each entity's CIK. We recommend that filers obtain this information from our public company database site at [www.edgarcompany.sec.gov](http://www.edgarcompany.sec.gov).

#### 8. Electronic Filing Responsibilities

With respect to these requirements that we adopt today, including the updating requirements, we emphasize that it is the investment company's responsibility to ensure the correctness of this information and its use in each

of its filings on the EDGAR system.<sup>47</sup> Each S/C Fund must ensure that it receives all of its series and class (or contract) identifiers for series and classes (contracts) in existence before the Mandatory Series/Class (Contract) Identification Date; that it enters correctly information concerning series and classes (contracts) coming into existence on or after the Mandatory Series/Class (Contract) Identification Date; and that its filings are made using the correct EDGAR codes, including series and class (or contract) identifiers. A S/C Fund may verify the codes and identifiers under which its filing was made and accepted by reading its electronic notice of acceptance, which will contain the CIK, file number(s) and, where applicable, series and class (or contract) names and identifiers.<sup>48</sup>

#### B. Regulation S-T and Related Form Amendments in Connection With Series and Class (Contract) Identification Requirements

##### 1. New Rule 313 Under Regulation S-T

We are adding new Rule 313 under Regulation S-T in connection with identification of series and classes. New Rule 313 provides that all S/C Funds (*i.e.*, investment companies whose last registration statement was filed on Form N-1A, N-3, N-4, or N-6) must obtain identifiers for their constituent series existing under Sections 18(f)(1) and (2) of the Investment Company Act and Investment Company Act Rule 18f-2 and identify the series for which a

<sup>47</sup> This responsibility includes ensuring the correctness and timeliness of updates to names and deactivations of series and/or class (contract) identifiers, as required by Rule 313. We advise funds that ensuring that the correct information is contained in their EDGAR submissions, including the correct use of CIKs and series and class (contract) identifiers, should be addressed in a fund's written policies and overseen by the fund's chief compliance officer. See Compliance Programs of Investment Companies and Investment Advisers, Release No. IC-26299 (Dec. 17, 2003) [68 FR 74713] at footnotes 24 and 75.

We also remind companies of their obligation to keep their company information current and accurate, particularly their address(es) and IRS numbers. See Section 1.2.6 (Changing Company Information) of the EDGARLink Filer Manual. (Investment companies organized as series funds may provide the IRS number of any one of their constituent series.) Companies may view and update their information using the EDGAR Filing Web site.

<sup>48</sup> Before a S/C Fund uses the Series and Classes (Contracts) Information Page, it must make sure it has only one CIK. S/C Funds must submit their Investment Company Act filings under only one Investment Company Act number (811-) and one CIK. (Registrants may have multiple 1933 Act numbers under a single CIK.) A S/C Fund wishing to obtain identifiers that has more than one 1940 Act number or more than one CIK, should call the IM EDGAR Inquiry Line at 202-551-6989 for assistance before proceeding.

particular filing is being made.<sup>49</sup> A S/C Fund that is not organized as a series company but is covered under this rule will be deemed to have one series and must obtain a series identifier and include that identifier in specified filings.<sup>50</sup> This requirement is to assure that investors, the public, and our staff will be able to electronically search within the same universe of filers for each entity operating as a mutual fund or separate account, for example, whether it is a mutual fund operating as a single series (a "stand alone" fund) or a series of a S/C Fund. It will also permit electronic searches of all Form N-3 filers, including separate accounts consisting of a single series as well as those with multiple series.

Under Rule 313, each such investment company or series that has multiple classes under Investment Company Act Rule 18f-3<sup>51</sup> (or that issues multiple contracts, in the case of insurance company separate accounts) will also be required to obtain a class (or contract) identifier for each class (or contract) and include that identifier in specified submission types.<sup>52</sup> S/C Funds or series that are not organized as multiple class companies are deemed to have one class and must obtain a class identifier and include that identifier.<sup>53</sup>

Rule 313 will require that S/C Funds or series provide identifying information when they file certain merger documents (Form N-14,<sup>54</sup> Rule 425,<sup>55</sup> and proxy filings), including information about both the target and acquiring fund or series, class(es), or contract(s).

Under Rule 313, S/C Funds will have a duty to keep the information regarding their series and classes up to date. S/C Funds will update their information via the Series and Classes (Contracts) Information Page if the name of a series or class (or contract) changed. S/C Funds also will deactivate the identifiers for a series and/or class (or contract) via the Series and Classes (Contracts) Information Page when the

<sup>49</sup> This determination is to be made without reference to any merger/proxy filings submitted on Form N-14.

<sup>50</sup> This "dummy" series will be assigned the same name as the S/C Fund.

<sup>51</sup> 17 CFR 270.18f-3.

<sup>52</sup> Separate accounts registering on Forms N-4 and N-6 will be deemed to have one "dummy series" assigned the same name as the S/C Fund and will obtain a separate identifier at the "class" level (rather than series identifiers) for each of their contracts.

<sup>53</sup> This "dummy" class will be assigned the same name as the series to which it belongs. "Stand alone" funds with no separate series or classes will be deemed to have one series and one class, each assigned the same name as the S/C Fund.

<sup>54</sup> 17 CFR 239.23.

<sup>55</sup> 17 CFR 230.425.

<sup>40</sup> 17 CFR 239.14 and 274.11a-1.

<sup>41</sup> 17 CFR 239.24 and 274.5.

<sup>42</sup> 17 CFR 239.11.

<sup>43</sup> 17 CFR 239.13.

<sup>44</sup> 17 CFR 239.16.

<sup>45</sup> 17 CFR 239.23.

<sup>46</sup> 17 CFR 230.425.

series and/or class (contract) is no longer offered by the S/C Fund or the S/C Fund is deregistered. While EDGAR will suspend attempted filings which include deactivated series or class (contract) identifiers, information on deactivated series and classes (contracts) will remain available and searchable on the Commission's public Web site.

## 2. Rule 11 Under Regulation S-T

Currently, Rule 11 of Regulation S-T defines the phrase "official filing" to mean any filing that is received and accepted by us, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing. We are amending this definition to provide that the electronic identification of investment company type and inclusion of identifiers for series and class (or contract, in the case of separate accounts of insurance companies), as we are requiring under Rule 313 of Regulation S-T, will be deemed part of the official filing. On and after the Mandatory Series/Class (Contract) Identification Date, failure of a S/C Fund to include correctly the required identifiers will mean that a filing for that series and/or class (or contract) has not been made. We also stress that it is important for S/C Funds to keep their information up-to-date, including updating in a timely manner when a series and/or class (contract) deactivates. If a S/C Fund does not do so, we will assume that the S/C Fund is delinquent in reporting for a series or class (contract).

