

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR PARTS 210, 228, 229, 230, 239, 240, 249, 260, and 269**

**RELEASE NOS. 33-8819; 34-56013; 39-2447; FILE NO. S7-15-07**

**RIN 3235-AJ86**

**SMALLER REPORTING COMPANY REGULATORY RELIEF AND SIMPLIFICATION**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed amendments.

**SUMMARY:** The Securities and Exchange Commission is proposing rule amendments relating to our disclosure and reporting requirements for smaller companies under the Securities Act of 1933 and the Securities Exchange Act of 1934. We propose to extend the benefits of our current optional disclosure and reporting requirements for smaller companies to a much larger group of companies. The proposals would allow companies with a public float of less than \$75 million to qualify for the smaller company requirements, up from \$25 million for most companies today.

The proposals also would combine for most purposes the “small business issuer” and “non-accelerated filer” categories of smaller companies into a single category of “smaller reporting companies.” In addition, the proposals would maintain the current disclosure requirements for smaller companies contained in Regulation S-B, but integrate them into Regulation S-K. We also are soliciting suggestions for additional ways in which we could better scale our disclosure and reporting requirements to the needs of smaller reporting companies and their investors.

**DATES:** Comments should be received on or before [insert date 60 days after publication in the Federal Register].

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

Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-15-07 on the subject line; or
- Use the Federal Rulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments:

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

All submissions should refer to File Number S7-15-07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Laporte, Chief, Kevin M. O’Neill, Special Counsel, or Johanna Vega Losert, Attorney-Advisor, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628, (202) 551-3460.

**SUPPLEMENTARY INFORMATION:** We propose amendments to Regulation S-K,<sup>1</sup> and

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<sup>1</sup> 17 CFR 229.10–229.1123.

rules and forms under the Securities Act of 1933,<sup>2</sup> Securities Exchange Act of 1934,<sup>3</sup> and Trust Indenture Act of 1939.<sup>4</sup> In Regulation S-K, we propose to amend Items 10, 101, 201, 301, 302, 303, 305, 401, 402, 404, 407, 503, 504, 512, 601, 701, and 1118.<sup>5</sup> We propose to add a new Item 310 to Regulation S-K. We propose to amend Securities Act Rules 110, 138, 139, 158, 175, 405, 415, 428, 430B, 430C, 455, and 502.<sup>6</sup> Further, we propose to repeal Regulation S-B<sup>7</sup> and eliminate the forms associated with it, which include Forms SB-1, SB-2, 10-SB, 10-QSB, and 10-KSB.<sup>8</sup> We propose to amend Securities Act Forms 0-1, S-1, S-3, S-4, S-8, S-11, 1-A, and F-X.<sup>9</sup> We also propose to amend Exchange Act Rules 0-2, 0-12, 3b-6, 10A-1, 10A-3, 12b-2, 12b-23, 12b-25, 12h-3, 13a-10, 13a-13, 13a-14, 13a-16, 13a-20, 14a-3, 14a-5, 14a-8, 14c-3, 14d-3, 15d-10, 15d-13, 15d-14, 15d-20, and 15d-21<sup>10</sup> and Exchange Act Forms 0-1, 8-A, 8-K, 10, 10-Q, 10-K, 11-K, 20-F, and SE.<sup>11</sup> We also propose to amend Schedules 14A and 14C.<sup>12</sup> Under Regulation S-X,<sup>13</sup> we propose to amend Rules 210.3-01, 210.3-10, 210.3-12, 210.3-14, 210.4-01, and 210.10-01.<sup>14</sup> Finally, we propose to amend Trust Indenture Act Rules 0-11, 4d-9,

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<sup>2</sup> 15 U.S.C. 77a et seq.

<sup>3</sup> 15 U.S.C. 78a et seq.

<sup>4</sup> 15 U.S.C. 77aaa et seq.

<sup>5</sup> 17 CFR 229.10, 229.101, 229.201, 229.301, 229.302, 229.303, 229.305, 229.401, 229.402, 229.404, 229.407, 229.503, 229.504, 229.512, 229.601, 229.701, and 229.1118.

<sup>6</sup> 17 CFR 230.110, 230.138, 230.139, 230.158, 230.175, 230.405, 230.415, 230.428, 230.430B, 230.430C, 230.455, and 230.502.

<sup>7</sup> 17 CFR 228.10–228.703.

<sup>8</sup> 17 CFR 239.9, 239.10, 249.210b, 249.308b, and 249.310b.

<sup>9</sup> 17 CFR 239.0-1, 239.11, 239.13, 239.25, 239.16b, 239.18, 239.90, and 239.42.

<sup>10</sup> 17 CFR 240.0-2, 240.0-12, 240.3b-6, 240.10A-1, 240.10A-3, 240.12b-2, 240.12b-23, 240.12b-25, 240.12h-3, 240.13a-10, 240.13a-13, 240.13a-14, 240.13a-16, 240.13a-20, 240.14a-3, 240.14a-5, 240.14a-8, 240.14c-3, 240.14d-3, 240.15d-10, 240.15d-13, 240.15d-14, 240.15d-20, and 240.15d-21.

<sup>11</sup> 17 CFR 249.0-1, 249.208a, 249.210, 249.308, 249.308a, 239.310, 249.311, 249.220f, and 249.444.

<sup>12</sup> 17 CFR 240.14a-101 and 240.14c-101.

<sup>13</sup> 17 CFR 210.3-01–210.12-29.

<sup>14</sup> 17 CFR 210.3-01, 210.3-10, 210.3-12, 210.3-14, 210.4-01, and 210.10-01.

10a-5,<sup>15</sup> and § 269.0-1 of the Trust Indenture Act Forms.<sup>16</sup>

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<sup>15</sup> 17 CFR 260.0-11, 260.4d-9, and 260.10a-5.

<sup>16</sup> 17 CFR 269.0-1.

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## I. Background

Since the federal securities laws were first enacted, the Commission has made special efforts not to subject smaller companies and their investors to unduly burdensome federal securities regulation.<sup>17</sup> This special concern for small business in part reflects recognition of the special role that small business historically has played as a driver of economic activity, innovation, and job creation in the United States. In March 2005, we chartered the Advisory Committee on Smaller Public Companies and asked that panel to assess the current regulatory system for smaller companies under the federal securities laws and to recommend changes to that system.<sup>18</sup> The major proposals we are making in this release stem from the Advisory Committee's recommendations.

Our rules currently include two major categories of smaller companies – “small business issuers” and “non-accelerated filers” – for purposes of scaling our disclosure and reporting requirements to the needs of smaller companies and their investors. These two categories of smaller companies are defined as follows:

- “Small business issuers” essentially are companies with both a public float and revenues of less than \$25 million. Of the 11,898 companies that filed annual reports under the Exchange Act in 2006, 3,749 had a public float of less than \$25 million.<sup>19</sup>
- “Non-accelerated filers” are companies that do not qualify as “large accelerated filers” or

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<sup>17</sup> See SEC Advisory Committee on Smaller Public Companies, Final Report 20-21 (2006) (“Advisory Committee Final Report”), available at <http://www.sec.gov/info/smallbus/acspc.shtml>.

<sup>18</sup> See Advisory Committee Final Report 1, App. B (Advisory Committee Charter).

<sup>19</sup> Of these 11,898 filers, 3,395 filed a Form 10-KSB, the annual report filed by small business issuers. We determined that there were an additional 354 filers with a public float of less than \$25 million that did not file a Form 10-KSB because they opted to use Form 10-K, the form prescribed for most larger companies, instead. We have not attempted to provide information on companies with revenues of less than \$25 million because, as discussed below, we propose to eliminate the revenue test for purposes of the primary determination of whether smaller companies qualify for scaled regulation under our disclosure requirements.

“accelerated filers” under our rules.<sup>20</sup> Non-accelerated filers essentially are companies with a public float of less than \$75 million. Of the 11,898 companies that filed annual reports under the Exchange Act in 2006, 4,976 had a public float of less than \$75 million.<sup>21</sup>

The scaled disclosure and reporting requirements available to these smaller companies apply to companies filing registration statements covering offerings of securities under the Securities Act and companies required to file annual and other reports under Exchange Act Sections 13 and 15(d).<sup>22</sup>

“Small business issuers” are eligible to make required disclosures based on the requirements in Regulation S-B,<sup>23</sup> which sets forth disclosure standards for small business issuers that must file documents with the Commission under the Securities Act, Exchange Act, or Trust Indenture Act. In most cases, small business issuers may make disclosures based on Regulation S-B only if they use one of the forms we have designated with the letters “SB” – Form 10-SB, Form 10-QSB, Form 10-KSB, Form SB-1, and Form SB-2. One of the most important provisions of Regulation S-B is Item 310, which governs the form, content, and preparation of financial statements for companies that provide disclosure pursuant to Regulation S-B. The requirements in Item 310 of Regulation S-B are less detailed than the requirements in Regulation S-X, the regulation that governs the financial statements of most companies that do not rely on Regulation S-B. Regulation S-B also contains a number of disclosure requirements

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<sup>20</sup> The terms “large accelerated filer” and “accelerated filer” are defined in Exchange Act Rule 12b-2 (17 CFR 240.12b-2).

<sup>21</sup> Statistics are based on 2006 data from the Commission’s computerized filing system and Thomson Financial (Datastream). Datastream data includes all registered public firms trading on the New York Stock Exchange, the American Stock Exchange, the Nasdaq, the Over-the-Counter Bulletin Board, and the Pink Sheets and excludes closed end funds, exchange traded funds, American depository receipts, and direct foreign listings.

<sup>22</sup> 15 U.S.C. 78m and 15 U.S.C. 78o(d).

<sup>23</sup> The term “small business issuer” is defined in Item 10(a)(1) of Regulation S-B (17 CFR 228.10(a)(1)), among other places. The Commission adopted Regulation S-B in 1992. See Release No. 33-6949 (July 30, 1992) [57

that are scaled to the characteristics of smaller companies, including requirements on executive compensation, related person transactions, and management’s discussion and analysis of financial condition and results or plan of operation.<sup>24</sup>

Smaller companies qualifying as “non-accelerated filers” may file their annual reports no later than 90 days after fiscal year end and their quarterly reports no later than 45 days after the end of each fiscal quarter.<sup>25</sup> This contrasts with the 60-day and 75-day deadlines for the annual reports of large accelerated filers and accelerated filers, respectively, and the 40-day deadline for quarterly reports of those larger companies. Non-accelerated filers also are treated differently with regard to the compliance dates applicable to the internal control over financial reporting provisions in Section 404 of the Sarbanes-Oxley Act of 2002.<sup>26</sup>

Our proposals have three primary objectives, each of which is consistent with investor protection:

- Expanding eligibility for our scaled disclosure and reporting requirements for smaller companies by making those requirements available to most companies with a public float of less than \$75 million;
- Simplifying our rules for smaller companies by combining the two categories of small business issuers and non-accelerated filers into one category called “smaller reporting companies;” and

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FR 36442].

<sup>24</sup> For a more complete survey of the disclosure requirements for small business issuers in Regulation S-B, see Section II.B.2 below.

<sup>25</sup> See Release No. 33-8644 (Dec. 21, 2005) [70 FR 76626].

<sup>26</sup> Pub. L No. 107-204, 116 Stat. 745 (July 30, 2002); see also Release No. 33-8760 (Dec. 15, 2006) [71 FR 76580].

- Simplifying and improving our disclosure and reporting rules for smaller companies by maintaining the Regulation S-B disclosure requirements for smaller companies but integrating them into the disclosure requirements in Regulation S-K.

The Advisory Committee on Smaller Public Companies addressed these objectives in the following recommendations:

- Recommendation II.P.1: Establish a new system of scaled or proportional securities regulation for smaller public companies using the following six determinants to define a “smaller public company”:
  - the total market capitalization of the company;
  - a measurement metric that facilitates scaling of regulation;
  - a measurement metric that is self-calibrating;
  - a standardized measurement and methodology for computing market capitalization;
  - a date for determining total market capitalization; and
  - clear and firm transition rules, *i.e.*, small to large and large to small.

Develop specific scaled or proportional regulation for companies under the system if they qualify as “microcap companies” because their equity market capitalization places them in the lowest 1% of total U.S. equity market capitalization or as “smallcap companies” because their equity market capitalization places them in the next lowest 1% to 5% of total U.S. equity market capitalization, with the result that all companies comprising the lowest 6% would be considered for scaled or proportional regulation;<sup>27</sup>

- Recommendation IV.P.1: Incorporate the scaled disclosure accommodations currently available to small business issuers under Regulation S-B into Regulation S-K, make them

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<sup>27</sup> See Advisory Committee Final Report 14-22.

available to all microcap companies, and cease prescribing separate specialized disclosure forms for smaller companies;<sup>28</sup> and

- Recommendation IV.P.2: Incorporate the primary scaled financial statement accommodations currently available to small business issuers under Regulation S-B into Regulation S-K or Regulation S-X and make them available to all microcap and smallcap companies.<sup>29</sup>

It has been maintained that regulation and disclosure standards are proportional when compliance requirements are flexible enough to be modified and scaled according to the size, resources, operations, and financial complexities of the reporting company without sacrificing investor protection.<sup>30</sup> We believe that our proposals meet this standard. We also believe these proposals maintain investor protection while providing greater capital formation opportunities for smaller reporting companies and encouraging more robust smaller company participation in the United States capital markets.

## **II. Explanation of Proposals**

The proposals that we publish for comment today would simplify, and increase significantly the number of companies eligible for our scaled disclosure and reporting rules for smaller reporting companies, consistent with investor protection. Our proposals largely would implement several of the recommendations of our Advisory Committee on Smaller Public Companies in these areas.

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<sup>28</sup> See Advisory Committee Final Report 60-64.

<sup>29</sup> See Advisory Committee Final Report 65-68.

<sup>30</sup> See generally C. Steven Bradford, Does Size Matter? An Economic Analysis of Small Business Exemptions from Regulation, 8 J. Small & Emerging Bus. L. 1, 2 (1999) (providing an economic analysis of costs and benefits associated with small business exemptions).

## **A. Expanding Eligibility for Smaller Company Scaled Regulation**

The proposals would expand the availability of our disclosure and reporting requirements for smaller companies to most companies with a public float of less than \$75 million.<sup>31</sup> We are proposing a new term – “smaller reporting company” – to replace the term “small business issuer” and proposing to make available to these “smaller reporting companies”<sup>32</sup> the disclosure and reporting standards that we make available to small business issuers and most non-accelerated filers.<sup>33</sup> Our proposals would provide further regulatory simplification and relief for smaller reporting companies by integrating into Regulation S-K the salient “small business issuer” disclosure requirements currently found in Regulation S-B. Finally, our proposals would eliminate all “SB” forms associated with Regulation S-B.

### **1. Quantitative Standards in the Proposed Definition of “Smaller Reporting Company”**

#### **a. Proposed Standard**

The smaller reporting company definition would include a public float eligibility ceiling of \$75 million for most companies. Other companies, for example, companies that do not have a public float as defined or are unable to calculate it, would be eligible for scaled treatment if their revenues are below \$50 million annually.<sup>34</sup> At present, 3,395 reporting companies use our

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<sup>31</sup> See proposed Item 10(f)(1) of Regulation S-K. We propose to continue to exclude investment companies and asset-backed issuers from eligibility for scaled reporting and disclosure regulation.

<sup>32</sup> The definition would replace the almost identical definitions of the term “small business issuer” in Securities Act Rule 405 and Exchange Act Rule 12b-2. We also would insert the new definition as a new paragraph in Item 10(f) of Regulation S-K.

<sup>33</sup> Under our proposals, we would continue to use the term “non-accelerated filer” to refer to companies that are not subject to our accelerated filing requirements for their annual and quarterly reports under the Exchange Act and are currently eligible to use different compliance dates applicable to internal control over financial reporting and different periodic report deadlines.

<sup>34</sup> See proposed Item 10(f)(1) of Regulation S-K.

current scaled disclosure and reporting requirements for smaller companies.<sup>35</sup> If the proposals are adopted, a total of 4,976 companies would be eligible to use the scaled disclosure item requirements. The 4,976 eligible companies represent 42% of the 11,898 companies that filed annual reports under the Exchange Act in 2006.<sup>36</sup>

The term “smaller reporting company” would replace the term “small business issuer,” which defines the companies eligible currently to use the Regulation S-B disclosure requirements.<sup>37</sup> The proposed definition of smaller reporting company also would include most non-accelerated filers, which generally are those filers with a public float of less than \$75 million.<sup>38</sup> Non-accelerated filers are the companies currently eligible to use different compliance dates applicable to internal control over financial reporting and different periodic report deadlines. By using the same term to refer to both current groups of companies, we would effectively combine the two groups of scaled requirements into a single group – companies with a public float of less than \$75 million, or revenues below \$50 million if their public float cannot be calculated. As proposed, the \$75 million and \$50 million ceilings would be adjusted for inflation on September 1, 2012, and every fifth year thereafter, to reflect any changes in the value of the Personal Consumption Expenditures Chain-Type Price Index (PCECTP Index) (or any successor index thereto), as published by the Department of Commerce, from December 31, 2006.<sup>39</sup>

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<sup>35</sup> See footnote 19 above.

<sup>36</sup> See footnote 21 above.

<sup>37</sup> See Item 10(a)(1) of Regulation S-B, Securities Act Rule 405, and Exchange Act Rule 12b-2.

<sup>38</sup> Although the term “non-accelerated filer” is not defined in our rules, we allude to it in Exchange Act Rule 12b-2 and have used it throughout several releases to refer to an Exchange Act reporting company that does not meet the Exchange Act Rule 12b-2 definitions of either an “accelerated filer” or a “large accelerated filer.” See Release No. 33-8760 n.15 (Dec. 15, 2006) [71 FR 76580].

<sup>39</sup> Each adjustment would be rounded to the nearest multiple of \$5,000,000. We propose to use the PCECTP Index because it is a widely used and broad indicator of inflation in the U.S. economy.

We propose to set the initial ceiling for smaller reporting companies at \$75 million in public float because we now have several rules using the \$75 million public float metric to distinguish smaller companies. In addition to the use of this public float metric in the definition of accelerated filer, the \$75 million public float requirement is used to determine expanded eligibility in Form S-3 and Form F-3.<sup>40</sup> Further, issuers are required to provide their public float on the cover page of their Exchange Act annual reports.

Our proposed definition of “smaller reporting company” does not include a revenue test for most companies. While our current definition of “small business issuer” includes a revenue standard, the classification of an issuer as a large accelerated filer, an accelerated filer, or (by default) a non-accelerated filer does not involve a revenue standard. We chose not to propose a revenue standard to qualify for “smaller reporting company” status for most companies to provide greater simplicity, consistency, and certainty.

While our proposed definition of “smaller reporting company” does not generally apply a revenue standard, where an issuer has no common equity public float or market price, we propose a revenue test.<sup>41</sup> If an issuer has no common equity public float or market price and it has reported annual revenues of less than \$50 million in the most recently completed fiscal year for which audited financial statements are available, then it would qualify initially for scaled regulation as a smaller reporting company for the fiscal year in which it files a registration statement under the Securities Act or Exchange Act with the Commission as a smaller reporting company.<sup>42</sup>

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<sup>40</sup> 17 CFR 239.33 and 239.13.