## 3. Forms TH and SE

Form TH<sup>56</sup> is the form that filers use as a cover for filings made in paper under a temporary hardship exemption under Rule 201 of Regulation S-T. Under Rule 201, confirming electronic copies of filings made in paper under temporary hardship exemptions must be made within [6] business days of the date of the paper filings. Form SE<sup>57</sup> is the form that electronic filers must use to submit any paper format exhibit permitted under Rule 201, 202, or 311 of Regulation S-T.<sup>58</sup> We are amending Forms TH and SE to require the inclusion of series and class (or contract) identifying information for those filings for which the identifiers will be required in the confirming

electronic copy or associated electronic filing, respectively.

## II. Mandatory Electronic Investment Company Filings

Until recently, investment companies could submit filings of fidelity bonds under Section 17(g),<sup>59</sup> sales literature filed with us under Section 24(b),<sup>60</sup> and litigation material filed under Section 33 of the Investment Company Act<sup>61</sup> in paper only. In August 2004, we modified the EDGAR system to allow companies to make these filings either in paper or electronically on a voluntary basis.<sup>62</sup> We are now amending Rule 101 to make two of these submissions mandatory electronic submissions and to continue to allow submission of the third electronically on a voluntary basis.

As of August 2004, companies could submit either in paper, or electronically on the EDGAR system on a voluntary basis, sales literature filed with us<sup>63</sup> under Section 24(b) of the Investment Company Act.<sup>64</sup> Because of the format and graphics which characterize these submissions, at the time of the original adoption of the EDGAR rules, we believed that the burden to registrants of electronically formatting sales literature appeared to outweigh the usefulness of developing an electronic database.<sup>65</sup> Given the advances in technology and the availability of HTML as a format for official EDGAR filings, we proposed to require filers to make these submissions electronically.<sup>66</sup> We note that, for filers who are required to file with us prospectuses submitted under Securities Act Rule 482<sup>67</sup> (482 ads), the filers must already submit the 482 ads electronically.<sup>68</sup> We requested comment on whether we should require filers to

submit sales literature on EDGAR in HTML format. We also noted that, if we were to make mandatory the electronic submission of sales literature, under paragraph (c) of Rule 304 of Regulation S-T,<sup>69</sup> filers will be required to retain copies of sales literature documents including graphic materials for a period of five years and will be required to furnish to the Commission or the staff, upon request, a copy of any or all of such documents. We received no comments on this proposal, and we are adopting it as proposed.

Also as of August 2004, companies could submit in paper, or electronically on a voluntary basis, filings under Section 17(g)<sup>70</sup> and litigation material filed under Section 33 of the Investment Company Act. Filings under Section 17(g) consist of the registrant's fidelity bond, which is filed under Rule 17g-1(g)(1),<sup>71</sup> and claims and settlements filed under Rule 17g-1(g)(2) and (3), respectively.<sup>72</sup> Filings of litigation material under Section 33 include a wide variety of documents.<sup>73</sup> We believed that most filers would have electronic copies of their fidelity bonds and claims and settlements as well as litigation materials and that these filings should therefore be available to the public through our EDGAR system. However, the only comment that we received concerning filings under Section 17(g) and Section 33 stated that investment companies would be able to provide copies of fidelity bonds and related documents with the Commission if given sufficient transition time, but that it would be burdensome to require the electronic filing of litigation materials, since the materials may be voluminous and the technology to easily convert paper documents into either ASCII or HTML is not available. This commenter also requested that filers be given sufficient time to transition to the

<sup>59</sup> 15 U.S.C. 80a-17(g). See Release No. 33-6978 (Feb. 23, 1993) [58 FR 14848] and Release No. 33-7241 (Nov. 13, 1995) [60 FR 57682] at footnotes 26-32 and accompanying text.

<sup>60</sup> 15 U.S.C. 80a-24(b).

<sup>61</sup> 15 U.S.C. 80a-31.

<sup>62</sup> See the EDGAR Filer Manual Release at footnotes 6-10 and accompanying text.

<sup>63</sup> Most investment company registrants file sales literature with the National Association of Securities Dealers (NASD), in lieu of filing with us, as permitted by Rule 24b-3 under the Investment Company Act [17 CFR 270.24b-3]. We are not proposing to change Rule 24b-3; these filers will continue to make their submissions to the NASD only.

<sup>64</sup> See Rules 24b-1, 24b-2, and 24b-3 [17 CFR 270.24b-1, 270.24b-2, and 270.24b-3].

<sup>65</sup> See Release No. 33-6978 at footnotes 51 and 52 and accompanying text.

<sup>66</sup> We are amending both Rule 101 of Regulation S-T and Rule 24b-2 under the Investment Company Act, which currently provide that filers submit such material to us in paper only.

<sup>67</sup> 17 CFR 230.482.

<sup>68</sup> See Release No. 33-7122 (Dec. 19, 1994) [59 FR 67752 (Dec. 30, 1994)] at footnote 32 and accompanying text.

<sup>69</sup> 17 CFR 232.304(c).

<sup>70</sup> This includes submission of an investment company's fidelity bond; see Release No. 33-7241 at footnotes 30 and 31 and accompanying text.

<sup>71</sup> 17 CFR 270.17g-1(g)(1).

<sup>72</sup> 17 CFR 270.17g-1(g)(2) and (3).

<sup>73</sup> The documents include the following: (1) all pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim; (2) any proposed settlement, compromise, or discontinuance of such action or claim; and (3) motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. If any of the documents in (1) or (2) above are delivered to the company or party defendant, Section 33 requires that the document be filed with the Commission not later than 10 days after receipt. If the document is filed in court or delivered by the company or party defendant, it must be filed with the Commission within five days after the filing or delivery.

<sup>56</sup> 17 CFR 239.65, 249.447, 259.604, 269.10, and 274.404.

<sup>57</sup> 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

<sup>58</sup> 17 CFR 232.201, 232.202, or 232.311.

electronic filing of Section 17 materials.<sup>74</sup>

We are adopting the requirements for the mandatory electronic filing of Section 17 fidelity bonds and claims and settlements, as proposed, but with a delayed effectiveness date to allow transition time.<sup>75</sup> However, we are not adopting these requirements with respect to litigation materials at this time due to the technical difficulty that many filers may have scanning and verifying the accuracy of these documents; instead, we will continue to allow companies to file litigation materials either in paper or electronically on a voluntary basis.<sup>76</sup> We will review the status of technology from time to time to determine whether and at what point we should make these filings mandatory electronic as well.