<sup>41</sup> An issuer may have no public float or market price because it has no significant public equity outstanding or no public market for its equity. For example, a company with only debt publicly outstanding would use the revenue test.

<sup>42</sup> The issuer would refer to its most recently audited financial statements available at the time it files with the Commission as a smaller reporting company.

As proposed, the determination date for calculating a company's public float to establish eligibility for smaller reporting company status would be the same date used to determine accelerated filer status today – the last business day of a company's second fiscal quarter.<sup>43</sup> The public float of a reporting company would be calculated by using the price at which the shares of its common equity were last sold or the average of the bid and asked prices of such shares in the principal market for the shares as of the last business day of the company's second fiscal quarter, multiplied by the number of outstanding shares held by non-affiliates.<sup>44</sup>

With regard to a Securities Act registration statement for an initial public offering of common equity securities, however, a company would calculate its public float as of a date within 30 days of the date it files the initial registration statement. These companies would compute public float by multiplying the aggregate worldwide number of such shares held by non-affiliates before the offering plus the number of such shares included in the registration statement by the estimated public offering price of the shares.<sup>45</sup> The proposed method of calculating public float with regard to a Securities Act registration statement for an initial public offering would operate consistently with the following example:

- Company X has 50,000,000 shares of common stock outstanding;
- Company X has 25,000,000 shares of common stock outstanding that are held by non-affiliates;
- Company X files a Securities Act registration statement for its initial public offering – in that registration statement, Company X registers 7,000,000 shares of common stock to be sold at an estimated offering price of \$10 per share; and

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<sup>43</sup> See proposed Item 10(f)(1)(i) of Regulation S-K.

<sup>44</sup> Id.

<sup>45</sup> See proposed Item 10(f)(1)(ii) of Regulation S-K.

- For purposes of the smaller reporting company definition, Company X’s “public float” would be \$320,000,000 ((25,000,000 shares + 7,000,000 shares) x \$10 per share).

Currently, Regulation S-B requires a company preparing an initial public offering of securities to calculate its public float for purposes of determining small business issuer status on the basis of the total number of equity shares outstanding before the offering and the estimated public offering price of the securities. Our proposed change to this rule is intended to more accurately reflect the company’s public float by requiring companies to include the number of shares registered to be offered to the public in calculating the public float.

With regard to a company’s initial registration statement under the Exchange Act covering a class of securities, the company would calculate its public float as of a date within a 30-day window of the registration statement being filed. Because such an Exchange Act registration statement would not directly affect the issuer’s public float, if an issuer that files such an Exchange Act registration statement does not have a public float or its public float cannot be calculated because there is no market price for the issuer’s equity securities, the issuer’s eligibility for the scaled disclosure and reporting would be based on its revenue.

**b. Comparison of the Proposed Standard to the Advisory Committee’s Recommendation**

The proposal to broaden the number of smaller companies eligible for our scaled disclosure and reporting requirements is consistent with, but not identical to the Advisory Committee recommendation. The Advisory Committee recommended that we make the majority of our smaller company requirements available to companies whose equity market capitalization places them in the lowest 1% of total U.S. market capitalization, which it called “microcap companies.” The Advisory Committee indicated that, based on the information it relied upon,

the ceiling for that category was \$128 million in market capitalization.<sup>46</sup> We have chosen to propose using public float rather than market capitalization to set the ceiling for several reasons:

- The Commission has consistently used public float in this context,<sup>47</sup> rather than market capitalization;
- Each reporting company already is required to disclose its public float on the cover page of its annual report on Form 10-K or Form 10-KSB;
- The use of market capitalization would require us to establish new standards for reporting companies to calculate that information and a new obligation for those companies to disclose that information; and
- The overlap between reporting companies with \$128 million in market capitalization and reporting companies with \$75 million in public float is approximately 98%.<sup>48</sup>

We have not proposed a standard based on a company's ranking within a specified percentage of total U.S. market capitalization because we believe that such a standard may make the smaller reporting company system unduly complicated and create confusion among both smaller companies and their investors. Our proposal to adjust the \$75 million public float and \$50 million in revenue ceilings every five years to account for inflation, however, responds to the Advisory Committee's concern that our regulatory metrics should be adjusted in a timely manner to reflect changes in our economy.

The Advisory Committee received numerous comments to the effect that the \$25 million

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<sup>46</sup> The Advisory Committee relied on data derived from Center for Research in Security Prices (CRSP) for 9,428 New York and American Stock Exchange companies as of March 31, 2005 and from Nasdaq for NASDAQ Stock Market and Over-the-Counter Bulletin Board firms as of June 10, 2005. See Advisory Committee Final Report, at 15 n.36.

<sup>47</sup> In our adopting release for public securities offering reform, we provided the historical background for the use of public float as a measure for determining Form S-3 or F-3 eligibility. See Release No. 33-8591, at 26 n.50 (July 19, 2005) [70 FR 148].

<sup>48</sup> This estimate was calculated from data obtained from Thomson Financial (Datastream).

public float and revenue standards in Regulation S-B are too low and should be increased to permit a broader range of smaller companies to be eligible for its benefits, particularly in light of the increased costs associated with Exchange Act reporting obligations.<sup>49</sup> A group responding to the Advisory Committee’s request for comments on its proposed agenda noted that the \$25 million standards resulted in Regulation S-B being available only to the very smallest public companies.<sup>50</sup> This group also expressed the view to the Advisory Committee that, for Regulation S-B to have any meaningful benefit to new and smaller public companies, the threshold needed to be raised to \$100 million in both revenue and market capitalization. Another commentator has argued that the standard should be less concerned with market capitalization and more concerned with revenue, which in part indicates the ability of small companies to shoulder the burdens of regulation.<sup>51</sup> The Advisory Committee rejected a revenue-based metric in determining general eligibility for scaling, however, stating that market capitalization should be the primary metric for determining eligibility for scaling regulations and that including revenues would introduce unnecessary additional complexity.<sup>52</sup>

The Advisory Committee recommended that we extend eligibility for scaled disclosure to two tiers of companies – what the Advisory Committee called “microcap companies” and “smallcap companies.” More specifically, the Committee recommended that we develop scaled or proportional regulation for companies that qualify as “microcap companies” because their equity market capitalization places them in the lowest 1% of total U.S. market capitalization and

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<sup>49</sup> See Advisory Committee Final Report 64 n.132.

<sup>50</sup> See Letter from Subcommittee on Smaller Public Companies, Securities Law Committee, Society of Corporate Secretaries & Governance Professionals (June 7, 2005) (on file in Commission Rulemaking File No. 256-23), available at <http://www.sec.gov/info/smallbus/acspc.shtml>.

<sup>51</sup> Paul Rose, *Balancing Public Market Benefits and Burdens for Smaller Companies Post Sarbanes-Oxley*, 41 Willamette L. Rev. 707, 740 (2005).

<sup>52</sup> The Advisory Committee did recommend that we adopt a revenue ceiling for companies to be eligible for certain scaled regulations under Section 404 of the Sarbanes-Oxley Act. See Advisory Committee Final Report 43.

“smallcap companies” because their equity market capitalization places them in the next lowest 1% to 5% of total U.S. equity market capitalization, with the result being that all companies comprising the lowest 6% would be eligible for scaled or proportional regulation.<sup>53</sup> Based on the statistics relied upon by the Advisory Committee, companies with less than \$787 million in market capitalization would have been included in the lowest 6% of market capitalization as of March 31, 2005.<sup>54</sup> Our proposals do not extend the scaled disclosure regime or develop another scaled disclosure regime for companies between \$75 million and \$787 million in market capitalization at this time. We solicit comment below on the appropriateness of scaled disclosure requirements for companies with a public float greater than \$75 million.

## **2. Exclusions from the Definition of “Smaller Reporting Company”**

The current definition of “small business issuer” excludes companies that are not organized in the United States or Canada, investment companies, and asset-backed issuers.<sup>55</sup> Under the proposed amendments, all foreign companies that meet the criteria would be able to qualify as smaller reporting companies. Foreign companies could, therefore, take advantage of the scaled standards available to domestic smaller reporting companies if they otherwise qualify for that status and file a form that permits disclosure based on the standards for smaller reporting companies, such as Forms S-1, S-3, S-4, and Forms 10-Q and 10-K. In this regard, the forms available only to “foreign private issuers,” such as Form F-1,<sup>56</sup> Form F-3<sup>57</sup>, Form F-4,<sup>58</sup> and Form 20-F,<sup>59</sup> would not permit disclosure based on the standards for smaller reporting

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<sup>53</sup> See Advisory Committee Final Report 14-19.

<sup>54</sup> Id.

<sup>55</sup> See Item 10(a)(1)(ii) through (iii) of Regulation S-B.

<sup>56</sup> 17 CFR 239.31.

<sup>57</sup> 17 CFR 239.33.

<sup>58</sup> 17 CFR 239.34.

<sup>59</sup> 17 CFR 249.220f.

companies.<sup>60</sup> Foreign private issuers who qualify for smaller reporting company status could choose whether to use the domestic forms and be able to provide disclosure based on these standards or to use the “F” forms and comply with the disclosure requirements of those forms.

We propose to continue to exclude investment companies and asset-backed issuers from eligibility for scaled reporting and disclosure regulation. Investment companies are subject to separate disclosure and reporting requirements.<sup>61</sup> Asset-backed issuers have a separate disclosure system that applies to them and do not use Regulation S-K for their disclosure requirements.<sup>62</sup>

### **Request for Comments**

- Should the definition of smaller reporting company include tests based on both public float and revenue? Should the definition contain only a revenue test, rather than the proposed public float test? If the definition contained a revenue test, should the standard be \$50 million, \$75 million, \$100 million, or some other amount? Please explain in detail and provide a reasoned basis for your views.
- Is a public float of less than \$75 million the appropriate standard for defining a “smaller reporting company?” Should the public float standard be \$50 million, \$150 million, or some other amount? Please explain in detail and provide a reasoned basis for your views.
- Is it appropriate to compute public float for an initial public offering by a smaller reporting company by multiplying the aggregate worldwide number of such shares held by non-affiliates before the offering plus the number of shares included in the registration

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<sup>60</sup> The term “foreign private issuer” is defined in Securities Act Rule 405 and Exchange Act Rule 12b-2.