### III. Technical Amendments to EDGAR System Filing Requirements

In the S/C proposing release, we also proposed technical corrections to our rules relating to paper exhibits for EDGAR filings and incorporation by reference by investment companies into documents filed on EDGAR. We are now adopting these proposals, as discussed below.

#### A. Rule 102(d) of Regulation S-T

Currently, paragraph (d) of Rule 102 provides that each electronic filing requiring exhibits must contain an exhibit index. It further requires that, whenever an exhibit is filed in paper pursuant to a temporary or continuing hardship exemption, the filer must place the letter "P" next to the listed exhibit in the exhibit index to reflect that the exhibit was filed in paper pursuant to such exemption. However, the rule does not require the designation "P" for an exhibit filed in paper other than pursuant to a hardship exemption. Nor does the rule require designation of the authority under which a filer was

<sup>74</sup> This commenter also expressed concern with having to include series and class identifiers in complex filings such as Section 17 fidelity bonds. We note that these EDGAR submission types (40-17G and 40-17GCS and their amendments) are not among the submission types that we are at this time designating as requiring series and/or class (contract) identifiers.

<sup>75</sup> For administrative convenience, we are also delaying the effective date with respect to the mandatory electronic filing of sales literature under Section 24. As of the effective date, companies will have to submit these materials electronically, either as ASCII or HTML documents.

<sup>76</sup> The EDGAR submission types for these filings will be as follows: 40-17G (fidelity bond filed pursuant to Rule 17g-1(g)(1)); 40-17GCS (notice of claim or settlement filed pursuant to Rule 17g-1(g)(2) or (3)); 40-24B2 (sales literature filed pursuant to Rule 24b-2); and 40-33 (litigation material filed pursuant to Section 33 of the Investment Company Act).

submitting an exhibit in paper. We are amending paragraph (d) to require the designation "P" for all exhibits filed in paper, the designation "Rule 311" next to the letter "P" in the exhibit index for exhibits filed pursuant to Rule 311 of Regulation S-T, and the letters "TH" or "CH," respectively, next to the letter "P" in the exhibit index for exhibits filed pursuant to temporary or continuing hardship exemptions.

The rule also currently requires that, whenever a confirming electronic copy of an exhibit is filed pursuant to a hardship exemption, the exhibit index must specify where the confirming electronic copy can be located and the filer must place the designation "CE" (confirming electronic) next to the listed exhibit in the exhibit index. We requested comment on the usefulness of the rule's requirement that the exhibit index must specify where the confirming electronic copy can be located. For example, we asked whether the provision is useful in locating the electronic confirming copy of the paper exhibit where an exhibit filed in paper under a temporary hardship exemption is later incorporated by reference into a filing. We encouraged commenters, if they found that the provision is not useful, to provide suggested revisions to make the rule more helpful to users of the information. We received no comments in response to our request, and we are not amending this provision.

#### B. Rule 102(e) of Regulation S-T

Paragraph (e) of Rule 102 provides that any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format. We are adopting as proposed an amendment to this rule to codify staff interpretation that incorporation by reference in an EDGAR filing by a registered investment company or a business development company must relate only to documents that have been filed in electronic format on the EDGAR system. A filer may not incorporate by reference electronic filings made with us but not made via the EDGAR system.<sup>77</sup>

#### C. Rule 201 of Regulation S-T

Rule 201(a)(1) of Regulation S-T currently provides that, where a filer makes a paper submission pursuant to a temporary hardship exemption, a microfiche copy of the paper document is the official filing of the registrant. We no longer keep on microfiche the official

<sup>77</sup> For example, a registrant could not incorporate by reference in an EDGAR filing to a document submitted electronically on the IARD system.

copies of filings made in paper under the temporary hardship exemption; paper filings are now electronically imaged. Accordingly, we are amending, as proposed, Rule 201(a)(1) to reflect this change. We are also removing the phrase "of the registrant," since an official filing may be made by a non-registrant third party.

#### D. Rule 311(h)(1) of Regulation S-T

Rule 311 sets forth the requirements for filers submitting documents in paper under cover of Form SE. Paragraph (h)(1) of Rule 311 currently provides that, if the subject of a temporary hardship exemption is an exhibit only, a filer must file the exhibit under cover of Form SE no later than one business day after the date the exhibit was to be filed electronically. We are amending this provision, as proposed, to clarify the current requirement<sup>78</sup> that the filer must submit the exhibit and a Form TH (the cover form for submitting a filing under a temporary hardship exemption) under cover of Form SE.<sup>79</sup>

#### E. Form SE

We had proposed to make an additional amendment to Form SE that parallels the changes to the exhibit index requirement discussed above. Currently, Form SE does not require the filer to specify under which of these rules the filer is submitting the paper format exhibit. We are amending the form, as proposed, to require filers to indicate under which rule they are submitting the paper exhibit, *i.e.*, Rule 201 (Temporary Hardship Exemption), Rule 202 (Continuing Hardship Exemption), or Rule 311 (Permitted Paper Exhibit). We also are amending the General Instructions to Form SE to clarify that, if the filer is submitting the exhibit under a temporary hardship exemption, the filer must submit both the exhibit and a Form TH (the cover form for submitting a filing under a temporary hardship exemption) under cover of Form SE. Finally, we are adding to the General Instructions a statement of the current requirement that exhibits filed under a continuing hardship exemption must include the legend required by Rule 202(c) of Regulation S-T.<sup>80</sup>

### IV. Effective Dates

The amendments to Rules 101(b), 102(d), 201(a)(1), and 311(h)(1) under

<sup>78</sup> See Release No. 33-6977 (Feb. 23, 1993) [58 FR 14628] at footnote 213 and accompanying text.

<sup>79</sup> We are also making conforming amendments to Note 1 to Rule 201(a) of Regulation S-T (17 CFR 232.201(a)).

<sup>80</sup> 17 CFR 232.202(c).

Regulation S-T will become effective September 19, 2005.

Rule 313 under Regulation S-T and the amendments to Rule 11 under Regulation S-T and to Forms TH and SE (relating to the series and class (contract) identification requirements) will become effective February 6, 2006. The amendments to Rules 101(a) and 101(c) under Regulation S-T will become effective on June 12, 2006.

## V. Cost-Benefit Analysis

We are sensitive to the costs and burdens of our rules. The rules we are adopting today reflect certain changes to the information currently provided in certain investment company submissions and technical amendments to our EDGAR filing rules. Specifically, these amendments will require 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). This information is already required in the text of the filing itself; these amendments will require this information to be included in an electronically tagged form. In addition, these amendments will add two investment company filings to the list of those that must be filed electronically and make several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR.

### A. Benefits

We expect that the addition of series and class (contract) identifiers ultimately will 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. Requiring these entities to identify the series and classes (or contracts) to which filings relate will benefit members of the investing public and the financial community by making information contained in Commission filings more easily searchable and readily available to them.

We believe that it can be difficult to find filings on EDGAR related to specific series and classes of funds. It can also be difficult to find filings on EDGAR related to specific variable

insurance contracts. This discourages both the public and Commission staff from fully using the EDGAR filing data. We believe the improvements that will result from the series and class (contract) identifiers will induce a substantial amount of new demand for the services provided by the EDGAR system and our public Web site. The amendments will result in the benefit to the public of the EDGAR page of our Web site being a comprehensive source from which to find series and class filings.

We also expect that our adoption of requirements for mandatory electronic filing of documents that previously could be filed only in paper format will result in economic benefits to current electronic filers. Investment companies should benefit from the increased efficiencies in the filing process for these filings resulting from the amendments. By electronically transmitting these documents directly to the Commission, investment companies will avoid the uncertainties and delays that can occur with the manual delivery of paper filings. Filers also will benefit from no longer having to submit multiple copies of paper documents to the Commission.

These amendments should benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating fidelity bonds and sales literature (not submitted to the NASD) filed with the Commission. The mandated electronic transmission of these documents will enable investors to access them more quickly. Currently, it requires a personal visit to the Commission's Public Reference Room to conduct a search for a particular filing that is in paper or microfiche. Some parties also use an agent at the Public Reference Room for these searches. After the implementation of this rule, an investor will be able to find and review the filing on any computer with an Internet connection by accessing the EDGAR data on the Commission's Web site or through a third party Web site that maintains EDGAR data. These amendments will also enable financial analysts and others to retrieve, analyze and disseminate more rapidly this information. An investor should be able to form more efficient investment decisions about particular investment companies. Both filers and investors should benefit from increased efficiencies in the Commission's storage, retrieval, and analysis of these filings which will result from these amendments. Mandated EDGAR filing of these documents will result in their addition to the Commission's central electronic repository of filings that is

free to anyone that has access to a computer linked to the Internet. Because the Commission's staff will be able to retrieve and analyze information contained in these filings more readily than under our current paper system, mandated electronic filing of these documents should facilitate the staff's retrieval and review of a particular document.

We expect the technical corrections to the Regulation S-T provisions should be beneficial to filers inasmuch as they, as have previous technical corrections, will clarify existing rules and make the filing community at large more aware of current practices and interpretations. These benefits, while qualitatively important, are necessarily difficult to quantify. Therefore, the Commission is unable to provide a quantitative estimate of the benefits of these new requirements and amendments to existing rules.

### B. Costs

We believe that the rules we adopt today for identification of series and classes (contracts) impose few or no costs related to substantive disclosure. Rather, the amendments may result in initial costs in connection with entering information onto the EDGAR filing Web site to obtain identifiers. Filers may experience some minimal costs in initially keying in data on their series and classes (contracts) when they obtain their identifiers, although a representative of one fund group Commission staff contacted that had already obtained their identifiers stated that they incurred no additional cost in applying for identifiers. A representative of another fund group stated that it took approximately four hours to read the instructions on the EDGAR Filing Web site and obtain identifiers because, initially, the instructions were difficult to read; this representative declined to provide any cost estimate. If we assume a cost of \$50.00 per hour for obtaining identifiers for the first time, the filer would have incurred a one-time cost of \$200. The 982 fund groups (including insurance product groups) would, therefore, incur a total one-time cost of \$196,400. We designed the EDGAR filing Web site screens and the detailed instructions in the EDGARLink filer manual to make it easy for anyone familiar with the series and class structure of the fund industry and her own funds to enter data easily, so we doubt that every fund group would incur that level of cost.

Additionally, filers may experience minimal programming costs in including the identifying data in specified filings and, when necessary,

obtaining identifiers for new series and classes (contracts). Some filers contacted by the Commission were unable to estimate the costs they would incur to use the identifiers in connection with filings. One filer who uses third party software to prepare EDGAR filings stated that the cost of purchasing updated software was unknown because the vendor has not yet updated the software. We question the importance of the cost of third party software to consideration of these rules because filers are not required to purchase any software to meet the new requirements; we will provide free EDGARLink software with fields for identifiers in filing templates. Disseminators of EDGAR data, third party software developers, and EDGAR filing agents may incur some transitional costs as they revise their software and, in some instances, hardware to accommodate the tagging changes to keep track of series and class identifiers for certain investment company filings. Disseminators may choose to reprogram their systems to take advantage of the new tagging scheme for identifying series and classes of mutual funds and contracts of insurance company separate accounts. As a result, disseminators may incur additional costs for processing.

We expect that the amendments to make certain filings mandatory electronic submissions will result in some costs to issuers. However, for the following reasons, we also expect that filers should not bear the full range of costs resulting from adoption of the amendments. The expected costs consist of ongoing costs,<sup>81</sup> and minimal initial costs.<sup>82</sup>

Filers may also incur future costs resulting from the training or hiring of employees regarding updated EDGAR filing requirements. The magnitude of these costs will depend on filers' levels of technological proficiency and their previous familiarity with EDGAR filing requirements. They will incur the costs

<sup>81</sup> 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 a company's documents filed on EDGAR. These transmission costs may include those related to subscribing to an Internet service provider. All filers who will be affected by these amendments are current EDGAR filers who will experience no additional initial costs.

<sup>82</sup> Ongoing costs are those associated with the electronic formatting and transmission of subsequent EDGAR filings.

associated with formatting and transmitting their documents on EDGAR. These filers have already incurred initial costs associated with the preparation of most of their filings in an electronic format. They have already trained their employees or hired an in-house information technology team or a third party agent, such as an Internet services company or financial printer, to format electronically their financial statements and other documents of interest to investors. These filers should be capable of electronically processing these documents for the EDGAR system. 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.

Fidelity insurance companies issue fidelity bonds to management investment companies. Some filers contacted by Commission staff estimated a one-time cost of \$600 to \$650 per filing to format for EDGAR filing their fidelity bond documents (which are currently available to them only as paper documents) because of the cost of acquiring optical character reader software and equipment to convert the paper documents to electronic files.<sup>83</sup> We question the validity of this data for two reasons. First, optical character readers have many uses, so we do not believe the entire cost should be applied to the requirement to make certain filings mandatory electronic submission. In addition, one commenter stated that it anticipated that, in response to our proposal, insurance companies issuing fidelity bonds to investment companies would provide to their investment company clients electronic copies of fidelity bonds suitable for filing with the Commission.

We believe that the costs are justified in light of the benefits to the investing public in gaining access to information and to our staff in regulating the industry.