<sup>61</sup> See, e.g., Form N-1A (17 CFR 239.15A; 274.11A), N-2 (17 CFR 239.14; 274.11a-1), and N-3 (17 CFR 239.17a; 274.11b), the registration forms used by management investment companies to register under the Investment Company Act of 1940, (15 U.S.C. 80a-1 et seq.) and to register their securities under the Securities Act. Business development companies, which are a category of investment companies that are not required to register under the Investment Company Act, register their securities under the Securities Act on Form N-2.

<sup>62</sup> See Regulation AB (17 CFR 229.1100 through 229.1123).

statement by the estimated public offering price of the shares? Is it appropriate to permit the calculation of public float on any date within 30 days of a filing?

- Is it appropriate to require companies to estimate the public offering price of the securities before filing an initial registration statement that would qualify them for smaller reporting company status, as has been required in the past under Regulation S-B and as we propose to continue to require? For purposes of calculating the estimated public offering price per share, should we require issuers to rely on the high, low, or mid-point of the price range for the securities?
- Is there an alternative standard that would more accurately calculate a company's public float before it files its initial Securities Act registration statement with the Commission to determine smaller reporting company eligibility? Please provide details and reasoned support for your position.
- Should the definition of smaller reporting company be based on market capitalization, as suggested by the Advisory Committee, rather than public float? If so, should the market capitalization standard be \$150 million, \$125 million, \$100 million, or some other level? Please discuss the benefits and burdens of your suggested standard and provide reasoned support for your position.
- Should a system of scaled or proportional regulation be made available to companies in the lowest 1% of total U.S. market capitalization (less than \$128 million as of March 31, 2005) or the lowest 6% of total U.S. market capitalization (\$787 million as of March 31, 2005), as suggested by the Advisory Committee? Please provide reasoned support for your position.
- Is the \$50 million revenue threshold an appropriate level for companies without a public float or market price, or should the test be \$75 million or \$25 million in revenue or some

other standard?

- Should any public float and/or revenue ceilings be indexed to adjust for inflation?

Should any ceilings be indexed using a different index than the PCECTP Index, the one we propose to use? Please provide details and reasoned support for your position.

- Should the Commission allow asset-backed issuers and investment companies, including business development companies, or business development companies only, to qualify as smaller reporting companies?
- Is it appropriate to permit all non-U.S. companies to qualify for smaller reporting company status?
- Are there companies reporting as small business issuers that have only public debt outstanding and have little or no publicly-held common equity? Are there companies with one or more classes of public debt outstanding but no significant amount of outstanding common equity held by non-affiliates that should qualify as smaller reporting companies? If so, should we permit such companies to qualify as smaller reporting companies on the basis of a revenue test? Does the proposed revenue test meet the needs of smaller companies?
- What benefits would flow to investors if the Commission adopted these proposals? For example, would the possible cost savings for the company provide a net benefit to shareholders? Please provide details and reasoned support for your position.
- If adopted, would these proposals have any negative effect on investors? For example, would investors in companies that have a public float of between \$25 million and \$75 million be harmed if a company chose to provide the disclosure required of a smaller reporting company rather than the disclosure currently required under Regulation S-K? If so, please describe the negative effect in detail, providing data and support where

possible.

## **B. Integrating Requirements of Current Regulation S-B into Regulation S-K**

### **1. Policy Objectives of Proposal**

We have maintained a separate registration, reporting, and qualification system for small business issuers under the Securities Act, Exchange Act, and Trust Indenture Act since 1992.<sup>63</sup> The centerpiece of this system, Regulation S-B, followed the model of Regulation S-K. When adopting Regulation S-B, we incorporated some concepts from Form S-18, which was a simplified registration form for smaller companies under the Securities Act that we replaced with Forms SB-1 and SB-2.<sup>64</sup>

Regulation S-B was designed to provide small business issuers with a single source for their SEC disclosure requirements. Our objectives in adopting a disclosure system for smaller companies were to reduce compliance costs while maintaining adequate investor protection, to improve the ability of start-ups and other small businesses to obtain financing through the public capital markets, and to encourage those companies to provide their investors with the benefits of trading in those markets.<sup>65</sup>

We propose to integrate the substantive provisions of Regulation S-B into Regulation S-K for a number of reasons. We believe integration will simplify regulation for small business and lower costs. The current dual system scheme is complex, and we believe this complexity may deter smaller companies from taking advantage of scaled regulation. We also are aware of anecdotal reports that securities lawyers recommend against using the Regulation S-B system because it results in increased legal costs. The Advisory Committee, in recommending that we

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<sup>63</sup> See Release No. 33-6949 (Jul. 30, 1992) [57 FR 36442].

<sup>64</sup> See Release No. 33-6949 (Jul. 30, 1992) [57 FR 36442] and Release No. 33-6924 (Mar. 20, 1992) [57 FR 9768].

<sup>65</sup> See Release No. 33-6924.

integrate the scaled disclosure requirements available to small business issuers into Regulation S-K and make them available to microcap companies, heard testimony that Regulation S-B was not used for two principal reasons. The first reason is that lawyers assert that they cannot use prior examples of filings involving companies that are not relying on Regulation S-B. The second reason is that the lawyers must maintain expertise in two different disclosure systems.<sup>66</sup> Maintaining two separate but largely similar systems also results in increased burdens on the Commission staff.

### **Request for Comments**

- Assuming we should revise Regulation S-B, should we do so in some way other than integrating its substantive provisions into Regulation S-K? Please be as specific as possible with your comments.
- Might integrating our two disclosure systems make it more difficult to maintain scaled securities regulation for smaller companies? How should we maintain scaled regulation over time? Please provide opposing or supporting views and clearly explain the bases for your views.
- Will this proposal simplify the disclosure obligations of smaller companies? Please provide details to support your view.
- If these proposals are adopted, would smaller companies experience lower costs for legal assistance and other services?
- If adopted, would these proposals have any effect on investors, either positive or negative? Please provide a detailed explanation of your views, with supporting data if possible.

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<sup>66</sup> See Advisory Committee Final Report 64.

## **2. Specific Integration Proposals**

### **a. Financial Statements**

We propose to add a new Item 310 (Financial Statements of Smaller Reporting Companies) to Regulation S-K to set forth the alternative requirements on form and content of financial statements for smaller companies that now appear in Item 310 of Regulation S-B. Item 310 of Regulation S-B constitutes perhaps the most significant example of scaling for smaller companies in all of Regulation S-B, as it bases the requirements on form, content, and preparation of financial statements for smaller companies solely on generally accepted accounting principles (“GAAP”). It does not require smaller companies to conform their financial statements to the Commission’s Regulation S-X.<sup>67</sup> Item 310 of Regulation S-B allows smaller companies to provide an audited balance sheet for the latest fiscal year only and audited statements of income, cash flows, and changes in stockholders’ equity for each of the latest two fiscal years only, rather than an audited balance sheet for the latest two fiscal years and audited statements of income, cash flows, and changes in stockholders’ equity for each of the latest three fiscal years, as required in Regulation S-X. Item 310 of Regulation S-B also differs from Regulation S-X in its requirements for historical and pro forma financial statements for significant acquired businesses, the maximum age of financial statements, and limited partnerships.<sup>68</sup>

We propose one substantive change in Item 310 that would differentiate it from the current Item 310 in Regulation S-B. Currently, in Note 2 preceding the Item, foreign private issuers are permitted to prepare and present financial statements in accordance with Item 17 of Form 20-F. Item 17 of Form 20-F allows an issuer to provide alternative financial statements

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<sup>67</sup> See Rule 1.01 of Regulation S-X (17 CFR 210.1-01).

<sup>68</sup> The requirements of Item 310 of Regulation S-B were consistent with the requirements of Form S-18, which governed the form and content of financial statements of smaller companies choosing to use that form before

prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States if certain conditions are met. Regulation S-B currently is available only to U.S. and Canadian issuers, so permitting non-U.S. GAAP for Canadian foreign private issuers was a modest adjustment in terms of the number of companies eligible to use this adjustment. Because we propose to expand the definition of smaller reporting company to include all foreign companies, we do not feel that non-U.S. GAAP financial statements would be appropriate for a larger number of issuers. Therefore, we propose that foreign issuers who elect to use Item 310 disclosure for smaller reporting companies be required to present financial statements pursuant to U.S. GAAP. Currently, all financial statements in registration statements that may be used by domestic issuers, other than Canadian small business issuers using Forms SB-1 and SB-2, are required to conform to U.S. GAAP.<sup>69</sup>

### **Request for Comments**

- Should the Commission incorporate the requirements on form and content of financial statements of smaller companies now in Item 310 of Regulation S-B into Regulation S-X, as proposed? Should the Commission modify proposed Item 310 in any way?
- Is it appropriate to require U.S. GAAP for foreign private issuers and other foreign issuers who take advantage of the smaller reporting company requirements? Or is the option of filing a registration statement on Form 20-F an acceptable alternative? What effect, if any, will this have on foreign private issuers?
- The Advisory Committee believed that a second year of audited balance sheet data would provide investors with a basis for comparison with the current period, without

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Regulation S-B was adopted in 1992. See Release No. 33-6949 (Jul. 30, 1992) [57 FR 36442].