#### **VI. Consideration of Effects on Competition, Capital Formation and Efficiency**

Section 23(a)(2) of the Exchange Act requires us, when engaging in rulemaking under the Exchange Act, to consider the anti-competitive effects of

<sup>83</sup> We received 2,372 filings of EDGAR submission type 40-17G in calendar year 2004, only 30 of which were electronically filed. Even using the higher cost estimate of \$650 per filing for converting paper documents to electronic files, the total one-time cost to the investment company industry would be only about \$1.5 million.

any rules that we adopt under the Exchange Act. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act,<sup>84</sup> Section 3(f) of the Exchange Act,<sup>85</sup> and Section 2(c)<sup>86</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 will promote efficiency, competition, and capital formation and to consider any anti-competitive effects of the amendments. In the proposing release, we requested comment on whether the amendments, if adopted, would promote efficiency, competition, and capital formation. We received no comments on this section of the proposals.

We believe it is likely that the amendments will not have any adverse effect on capital formation. We believe they will promote efficiency by making the information investors can receive electronically easier to find. The amendments will apply equally to all entities of the same types currently required to file on EDGAR. Because the amendments are designed to require filers to provide information in a format that will be more useful to investors, we believe that the amendments do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### **VII. Final Regulatory Flexibility Analysis**

This Final Regulatory Flexibility Analysis (Analysis) has been prepared in accordance with 5 U.S.C. 604 and relates to our amendments under the Securities Act, the Exchange Act, the Investment Company Act, the Trust Indenture Act, and the Public Utility Holding Company Act to require that open-end investment companies and insurance company separate accounts electronically identify in their filings to which of their series and classes (or contracts) the filing relates; to add two investment company filings to the list of filings that must be made electronically; and to make a number of technical amendments to rules and forms in connection with filing on the EDGAR system. Specifically, the amendments will require certain open-end management investment companies and

<sup>84</sup> 15 U.S.C. 77b(b).

<sup>85</sup> 15 U.S.C. 78c(f).

<sup>86</sup> 15 U.S.C. 80a-2(c).

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). In addition, they will add two investment company filings to the list of those that must be filed electronically and make several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR. An Initial Regulatory Flexibility Analysis (IRFA), which was prepared in accordance with 5 U.S.C. 603, was published in the proposing release.

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

Many open-end investment companies (mutual funds) registering on Form N-1A are organized as single registrants with several portfolios (series) under Sections 18(f)(1) and (2) of the Investment Company Act and its Rule 18f-2. Each series may also issue more than one class of securities under Rule 18f-3 of the Investment Company Act. Series and classes of a registrant are often marketed separately, without reference to other series or classes or to the registrant's name. Insurance company separate accounts organized as management investment companies registering on Form N-3 may also have separate series.

Insurance company separate accounts frequently register and issue multiple contracts. The individual contracts of insurance company separate accounts registering on Forms N-4 (funded by separate accounts organized as unit investment trusts) and N-6 (funded by separate accounts organized as unit investment trusts that offer variable life insurance policies)<sup>87</sup> make filings separately under the name of the Investment Company Act registrant.

Any particular filing for a single registrant may be filed for only some of its series and classes (or contracts, in the case of separate accounts). A single registrant may make multiple filings of the same type (for example, post-effective amendment filings), each covering different series and/or classes (or contracts) of that registrant. Currently, we keep records of filings on an investment company registrant basis, but the EDGAR system currently does not generate a record of filings on a series, class or contract basis. Our objective includes being able to track filings on a series and class (contract) basis by requiring that open-end management investment companies and separate accounts that register on Forms N-1A, N-3, N-4, and N-6 (collectively,

S/C Funds) obtain identifiers for their series and classes (or contracts, in the case of separate accounts) and electronically identify for which series and classes (or contracts) of the S/C Fund a particular filing is made. It is also our objective to facilitate investors' access to information about mutual funds and separate accounts.

On and after the Mandatory Series/Class (Contract) Identification Date, S/C Funds will have to use series and class (contract) identifiers in certain EDGAR submissions specified in the EDGAR Filer Manual. The series and class (or contract) identification will be added as a requirement to the EDGARLink header templates of certain investment company EDGAR submissions.

The amendments will also require certain current paper filings to be submitted electronically. Currently, investment companies must submit in paper filings under Section 17(g)<sup>88</sup> and sales literature filed with us under Section 24(b).<sup>89</sup>

Finally, the amendments will modify Rule 102(d) of Regulation S-T regarding references to paper filings in electronic filings' exhibit indices to require references to all exhibits filed in paper and make changes to Form SE to make it more useful (e.g., identify the applicable rule in Regulation S-T allowing the exhibit to be filed in paper).

We are adopting amendments to Rules 11, 101, 102, 201, and 311 of Regulation S-T and Forms SE and TH under the Securities Act, the Securities Exchange Act, the Public Utility Holding Company Act, the Trust Indenture Act, and the Investment Company Act, and new Rule 313 under Regulation S-T, pursuant to authority set forth in Sections 6, 7, 8, 10, and 19(a) of the Securities Act,<sup>90</sup> Sections 3, 12, 13, 14, 15(d), 23(a), and 35A of the Exchange Act,<sup>91</sup> Sections 3, 5, 6, 7, 10, 12, 13, 14, 17, and 20 of the Public Utility Holding Company Act,<sup>92</sup> Section 319 of the Trust Indenture Act,<sup>93</sup> and Sections 8, 30, 31, and 38 of the Investment Company Act.<sup>94</sup>

<sup>88</sup> 15 U.S.C. 80a-17(g). See Release No. 33-6978 and Release No. 33-7241 at footnotes 26-32 and accompanying text.

<sup>89</sup> 15 U.S.C. 80a-24(b).

<sup>90</sup> 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

<sup>91</sup> 15 U.S.C. 78c, 78l, 78m, 78n, 78o(d), 78w(a), and 78ll.

<sup>92</sup> 15 U.S.C. 79c, 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, and 79t.

<sup>93</sup> 15 U.S.C. 77sss.

<sup>94</sup> 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

#### *B. Significant Issues Raised by Public Comment*

In the IRFA for the proposed amendments, we encouraged the submission of written comments with respect to any aspect of the IRFA. We requested specifically comment on the number of small entities that will be affected by the amendments and the likely impact on small entities. We asked commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact. We received no comments with respect to this section of the proposals.

#### *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>95</sup> Approximately 145 out of 5,025 investment companies registered on Form N-1A meet this definition.<sup>96</sup> We estimate that few, if any, separate accounts registered on Form N-3, N-4, or N-6 are small entities.<sup>97</sup>

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

The amendments will require S/C funds to include in their EDGAR filings identification of their series and classes (contracts). It will also require them to provide information concerning the type of investment company and information about the other party to a merger filing. In addition, the amendments will add two investment company filings (fidelity bonds and sales literature not filed with the NASD) to the list of those that must be filed electronically and make several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR.