<sup>69</sup> As noted previously, foreign private issuers may use the forms and disclosure standards available only for such issuers.

substantially increasing audit costs.<sup>70</sup> Should we consider following the Advisory Committee recommendation to require smaller reporting companies to provide two years of audited balance sheet data in annual reports and registration statements?

**b. Proposed Changes to Other Regulation S-K Disclosure Items**

As a general rule, we propose to integrate the individual Regulation S-B disclosure items (other than Item 310 as discussed immediately above) into Regulation S-K. To do this, we propose to add a new paragraph to each item of Regulation S-K that will contain separate disclosure standards for smaller reporting companies, to the extent that a particular item permits such disclosure.<sup>71</sup> To ease navigation, each new paragraph would have a heading reading “Smaller reporting companies,” so readers can easily find the requirements tailored for smaller reporting companies. At this time, we do not propose any major substantive changes to the items that we are moving from Regulation S-B into Regulation S-K. Where the disclosure standards of identically numbered items in Regulation S-B and Regulation S-K are substantially the same for smaller reporting companies and larger companies, we propose no change to the existing Regulation S-K disclosure items.<sup>72</sup> We discuss our proposed treatment of specific Regulation S-K disclosure items below.

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<sup>70</sup> See Advisory Committee Final Report 65-66.

<sup>71</sup> We propose to add the new paragraphs at the end of items in Regulation S-K as they exist today. If we add additional paragraphs to items of Regulation S-K in the future, we may or may not move the smaller reporting company paragraph to the end of the item at that time.

<sup>72</sup> We propose no changes to the following items of Regulation S-K because the disclosure standards are currently substantially the same: Item 102 (Description of Property), Item 103 (Legal Proceedings), Item 202 (Description of Registrant’s Securities), Item 304 (Changes In and Disagreements with Accountant on Accounting and Financial Disclosure), Item 307 (Disclosure Controls and Procedures), Item 308 (Internal Control Over Financial Reporting), Item 308T (Internal Control Over Financial Reporting), Item 401 (Directors, Executive Officers, Promoters and Control Persons), Item 403 (Security Ownership of Certain Beneficial Owners and Management), Item 405 (Compliance with Section 16(a) of the Exchange Act), Item 406 (Code of Ethics), Item 501 (Forepart of Registration Statement and Outside From Cover Page of Prospectus), Item 502 (Inside Front and Outside Back Cover Pages of Prospectus), Item 505 (Determination of Offering Price), Item 506 (Dilution), Item 507 (Selling Security Holders), Item 508 (Plan of Distribution), Item 509 (Interest of Named Experts and Counsel), Item 510 (Disclosure of Commission Position on Indemnification for Securities Act Liabilities), Item 511 (Other Expenses of Issuance and Distribution), Item 701 (Recent Sales of

Item 101 (Description of Business). We propose to add a new paragraph (h) to Item 101 of Regulation S-K to set forth the alternative disclosure standards for smaller companies that appear now in Item 101 of Regulation S-B. Under Item 101 of Regulation S-B, smaller companies are required to provide a description of their business that is less detailed than the description that larger companies provide and to disclose business development activities for only three years, instead of the five-year disclosure required of larger companies by Item 101 of Regulation S-K.

Item 201 (Market Price of and Dividends on Registrant’s Common Equity and Related Stockholder Matters). We propose only a minor change in wording to this item because Instruction 6 to paragraph (e) of Item 201 of Regulation S-K currently contains a provision permitting smaller companies to use the alternative disclosure standards of Regulation S-B when preparing documents under Regulation S-K. Therefore, no substantive change is necessary. We propose to replace the reference to a “small business issuer” with a reference to a “smaller reporting company” and add a heading to Instruction 6.

Items 301 (Selected Financial Data) and 302 (Supplementary Financial Information). Regulation S-B currently does not require smaller companies to disclose Item 301 (Selected Financial Data) or Item 302 (Supplementary Financial Information) data. We therefore propose to add a new paragraph (c) to Items 301 and 302 in Regulation S-K, providing that smaller reporting companies are not required to present the information required by these items.

Item 303 (Management’s Discussion and Analysis of Financial Condition and Results of Operations). We propose to add a new paragraph (d) to Item 303 of Regulation S-K to reflect the alternative disclosure standards for smaller companies now in Item 303 of Regulation S-B. Regulation S-B provides more streamlined disclosure requirements for a smaller company’s

management to present its discussion and analysis of the company's financial condition and results of operations. It requires only two years of analysis if the company is presenting only two years of financial statements instead of the three years of analysis required of larger companies as required in Regulation S-X. Further, Regulation S-B does not require smaller companies to provide tabular disclosure of contractual obligations, as required for companies reporting under Item 303(a)(5) of Regulation S-K.<sup>73</sup>

Item 305 (Quantitative and Qualitative Disclosures about Market Risk). Regulation S-B currently does not require smaller companies to disclose Item 305 (Quantitative and Qualitative Disclosures about Market Risk) information. We therefore propose to add a new paragraph (e) to Item 305 of Regulation S-K providing that smaller reporting companies are not required to respond to this item.

Item 402 (Executive Compensation). We propose to add a new paragraph (l) to Item 402 of Regulation S-K to add the alternative standards for smaller reporting companies for disclosure of compensation of executives and directors now in Item 402 of Regulation S-B. Under Item 402 of Regulation S-B, a smaller company is allowed to provide executive compensation disclosure for only three officers, rather than the five required under Item 402 of Regulation S-K, and Summary Compensation Table disclosure for only two years, rather than the three years required under Regulation S-K. A smaller company does not need to provide a Compensation Discussion and Analysis, is required to provide only three of the seven tables prescribed by Item 402 of Regulation S-K, and is required to provide alternative narrative disclosures. In the Director Compensation Table, a smaller company need not include footnote disclosure of the

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and Officers), and Item 703 (Purchases of Equity Securities by the Issuer and Affiliated Purchasers).

<sup>73</sup> 17 CFR 229.303(a)(5).

grant date fair value of equity awards, given that no corresponding Grants of Plan-Based Award Table disclosure for named executive officers of smaller companies is required.<sup>74</sup>

Item 404 (Transactions with Related Persons, Promoters and Certain Control Persons).

We propose to add a new paragraph (d) to Item 404 of Regulation S-K to add the alternative standards for disclosure of related person transactions now available to smaller companies in Item 404 of Regulation S-B. A smaller reporting company would not be required to disclose policies and procedures for approving related person transactions, which is required of other companies under paragraph (b). Item 404 of Regulation S-B requires disclosure regarding transactions where the amount exceeds the lesser of 1% of a smaller company's total assets or \$120,000. Companies using Regulation S-K are required to disclose information only about transactions above \$120,000 in amount. As such, for smaller companies with an asset level such that 1% of its assets would equal a dollar amount lower than \$120,000, related person disclosure under Item 404 is more rigorous than for larger companies. Further, smaller companies are required to disclose additional specific information about underwriting discounts and commissions and corporate parents. We propose, however, to change the calculation of total assets for smaller reporting companies from 1% percent of their total assets based on the average of total assets at year end for the last three completed fiscal years to the last two completed fiscal years. This standard is more consistent with the two years of financial statements required of smaller reporting companies in the filings containing these disclosures.

Item 407 (Corporate Governance). We propose to add a new paragraph (g) to Item 407 of Regulation S-K to add the corporate governance disclosure standards now available to smaller companies in Item 407 of Regulation S-B. Smaller reporting companies would not be required to provide Compensation Committee Interlock and Insider Participation disclosure or a

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<sup>74</sup> See Release No. 8732A (Aug. 8, 2006) [71 FR 53158] and Release No. 33-8765 (Dec. 22, 2006) [71 FR

Compensation Committee Report. In addition, smaller reporting companies would not be required to provide an Audit Committee Report until the first annual report after their initial registration statement is filed with the Commission.

Item 503 (Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges).

We propose to add a new paragraph (e) to Item 503 of Regulation S-K to add the alternative standards for disclosure now available to smaller companies in Item 503 of Regulation S-B. Item 503 of Regulation S-B does not require smaller companies to provide the information required by paragraph (d) of Item 503 regarding the ratio of earnings to fixed charges when a registrant issues debt, or the ratio of combined fixed charges and preference dividends to earnings when a registrant issues preference equity securities.

Item 504 (Use of Proceeds). We propose no change to the primary text of Item 504 of Regulation S-K because the disclosure standards of Regulation S-K and Regulation S-B currently are substantially the same. We propose a minor change to the instructions to the item, however, to clarify that new Item 310 of Regulation S-K, rather than Regulation S-X, will govern whether financial statements of businesses proposed to be acquired are to be included in the filings of smaller reporting companies relying on Item 310 of Regulation S-K rather than Regulation S-X. We recognize that the instructions to Item 504 in Regulation S-K are more specific than and more than twice as long as those in Item 504 of Regulation S-B. We do not propose to substitute the shorter instructions of Regulation S-B for smaller reporting companies complying with Item 504 because we do not regard the longer instructions as necessarily more burdensome or not scaled to the needs of smaller companies.

Item 512 (Undertakings). We propose to add a new paragraph (m) to Item 512 of Regulation S-K to add the alternative standards for disclosure now available to smaller

companies in Item 512 of Regulation S-B. Item 512 of Regulation S-B does not require smaller companies to provide the information about asset-backed securities, foreign private issuers, and trust indenture offerings now required by Regulation S-K.

Item 601 (Exhibits). We propose to add a new paragraph (c) to Item 601 of Regulation S-K to incorporate the standards currently in Item 601 of Regulation S-B. The paragraph would clarify that a smaller reporting company is not required to provide Exhibit 12 (Statements re Computation of Ratios) unless it discloses one of the ratios discussed in the requirement upon the registration of debt or preference equity securities. The paragraph also would clarify that, for purposes of Exhibit 7 (Correspondence from an Independent Accountant Regarding Non-Reliance on a Previously Issued Audit Report or Completed Interim Review), new Item 310 of Regulation S-K, rather than Regulation S-X, may govern the form, content, and preparation of financial statements provided by a smaller reporting company. Our proposal also would revise Item 601 of Regulation S-K to delete references to several “SB” forms and to Regulation S-B, all of which would be deleted from our rules and regulations.

### **Request for Comments**

- Would a different format in the proposed integrated Regulation S-K more clearly identify the provisions that are different for smaller reporting companies?
- Is the proposed Item 101 (Description of Business) requirement adequate for most smaller reporting companies? Please be as specific as possible and provide details to support your position.
- Should the Commission consider requiring smaller reporting companies to provide tabular disclosure of contractual obligations required in paragraph (5) of Regulation S-K Item 303? Would this disclosure provide meaningful information for investors or would it be overly burdensome for smaller reporting companies?

- Should smaller reporting companies be required to fully comply with any other items of Regulation S-K to which we do not propose to subject them?
- Are there any other provisions in current Regulation S-B that should be carried over for smaller reporting companies into Regulation S-K that we have not proposed to be carried over?
- Conversely, are any of the current Regulation S-B items that we propose to carry over inappropriate for the larger group of companies we propose to define as smaller reporting companies?

**c. A La Carte Approach**

We propose to allow a company that qualifies as a smaller reporting company to choose, on an item-by-item or “a la carte” basis, to comply with either the scaled disclosure requirements made available in Regulation S-K for smaller reporting companies or the disclosure requirements for other companies in Regulation S-K, when the requirements for other companies are more rigorous.<sup>75</sup> A smaller reporting company would have the option to take advantage of the smaller reporting company requirements for one, some, all or none of the items, at its election, in any one filing, in such cases. We would require, however, that a smaller reporting company provide its financial statements on the basis of either Item 310 of Regulation S-K or Regulation S-X for an entire fiscal year, and not be permitted to switch back and forth from one to the other in different filings within a single fiscal year. If this approach is adopted, we would expect that our staff, in reviewing filings of smaller reporting companies, would be instructed to evaluate item-by-item compliance only with the Regulation S-K requirements applicable to smaller reporting companies, and not with the requirements applicable to larger companies, even if the company

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<sup>75</sup> As proposed, Item 404 would be the only disclosure requirement in Regulation S-K that would be more rigorous for smaller reporting companies than for other companies.

whose filing is being reviewed chooses to comply with the larger company requirements.<sup>76</sup> The staff also would continue to seek clarity in disclosure provided by smaller reporting companies.

Our objective in proposing the “a la carte” approach is to provide maximum flexibility for smaller reporting companies without disadvantaging investors. While establishing a baseline of required disclosure, we want to encourage smaller reporting companies to determine for themselves the proper balance and mix of disclosure for their investors within the boundaries of the law, given the costs of compliance and the market demand for information.

We propose to add a check box to the cover page of all filings in which smaller reporting companies may take advantage of the alternative disclosure requirements. The check box would require smaller reporting companies to indicate that they are eligible for “Smaller Reporting Company” status. Investors and others reviewing the filing would be able to tell from the check box that the disclosing company is eligible to comply with the scaled disclosure available to smaller reporting companies.

In proposing to require smaller reporting to companies to check a box identifying themselves as such on the cover page of their filings, we are attempting to strike the appropriate balance among investor protection, transparency, and the legitimate needs of smaller companies. We are aware that, as discussed by the Advisory Committee, a major reason our current Regulation S-B system has not worked as well as intended is that it requires filing on “SB” forms that may not have achieved an optimal level of market acceptance.<sup>77</sup> By requiring a company to check a box on the front of its filings, we are trying to address the legitimate needs of investors who may want to know if a company is eligible to comply with standards scaled for smaller companies. We are attempting, however, to avoid unduly stigmatizing smaller companies. We

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<sup>76</sup> These proposals would have no effect on the legal requirements and liabilities that would continue to apply to all disclosures made by issuers.

<sup>77</sup> See Advisory Committee Final Report 63-64.

believe that, if we have scaled our disclosure and reporting requirements to properly reflect the characteristics of smaller companies, investors will be adequately protected by our rules and should not be unduly concerned that a company may be providing information under a different, scaled standard.

### **Request for Comments**

- Should the Commission adopt the a la carte approach, allowing smaller reporting companies to take advantage of the adjusted disclosure requirements available to them on an item-by-item basis?
- Have smaller companies filing on “SB” forms not achieved greater market acceptance because investors believe that the disclosure required by Regulation S-K is valuable? Please provide a detailed explanation and a reasoned basis for your view.
- Does the proposal to scale disclosure for smaller reporting companies strike the proper balance between imposing proportional costs and burdens on smaller reporting companies while adequately protecting investors?
- Should the Commission adopt an approach requiring smaller reporting companies to comply with all disclosure requirements for larger companies if they elect to comply with any of those requirements? Should we require smaller reporting companies that choose to no longer follow the disclosure requirements for larger companies to separately disclose that change?
- Is the Commission creating a situation in which newly eligible companies could selectively choose not to disclose information that may be beneficial to investors?
- Does requiring smaller reporting companies to check a box indicating their “Smaller Reporting Company” status on the cover page of filings unduly penalize or stigmatize

smaller reporting companies? Is a check box necessary for investor protection? Is another alternative preferable to a check box?

- Should the proposal require a smaller reporting company to check the box only if it is choosing to comply with at least one item in Regulation S-K scaled for smaller reporting companies, rather than requiring all eligible companies to check the box even if they choose not to comply with any scaled items?
- What should be the impact on a smaller reporting company that attempts to satisfy the disclosure requirements of larger companies but fails to satisfy those requirements? Please provide details to support your views.
- Instead of a check box indicating the size of the company, would it be preferable to have check boxes or some other form of identification indicating what smaller reporting company items the company has relied upon in preparing its filing?
- How would the a la carte approach affect the ability of investors to compare disclosures of smaller reporting companies?

#### **d. Eliminating “SB” Forms**

We anticipate that the elimination of forms associated with Regulation S-B (Forms 10-SB, 10-QSB, 10-KSB, SB-1, and SB-2) will result in regulatory simplification by mainstreaming smaller reporting company filers into the Regulation S-K framework. We anticipate that legal practitioners, accountants, and other individuals preparing disclosure forms will appreciate the convenience of referring to only one set of disclosure requirements.

The Advisory Committee noted that elimination of the “SB” forms would reduce the complexity of federal securities regulations. The Advisory Committee recognized that the drawbacks associated with Regulation S-B included a lack of acceptance of “SB” filers in the

marketplace.<sup>78</sup> Also, North American Securities Administrators Association officials representing state securities regulators have commented that small businesses issuing securities were especially vulnerable to loss of investor confidence if some issuers “poisoned the well” with material misstatements.<sup>79</sup>

The elimination of the forms associated with Regulation S-B would result in most smaller reporting companies using Securities Act Form S-1 to offer securities to the public. Since 2005, an issuer using Form S-1 that is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act may be permitted to incorporate by reference its previously filed Exchange Act reports if it has filed an annual report for its most recently completed fiscal year, has filed all reports and other materials required to be filed by Sections 13(a), 14, or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and makes available all incorporated materials on its Web site.<sup>80</sup> We believe that this ability to incorporate previously filed reports by reference would result in some cost savings and efficiencies in preparing registration statements for smaller reporting companies.

It is our intention that the integration of the disclosure standards of Regulation S-B into Regulation S-K will mitigate the reported lack of market acceptance associated with smaller filers. As one commentator has explained, it is not enough to establish that small business should at times be treated separately from larger business; the manner in which the distinction is made is equally important, “for a misguided partition may be worse than no partition at all.”<sup>81</sup> We expect that adoption of our proposal to eliminate the forms associated with Regulation S-B

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<sup>78</sup> Id.

<sup>79</sup> U.S. General Accounting Office, *Small Business: Efforts to Facilitate Equity Capital Formation* 190 (2000).

<sup>80</sup> See Release No. 33-8591 (Jul. 19, 2005) [70 FR 44722].

<sup>81</sup> See Larry T. Garvin, *Small Business and the False Dichotomies of Contract Law*, 40 Wake Forest L. Rev. 295, 373 (2005).

will further our goals of eliminating unwarranted negative perceptions of the smaller reporting company disclosure regime.

### **Request for Comments**

- Is it appropriate to eliminate all “SB” forms associated with Regulation S-B?
- Should we maintain some or all of the “SB” forms, even if we integrate the provisions of Regulation S-B into Regulation S-K?
- If adopted, would elimination of the “SB” forms provide significant benefits to legal practitioners, accountants, and other individuals preparing disclosure for smaller companies? Would there be any impact on investors? Please provide details to support your views.

#### **e. Transition to and from Smaller Reporting Company Status**

As discussed above, we propose to significantly expand eligibility for smaller company scaled regulation by combining our two current smaller company regulatory categories, “small business issuer” and “non-accelerated filer,” into a new category called “smaller reporting company.” These companies would have their own eligibility standards and rules for transitioning up to a category of larger companies once a company exceeds the limitations for the smaller reporting company designation. In addition, each category of larger companies has rules for transitioning down to a smaller company category. This ordinarily would occur if the company drops below the ceiling marking the boundary between the smaller and larger company categories.