The Commission estimates some one-time formatting and on-going burdens that will be imposed on all funds, including funds that are small entities.

<sup>95</sup> 17 CFR 270.0-10.

<sup>96</sup> This estimate is based on analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers, including Morningstar, Inc. and Lipper.

<sup>97</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>87</sup> 17 CFR 239.17c and 274.11d.

We note, however, that funds currently must keep track of their series and classes (or contracts) and that the addition of a number assigned to each should create only a *de minimis* burden. Also, funds must currently incur the cost of submitting fidelity bonds and sales literature in paper.

#### *E. Agency Action To Minimize Effect on Small Entities*

The Regulatory Flexibility Act directs us to consider significant alternatives that will accomplish our stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the amendments, or any part of them, for small entities. The amendments will require S/C Funds to include in their EDGAR filings identification of their series and classes (contracts). They will also require them to provide information concerning the type of investment company and information about the other party to a merger filing.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, with regard to these amendments, will not be appropriate or consistent with investor protection. Different requirements for funds that are small entities may create the risk that the shareholders in these funds will not be as able as investors in larger funds to locate Commission filings and disclosure documents. We believe it is important that the benefits resulting from the amendments be provided to investors in all investment companies, not just investors in investment companies that are not considered small entities.

We have endeavored through the amendments to minimize the regulatory burden on all investment company EDGAR filers, including small entities, while meeting our regulatory objectives. Investors in small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as investors in other investment companies. Further clarification, consolidation, or

simplification of the amendments for funds that are small entities will be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards with regard to these amendments to be consistent with our statutory mandate of investor protection.

#### **VIII. Paperwork Reduction Act**

The amendments will affect two forms that contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>98</sup> The title of the affected information collections are the EDGAR Forms SE and TH.

Form SE (OMB Control Number 3235-0327) is used by electronic filers to submit exhibits in paper to the extent permitted under Rules 201, 202 and 311 of Regulation S-T; Form TH (Control Number 3235-0425) is used by electronic filers to submit paper filings pursuant to a temporary hardship exemption to the extent permitted under Rule 201 under Regulation S-T.

Compliance with the amendments will be mandatory. The information required by the amendments will not be kept confidential. The above forms will not impose a retention period for any recordkeeping requirements.

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. We expect that the amendments will obligate applicants to disclose on Forms SE and TH essentially the same information that they are required to disclose today. We therefore believe that the overall information collection burden of Forms SE and TH will remain approximately the same. As a result, we have not submitted the revisions to the collections of information to the Office of Management and Budget for review under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

We solicited comment on the expected Paperwork Reduction Act effects of the amendments. In particular, we solicited comment on the accuracy of our estimate that no additional burden will result from the amendments. We further requested comment on whether the changes to the collections of information are necessary for the proper performance of the Commission's functions, including whether the additional information garnered will have practical utility. In addition, we solicited comment on whether there are ways to enhance the

quality, utility, and clarity of the information to be collected. We further solicited comment on whether there are ways to minimize the burden of information collection on those applicants who file Forms SE and TH, including through the use of automated collection techniques or other forms of information technology. Finally, we solicited comment on whether the amendments would have any effects on any other collection of information not previously identified in this section. We received no comments on this section of the proposal.

#### **IX. Statutory Basis**

We adopt the rule amendments outlined above under Sections 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a), and 35A of the Exchange Act, Sections 3, 5, 6, 7, 10, 12, 13, 14, 17, and 20 of the Public Utility Holding Company Act, Section 319 of the Trust Indenture Act, and Sections 8, 30, 31, and 38 of the Investment Company Act.

#### **List of Subjects**

##### *17 CFR Part 232*

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

##### *17 CFR Part 239*

Reporting and recordkeeping requirements, Securities.

##### *17 CFR Part 249*

Brokers, Reporting and recordkeeping requirements, Securities.

##### *17 CFR Part 259*

Electric utilities, Holding companies, Reporting and recordkeeping requirements, Securities.

##### *17 CFR Part 269*

Securities, Trusts and trustees, Reporting and recordkeeping requirements.

##### *17 CFR Part 270*

Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

##### *17 CFR Part 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

#### **Text of the Rule and Form Amendments**

■ In accordance with the foregoing, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows.

<sup>98</sup> 44 U.S.C. 3501 *et seq.*

**PART 232—REGULATION S—  
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. Amend § 232.11 by revising the definition of “official filing” to read as follows:

**§ 232.11 Definition of terms used in part 232.**

\* \* \* \* \*

*Official filing.* The term *official filing* means any filing that is received and accepted by the Commission, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing; except that electronic identification of investment company type and inclusion of identifiers for series and class (or contract, in the case of separate accounts of insurance companies) as required by rule 313 of Regulation S–T (§ 232.313) are deemed part of the official filing.

\* \* \* \* \*

■ 3. Amend § 232.101 by:

- a. Revising paragraphs (a)(1)(iv) and (c)(7);
  - b. Removing the word “and” at the end of paragraph (b)(8);
  - c. Removing the period at the end of paragraph (b)(9) and in its place adding “; and”; and
  - d. Adding paragraph (b)(10).
- The revisions and addition 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); *provided, however* that submissions under section 6(c) of that Act (15 U.S.C. 80a–6(c)) and documents related to applications for exemptive relief under any section of that Act, shall not be made in electronic format;

\* \* \* \* \*

(b) \* \* \*

(10) Documents filed with the Commission pursuant to section 33 of the Investment Company Act (15 U.S.C. 80a–32).

(c) \* \* \*

(7) Promotional and sales material submitted pursuant to Securities Act Industry Guide 5 (§ 232.801(e) of this chapter) or otherwise supplementally furnished for review by the staff of the Division of Corporation Finance;

\* \* \* \* \*

■ 4. Amend § 232.102 by revising paragraphs (d) and (e) to read as follows:

**§ 232.102 Exhibits.**

\* \* \* \* \*

(d) Each electronic filing requiring exhibits must include an exhibit index which must immediately precede the exhibits filed with the document. The index must list each exhibit filed, whether filed electronically or in paper. Whenever a filer files an exhibit in paper pursuant to a temporary or continuing hardship exemption (§ 232.201 or § 232.202) or pursuant to § 232.311, the filer must place the letter “P” next to the listed exhibit in the exhibit index of the electronic filing to reflect the fact that the filer filed the exhibit in paper. In addition, if the exhibit is filed in paper pursuant to § 232.311, the filer must place the designation “Rule 311” next to the letter “P” in the exhibit index. If the exhibit is filed in paper pursuant to a temporary or continuing hardship exemption, the filer must place the letters “TH” or “CH,” respectively, next to the letter “P” in the exhibit index. Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or § 232.202(d)), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation “CE” (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format on the EDGAR system, unless the document has been filed in paper under a hardship exemption (§ 232.201 or § 232.202) and any required confirming electronic copy has been submitted.