Currently, a small business issuer that exceeds the \$25 million revenue and \$25 million public float standards for that status at the end of two consecutive fiscal years must transition out of small business issuer status, effective immediately for filings covering events and completed fiscal periods in the next fiscal year. A non-accelerated filer ceases to qualify for that status and

must transition to accelerated filer status in the next fiscal year after its public float first rises above \$75 million as of the last business day of its most recently completed second fiscal quarter.<sup>82</sup> For smaller reporting companies, we propose to follow the transition model currently used to determine “accelerated filer” status. Under our proposal, smaller reporting companies would lose eligibility to claim that status in the first fiscal year following a fiscal year in which the smaller reporting company’s public float rises above \$75 million as of the last business day of the second fiscal quarter.<sup>83</sup>

We also propose to follow the accelerated filer model in establishing rules for companies to transition to smaller reporting company status. Under our current rules, a reporting company may transition to small business issuer status in the next fiscal year if its public float and revenue fall below \$25 million at the end of two consecutive fiscal years.<sup>84</sup> An accelerated filer may transition to non-accelerated filer status in the next fiscal year if its public float falls below \$50 million as of the last business day of the company’s second fiscal quarter. We propose that a reporting company that does not file reports claiming smaller reporting company status be required to transition to that status in the next fiscal year if its public float falls below \$50 million as of the last business day of the company’s second fiscal quarter.<sup>85</sup>

Where an issuer does not have a public float or no public market for its common equity securities exists and it has less than \$50 million in revenue, we propose to allow it to use the scaled disclosure item requirements until it exceeds \$50 million in annual revenue. Once an

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<sup>82</sup> Exchange Act Rule 12b-2 (paragraph (3)(i) of the definition of “accelerated filer”) provides:

The determination at the end of the issuer’s fiscal year for whether a non-accelerated filer becomes an accelerated filer, or whether a non-accelerated filer or accelerated filer becomes a large accelerated filer, governs the deadlines for the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports to be filed thereafter while the issuer remains an accelerated filer or large accelerated filer.

<sup>83</sup> See proposed Item 10(f) of Regulation S-K.

<sup>84</sup> See Item 10 of Regulation S-B.

<sup>85</sup> See proposed Item 10(f) of Regulation S-K.

issuer fails to qualify for smaller reporting status under the revenue test, it would remain unqualified unless its annual revenues fall below \$40 million during the previous fiscal year.

The determination as to whether a company qualifies for smaller reporting company treatment would be made at the beginning of a fiscal year on the basis of the information in a quarterly report on Form 10-Q or an initial registration statement under the Securities Act or Exchange Act, whichever is the first to be filed during that year. If an issuer that qualified on the basis of revenue develops a public float or its public float increases during the year, the issuer would remain a smaller reporting company for the entire fiscal year.

Our purpose in proposing these transition rules is to provide both predictability and flexibility to smaller companies, while at the same time assuring that investors have access to the appropriate level of disclosure. We do not wish to have the rules under which a smaller company is reporting change too frequently. It also is our intention to provide smaller reporting companies with the ability to take advantage of scaled regulation in the appropriate circumstances.

### **Request for Comments**

- Should the transition rules to and from smaller reporting company status be more similar to the current transition rules for small business issuer status?
- Should we provide a two-year test period, rather than a single determination date, for transitioning from smaller reporting company status, as is the case for transitioning from small business issuer status today?
- Should the Commission consider a threshold other than \$50 million in public float to transition into smaller reporting company status? Should we set the public float level for transitioning into smaller reporting company status at \$40 million, \$60 million, \$75 million, or some other level?

- Is there a better way for smaller reporting companies to transition to or from that status?  
Please be as specific as possible and provide details with your comments.

**f. Eliminating Transitional Small Business Issuer Format**

As part of the adoption of Regulation S-B, and later additional small business initiatives, the Commission developed a transitional registration statement, Form SB-1, and annual report, Form 10-KSB, allowing disclosure based on Model A or B found in Regulation A.<sup>86</sup> The Commission allowed the question-and-answer format for small business issuers to make an easy transition from a non-reporting company to a reporting company under the Securities Act or Exchange Act. A small business issuer may use this transitional disclosure format until it:

- registers more than \$10 million under the Securities Act in any continuous 12-month period, other than on a Form S-8;
- elects to graduate to a non-transitional disclosure system; or
- is no longer a small business issuer.

The number of companies that registered on Form SB-1 and followed the transitional disclosure format within Form 10-KSB has declined over time. During the past five years, the Commission has received only 56 Form SB-1 registration statements.<sup>87</sup> The number of companies that file their Form 10-KSB using the transitional disclosure format is also small. For the calendar years 2000 to 2005, two small business issuers out of 56 filed a Form 10-KSB using the transitional disclosure format.

Because the transitional disclosure format is not commonly understood and infrequently used, we propose to eliminate this disclosure option. Accordingly, smaller reporting companies

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<sup>86</sup> The transitional registration statement and annual report on Form 10-KSB allow some small business issuers to provide alternative disclosure. The Commission also allowed some small business issuers to provide Regulation A model disclosure on Form SB-1 to raise up to \$10 million of securities in a continuous 12-month period. See Release No. 33-6949; see also Release No. 33-6996 (Apr. 28, 1993) [58 FR 26509].

<sup>87</sup> We calculated the number of Forms SB-1 filed by adding those received from 2002 through 2006.

no longer would have the option to use Form SB-1 and the transitional format version of Form 10-KSB. Instead, they would use Form S-1 and 10-K. Our proposal would remove all references to transitional filer status, including removing paragraph 4 of General Instruction D in Form S-4, the Note to Small Business Issuers in Rules 14a-3 and 14c-3, and General Instructions G in Schedule 14A. We are not proposing to alter the disclosure format permitted in Regulation A offerings on Form 1-A.

### **Request for Comments**

- Should the Commission maintain the transitional disclosure format option? If so, please indicate the reasons why the option should be maintained.

#### **g. Other Proposals**

We also are soliciting suggestions for additional ways in which we could better scale our disclosure and reporting requirements to the needs of smaller companies and their investors. All suggestions that ease the burdens of smaller companies without compromising investor protection are welcome.

We also propose several minor and technical amendments to our rules and forms to conform them to the regulatory changes we propose today. Most of these amendments are deletions of references to Regulation S-B or a small business issuer rule and substitutions of references to Regulation S-K. In a few instances, we propose to amend rules to reflect the Commission's current address of 100 F Street, NE, Washington, DC 20549.

### **Request for Comments**

- Are there additional ways in which we could better scale our disclosure and reporting requirements to the needs of smaller reporting companies and their investors, while continuing to take investor protection into account? Please be as specific as possible and provide detailed support for your suggestions.

### **III. General Request for Comments**

We request and encourage any interested person to submit comments on any aspect of our proposals and any of the matters that might have an impact on the proposed amendments. We request comment from investors and companies that may be affected by the proposals. We also request comment from service professionals, such as law and accounting firms, and facilitators of capital formation, such as underwriters and placement agents, and other regulatory bodies, such as state securities regulators. We are especially interested in comments from service professionals that regularly work with smaller reporting companies. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiatives if accompanied by supporting data and analysis of the issues addressed and by alternatives to our proposals where appropriate.

### **IV. Paperwork Reduction Act**

#### **A. Background**

The proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>88</sup> We are submitting a request for approval of the proposed amendments to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act and its implementing regulations.<sup>89</sup> The titles of the collections of information are:<sup>90</sup>

- (1) “Regulation S-B” (OMB Control No. 3235-0417);
- (2) “Regulation S-K” (OMB Control No. 3235-0071);
- (3) “Regulation C” (OMB Control No. 3235-0074);

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<sup>88</sup> 44 USC 3501 et seq.

<sup>89</sup> 44 USC 3507(d); 5 CFR 1320.11.

<sup>90</sup> The paperwork burden from Regulation S-K and S-B is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork

- (4) “Form SB-1” (OMB Control No. 3235-0423);
- (5) “Form SB-2” (OMB Control No. 3235-0418);
- (6) “Form S-1” (OMB Control No. 3235-0065);
- (7) “Form S-3” (OMB Control No. 3235-0073);
- (8) “Form S-4” (OMB Control No. 3235-0324);
- (9) “Form S-8” (OMB Control No. 3235-0066);
- (10) “Form S-11” (OMB Control No. 3235-0067);
- (11) “Form 1-A” (OMB Control No. 3235-0286);
- (12) “Form 10” (OMB Control No. 3235-0064);
- (13) “Form 10-SB” (OMB Control No. 3235-0419);
- (14) “Form 10-K” (OMB Control No. 3235-0063);
- (15) “Form 10-KSB” (OMB Control No. 3235-0420);
- (16) “Form 8-K” (OMB Control No. 3235-0060);
- (17) “Form 8-A” (OMB Control No. 3235-0056);
- (18) “Form 10-Q” (OMB Control No. 3235-0070);
- (19) “Form 10-QSB” (OMB Control No. 3235-0416);
- (20) “Form 11-K” (OMB Control No. 3235-0082); and
- (21) “Form SE” (OMB Control No. 3235-0327).

We adopted all of the existing regulations and forms pursuant to the Securities Act, the Exchange Act, and the Trust Indenture Act. These regulations and forms set forth the disclosure requirements for annual, periodic, and current reports and registration statements that are prepared by issuers to provide investors information to make informed investment decisions in registered offerings of securities and in secondary market transactions.

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Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-

Our proposed amendments to existing forms and regulations and the proposed elimination of Regulation S-B, Form SB-1, Form SB-2, Form 10-SB, Form 10-KSB, and Form 10-QSB are intended to:

- make proportional and scaled disclosure options available to a larger number of smaller companies;
- promote regulatory simplification; and
- integrate current Regulation S-B disclosure requirements for smaller companies into disclosure requirements of Regulation S-K.

These proposed amendments are intended to result in regulatory simplification for a greater number of entities that would be eligible for scaled disclosure item requirements. These proposals should not increase the disclosure requirements for any registrant, but will require some registrants to file different forms than they currently use. These proposals do not affect any disclosure requirements for any company with a public float over \$75 million.