\* \* \* \* \*

■ 5. Amend § 232.201 by revising paragraph (a)(1), the Note heading following paragraph (a)(4), and Note 1 to read as follows:

**§ 232.201 Temporary hardship exemption.**

(a) \* \* \*

(1) An electronic imaged copy of the paper format document shall be the

official filing for purposes of the federal securities laws.

\* \* \* \* \*

*Notes to paragraph (a):*

1. Where a temporary hardship exemption relates to an exhibit only, the filer must file the paper format exhibit and a Form TH (§§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) under cover of Form SE (§§ 239.64, 249.444, 259.601, 269.8, and 274.403 of this chapter).

\* \* \* \* \*

■ 6. Amend § 232.311 by revising paragraph (h)(1) to read as follows:

**§ 232.311 Documents submitted in paper under cover of Form SE.**

\* \* \* \* \*

(h) \* \* \*

(1) If the subject of a temporary hardship exemption is an exhibit only, the filer must file the exhibit and a Form TH (§§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) under cover of Form SE (§§ 239.64, 249.444, 259.601, 269.8, and 274.403 of this chapter) no later than one business day after the date the exhibit was to be filed electronically.

\* \* \* \* \*

■ 7. Section 232.313 is added to read as follows:

**§ 232.313 Identification of investment company type and series and/or class (or contract).**

(a) Registered investment companies and business development companies must indicate their investment company type, based on whether the registrant’s last effective registration statement or amendment (other than a merger/proxy filing on Form N–14 (§ 239.23 of this chapter) was filed on Form N–1 (§§ 239.15 and 274.11 of this chapter), Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), Form N–3 (§§ 239.17A and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), Form N–5 (§§ 239.24 and 274.5 of this chapter), Form N–6 (§§ 239.17c and 274.11d of this chapter), Form S–1 (§ 239.11 of this chapter), Form S–3 (§ 239.13 of this chapter), or Form S–6 (§ 239.16 of this chapter) in those EDGAR submissions identified in the EDGAR Filer Manual.

(b) Registered investment companies whose last effective registration statement or amendment (other than a merger/proxy filing on Form N–14 (§ 239.23 of this chapter) was filed on Form N–1A (§§ 239.15A and 274.11A of this chapter), Form N–3 (§§ 239.17A and 274.11b of this chapter), Form N–4 (§§ 239.17b and 274.11c of this chapter), or Form N–6 (§§ 239.17c and 274.11d of this chapter) must, under the

procedures set forth in the EDGAR Filer Manual:

(1) Provide electronically, and keep current, information concerning their existing and new series and/or classes (or contracts, in the case of separate accounts), including series and/or class (contract) name and ticker symbol, if any, and be issued series and/or class (or contract) identification numbers;

(2) Deactivate for EDGAR purposes any series and/or class (or contract, in the case of separate accounts) that are no longer offered, go out of existence, or deregister following the last filing for that series and/or class (or contract, in the case of separate accounts), but the registrant must not deactivate the last remaining series unless the registrant deregisters; and

(3) For those EDGAR submissions identified in the EDGAR Filer Manual, include all series and/or class (or contract) identifiers of each series and/or class (or contract) on behalf of which the filing is made.

(c) Registered investment companies whose last effective registration statement or amendment (other than a merger/proxy filing on Form N-14 (§ 239.23 of this chapter)) was filed on Form N-1A (§§ 239.15A and 274.11A of this chapter), Form N-3 (§§ 239.17A and 274.11b of this chapter), Form N-4 (§§ 239.17b and 274.11c of this chapter), or Form N-6 (§§ 239.17c and 274.11d of this chapter) must provide electronically, as specified in the EDGAR Filer Manual, in the EDGAR submission identifying information concerning the acquiring fund and the target fund (and the series and/or classes (contracts), if any, of each if in existence at the time of the filing) in connection with merger filings on Form N-14 (§ 239.23 of this chapter), under § 230.425 of this chapter, and in compliance with Regulation 14A (§ 240.14a-1 of this chapter), Schedule 14A (§ 240.14a-101 of this chapter), and all other applicable rules and

regulations adopted pursuant to Section 14(a) of the Exchange Act, as referenced in Investment Company Act Rule 20a-1 (§ 270.20a-1 of this chapter).

(d) Non-registrant third party filers making proxy filings with respect to investment companies must designate in the EDGAR submission the type of investment company (as referenced in paragraph (a) of this section) and include series and/or class (or contract) identifiers in designated EDGAR proxy submission types, in accordance with the EDGAR Filer Manual.

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

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

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

**PART 249 —FORMS, SECURITIES EXCHANGE ACT OF 1934**

■ 9. The authority citation for part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

**PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

■ 10. The authority citation for part 259 continues to read as follows:

**Authority:** 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

**PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939**

■ 11. The authority citation for part 269 continues to read as follows:

**Authority:** 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, and 78ll(d), unless otherwise noted.

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

■ 12. 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.

\* \* \* \* \*

■ 13. Section 270.24b-2 is revised to read as follows:

**§ 270.24b-2 Filing copies of sales literature.**

Copies of material filed with the Commission for the sole purpose of complying with section 24(b) of the Act (15 U.S.C. 80a-24(b)) either shall be accompanied by a letter of transmittal which makes appropriate references to said section or shall make such appropriate reference on the face of the material.

**PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

■ 14. The authority citation for Part 274 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

\* \* \* \* \*

■ 15. Revise Form SE (referenced in §§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter) to read as follows:

**Note:** The text of Form SE does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8010-01-P

## OMB APPROVAL

OMB Number: 3235-0327  
 Expires: 05/31/2006  
 Estimated average  
 burden hours per  
 response: ..... .1

UNITED STATES  
 SECURITIES AND EXCHANGE COMMISSION  
 Washington, DC

FORM SE  
 FORM FOR SUBMISSION OF PAPER FORMAT EXHIBITS  
 BY EDGAR ELECTRONIC FILERS

\_\_\_\_\_  
 Exact name of registrant as specified in charter

\_\_\_\_\_  
 Registrant CIK Number

\_\_\_\_\_  
 Electronic report, schedule or registration statement  
 of which the documents are a part

\_\_\_\_\_  
 SEC filer number,  
 if available

S-\_\_\_\_\_  
 (Series identifier(s) and names(s), if applicable; add more lines as needed)

C-\_\_\_\_\_  
 (Class (contract) identifier(s) and names(s), if applicable; add more lines as needed)

\_\_\_\_\_  
 Report period (if applicable)

\_\_\_\_\_  
 Name of person filing this exhibit (if other  
 than the registrant)

Identify the provision of Regulation S-T (§232 of this chapter) under which this exhibit is being  
 filed in paper (check only one):

\_\_\_ Rule 201 (Temporary Hardship Exemption)

\_\_\_ Rule 202 (Continuing Hardship Exemption)

\_\_\_ Rule 311 (Permitted Paper Exhibit)

## SIGNATURES

## Filings Made by the Registrant:

The registrant has duly caused this form to be signed on its behalf by the undersigned, duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Registrant

By: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

## Filings Made by Person Other than the Registrant:

After reasonable inquiry and to the best of my knowledge and belief, I certify on \_\_\_\_\_ 20\_\_, that the information set forth in this statement is true and complete.

By: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

## BILLING CODE 8010-01-C

## 1. Rule as to Use of Form SE.

A. Electronic filers must use this form to submit any paper format exhibit under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, or the Investment Company Act of 1940, *provided that* the submission of such exhibit in paper is permitted under Rule 201, 202, or 311 of Regulation S-T (§§ 232.201, 232.202, or 232.311 of this chapter).

B. Electronic filers are subject to Regulation S-T (Part 232 of this chapter) and the EDGAR Filer Manual. We direct your attention to the General Rules and Regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the

electronic filing rules and regulations under these Acts.

## 2. Preparation of Form SE.

Submit in paper format four complete copies of both the Form SE and the exhibit filed under cover of the Form SE.

## 3. Filing of Form SE.

A. If you are filing the exhibit under a temporary hardship exemption, submit the exhibit and a Form TH (§§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) under cover of this Form SE no later than one business day after the date on which the exhibit was to have been filed electronically. See Rule 201 of Regulation S-T (§ 232.201 of this chapter).

B. If you are filing the exhibit under a continuing hardship exemption under Rule 202 of Regulation S-T (§ 232.202 of this chapter), or as allowed by Rule 311 of Regulation S-T (§ 232.311 of this chapter), you may file the exhibit in

paper under cover of Form SE up to six business days before or on the date of filing of the electronic format document to which it relates; you may not file the exhibit after the filing date of the electronic document to which it relates. Exhibits filed under a continuing hardship exemption must include the legend required by Rule 202(c) (§ 232.202(c) of this chapter). If you submit the paper exhibit in this manner, you will have satisfied any requirements that you file the exhibit with, provide the document with, or have the document accompany the electronic filing. This instruction does not affect any requirement that you deliver or furnish the information in the exhibit to persons other than the Commission.

C. Identify the exhibit being filed. Attach to the Form SE the paper format exhibit and an exhibit index if required by Item 601 of Regulation S-K or S-B, as applicable (§§ 229.601 or 228.601 of this chapter).

## 4. Signatures.

A. Submit one copy signed by each person on whose behalf you are submitting the form or by that person's authorized representative. If the form is signed by the authorized representative of a person (other than an executive officer or general partner), file with the

form the evidence of the authority of the representative to sign on behalf of such person, except that you may incorporate by reference a power of attorney for this purpose that is already on file with the Commission.

B. Signatures may be in typed form rather than manual format.

■ 16. Revise Form TH (referenced in §§ 239.65, 249.447, 259.604, 269.10, and 274.404 of this chapter) to read as follows:

**Note:** The text of Form TH does not and this amendment will not appear in the Code of Federal Regulations.

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC

FORM TH

NOTIFICATION OF RELIANCE ON  
TEMPORARY HARDSHIP EXEMPTION

\_\_\_\_\_  
Report, schedule or registration statement  
to which the hardship exemption relates  
(give period of report, if applicable)

\_\_\_\_\_  
SEC file number(s) under which filing made  
(Required, if assigned)

\_\_\_\_\_  
CIK of filer or subject company CIK, as applicable

\_\_\_\_\_  
Name of Filer or subject company, as applicable

\_\_\_\_\_  
Filed-by CIK (for subject company filings only)

\_\_\_\_\_  
Name of "filed-by" entity (for subject company filings only)

S-\_\_\_\_\_  
(Series identifier(s) and names(s), if applicable; add more lines as needed)

C-\_\_\_\_\_  
(Class (contract) identifier(s) and names(s), if applicable; add more lines as needed)

Part I – Filer Information

Full Name of Filer

Address of Principal Office

Street and Number

City, State, and Postal Code; Country, if other than US

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Part II—Information Relating to the Hardship

Furnish the following information:

1. A description of the nature and extent of the temporary technical difficulties experienced by the electronic filer in attempting to submit the document in electronic format.

2. A description of the extent to which the electronic filer has successfully submitted documents previously in electronic format with the same hardware and software, in test of required filings.

3. A description of the burden and expense involved to employ alternative means to submit the electronic submission in a timely manner.

4. Any other reasons an exemption is warranted.

Part III—Representation of Intent to Submit Confirming Electronic Copy

The filer shall include a representation that it shall cause to be filed a confirming electronic copy of the document filed in paper under cover of the Form TH and that its filing will be in accordance with Rule 201(b) of Regulation S-T (§ 232.201(b) of this

chapter) and appropriately designated as a “confirming electronic copy” in accordance with the requirements of the EDGAR Filer Manual.

Part IV—Contact Person

Name, telephone number, and e-mail address of person to contact in regard to this filing under Form TH:

Name (( ) (Area code) Phone number

e-mail address

Part V—Signature

Name of Filer (if registrant, name as it appears in charter) has caused this Form TH to be signed on its behalf by the undersigned, being duly authorized:

Date: By:

Instruction: This form may be signed by an executive officer of the registrant or by any other duly authorized representative.

General Instructions

1. Rule 201(a) of Regulation S-T (§ 232.201(a) of this chapter) requires an electronic filer relying on a temporary hardship exemption to file this Form TH in addition to filing a paper copy of a document otherwise required to be filed in electronic format.

2. Four signed copies of this Form TH must accompany the paper format document being filed pursuant to Rule 201; filers must file under Form TH within one business day after the date upon which the filer was originally to file the document electronically.

3. Signatures to the paper format document being filed with Form TH may be in typed form rather than in manual format. See Rule 302 of Regulation S-T (§ 232.302 of this chapter). Filers must satisfy all other requirements relating to paper format filings, including number of copies to be filed.

Dated: July 18, 2005.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

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