The hours and costs associated with preparing disclosure, filing information required by forms, and retaining records constitute reporting and cost burdens imposed by collection of information requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid control number.

The information collections related to annual, periodic, and current reports and registration statements would be mandatory for larger reporting companies; some of the requirements, however, would be voluntary for smaller reporting companies.

## **B. Summary of Information Collections**

Our proposals would amend the forms listed above as collections of information but focus primarily on the forms discussed below.

The proposals would increase existing collection of information total burden estimates for reports on Form 10-K and Form 10-Q as well as registration statements on Form 10, Form S-1, and Form S-11 for the following reasons:

- the elimination of Form 10-KSB would cause an increase in the number of companies that are required to file an annual report on Form 10-K;<sup>91</sup>
- the elimination of Form 10-QSB would cause an increase in the number of companies that are required to file quarterly reports on Form 10-Q;<sup>92</sup>
- the elimination of Form SB-1 would cause an increase in the number of registration statements filed on Form S-1;<sup>93</sup>
- the elimination of Form SB-2 would cause an increase in the number of registration statements filed on Form S-1;<sup>94</sup> and
- the elimination of Form SB-2 would cause real estate companies that had previously used that form to use Form S-11 instead, thereby increasing the number of registration statements filed on Form S-11.<sup>95</sup>

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<sup>91</sup> We estimate that approximately 3,504 small business issuers would file their annual reports on Form 10-K, rather than Form 10-KSB.

<sup>92</sup> We estimate that approximately 11,299 reports on Form 10-QSB that were filed in the last fiscal year would be filed on Form 10-Q.

<sup>93</sup> We estimate that approximately 24 registration statements in the last fiscal year were filed on Form SB-1 and would be required to be filed on Form S-1.

<sup>94</sup> We estimate that approximately 1,028 registration statements were filed on Form SB-2 in the last fiscal year and that the number of Form S-1 registration statements would increase by the same number.

<sup>95</sup> We estimate that approximately 15 registration statements were filed on Form SB-2 in the last fiscal year covering real estate transactions that would be required to be registered on Form S-11 if these proposals were adopted.

At the same time, the proposals would decrease existing collection of information total burden estimates for annual reports on Form 10-KSB, quarterly reports on Form 10-QSB, and registration statements on Form 10-SB, Form SB-1, and Form SB-2 by:

- eliminating Form SB-1, Form SB-2, Form 10-SB, Form 10-KSB, and Form 10-QSB and integrating the disclosure requirements of Regulation S-B into Regulation S-K, thereby simplifying the disclosure requirements by combining them into one regulation.

In addition, the proposals may decrease existing collection of information total burden estimates, or not affect them at all, for some reports filed on Form 10-K and Form 10-Q and some registration statements on Form 10, Form S-1, and Form S-11, depending on the company's particular circumstances, by:

- replacing the definition of small business issuer with a broader category of smaller reporting companies comprised of most non-accelerated filers with a public float between \$25 million and \$75 million, and providing these smaller reporting companies with the option of scaled disclosure;
- allowing smaller reporting companies to provide a three-year discussion of their business development (Item 101), rather than five years as required of larger companies;
- allowing smaller reporting companies to provide more streamlined disclosure for management's discussion and analysis of financial condition and results of operations (Item 303) by requiring two years of analysis if the company is presenting only two years of financial statements rather than three years as required of larger companies. Further, smaller reporting companies would not

have to provide tabular disclosure of contractual obligations as required for larger companies under Item 303(a)(5);

- allowing smaller reporting companies to provide an audited balance sheet for the most recent fiscal year and audited statements of income, cash flows, and changes in stockholders' equity for each of the latest two fiscal years rather than an audited balance sheet for the latest two fiscal years and audited statements of income, cash flows and changes in stockholders' equity for each of the latest three fiscal years as required by Regulation S-X for larger companies;
- allowing smaller reporting companies to provide information about the chief executive officer and two other highly compensated executive officers (Item 402), rather than information about the chief executive officer, chief financial officer, and three other highly compensated executive officers as required for larger companies and to provide only a summary compensation table, an outstanding equity awards table, and a director compensation table, rather than the seven tables required for larger companies. Furthermore, a smaller reporting company would not be required to provide a Compensation Discussion and Analysis, as required of larger companies; and
- allowing smaller reporting companies to disclose related person transactions that exceed the lower of 1% of their total assets or \$120,000 in amount. In this instance, a smaller reporting company for which 1% of its assets is less than \$120,000 may have a more rigorous disclosure burden than a larger registrant if it chose to provide the scaled disclosure available to smaller reporting companies. Smaller reporting companies also would provide the related person disclosure for two years rather than the three years required for larger companies. A smaller

reporting company would not be required to disclose its policies and procedures for approving related person transactions.

### **C. Paperwork Reduction Act Burden Estimates**

For purposes of the Paperwork Reduction Act, we believe that if these proposals were adopted, the burden changes would be insignificant for companies that currently meet the small business issuer definition.

We estimate that the total increase in burden hours for Form 10-K, Form 10-Q, Form 10, Form S-1, and Form S-11 would be 6,151,112 and that the total increase in cost would be \$933,954,800. These increases are offset by the total decrease in burden hours for Form 10-KSB, Form 10-QSB, Form 10-SB, Form SB-1, and Form SB-2 of 6,149,012 burden hours and a total decrease in cost of \$927,927,800. The net difference between the increase and decrease is an increase of 2,100 burden hours and a cost of \$6,027,000. The reason for the net difference is that small real estate companies, which are currently eligible to use Form SB-2, would be required to use Form S-11 if these proposals are adopted. Form S-11 is a form tailored to the real estate industry that requires more internal burden hours and increased professional costs. The net increase of 2,100 burden hours and costs of \$6,027,000 is outweighed by the possible decrease of 356,390 burden hours and costs of \$47,479,000, as discussed in detail below.

Our methodologies for deriving the burden hour and cost estimates presented below represent the average burdens for all issuers, both large and small. For Exchange Act annual reports and quarterly reports on Form 10-K and 10-Q, we estimate that 75% of the burden of

preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the issuer at an average cost of \$400 per hour.<sup>96</sup>

For purposes of the Paperwork Reduction Act, we estimate that over a three-year period<sup>97</sup> the annual increased incremental disclosure burden imposed by the proposed revisions would average 4,457,088 hours per Form 10-K, 7,387 hours per Form 10, 1,155,209 hours per Form 10-Q, 138,765 hours per Form S-1, and 7,413.75 hours per Form S-11. The plain English requirements would apply to these disclosure statements and is factored into the incremental burden of preparing these forms.

These estimates were based on the following assumptions:

#### **Form 10-K**

- The elimination of Form 10-KSB would cause the number of Form 10-Ks filed to increase. We estimate there were approximately 3,504 Form 10-KSBs filed in the last fiscal year so there would be a corresponding increase of 3,504 Form 10-Ks filed.
- We estimate that an increase of 3,504 Form 10-Ks filed would result in an increase in the compliance burden by an estimated 4,457,088 hours (3,504 companies x 1,272 internal hours per company) and an annual cost increase of \$594,278,400 (\$169,600 cost per response x 3,504 annual responses) with respect to the current Form 10-K.<sup>98</sup>

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<sup>96</sup> In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of \$400 as the average cost of outside professionals that assist issuers in preparing disclosure and conducting registered offerings.

<sup>97</sup> We calculated an annual average over a three-year period because OMB approval of Paperwork Reduction Act submissions cover a three year period.

<sup>98</sup> Our current PRA inventory for completing a Form 10-KSB is 1,272 burden hours and a cost of \$169,600 (424 professional hours x \$400/hour) per report.

### **Form 10-Q**

- The elimination of Form 10-QSB would cause the number of Form 10-Qs to increase. We estimate that there were approximately 11,299 Form 10-QSBs filed last fiscal year so there would be a corresponding increase of 11,299 more Form 10-Qs filed.
- We estimate that an increase of 11,299 to the number of Form 10-Qs filed would result in an increase in the compliance burden by 1,155,209 hours (11,299 responses by companies x 102.24 internal hours per response) and an annual cost increase of \$154,027,968 (34.08 professional hours x \$400 per hour = \$13,632 cost per response x 11,299 responses annually) with respect to the current Form 10-Q.

### **Form 10**

- The elimination of Form 10-SB would cause the number of Form 10s to increase. We estimate that approximately 166 Form 10-SBs were filed in the last fiscal year so there would be a corresponding increase of 166 Form 10s.
- We estimate that an increase of 166 to the number of Form 10s filed would result in an increase in the compliance burden by 7,387 hours (166 responses by companies x 44.5 internal hours per response) and an annual cost increase of \$8,864,000 (133.5 professional hours x \$400 per hour = \$53,400 cost per response x 166 responses annually) with respect to the current Form 10.

### **Form S-1**

- The elimination of Form SB-1 would cause the number of Form S-1s to increase. We estimate there were approximately 17 Form SB-1s filed in the last fiscal year so there would be a corresponding increase of 17 Form S-1s filed.
- We estimate that 17 more Form S-1s would increase the compliance burden by 3,009 hours (17 company responses x 177 internal hours per response) and increase the

annual cost by \$3,610,800 (531 professional hours x \$400 per hour = \$212,400 cost per response x 17 responses annually).

- The elimination of Form SB-2 would cause the number of Form S-1s to increase. We estimate that there were approximately 870 Form SB-2s filed in the last fiscal year so there would be a corresponding increase of 870 more Form S-1s filed.
- We estimate that 870 more Form S-1s would result in an increase in the compliance burden by 138,765 hours (870 company responses x 159.5 internal hours per response) and an annual cost of \$166,518,000 (478.5 professional hours x \$400 per hour = \$191,400 cost per response x 870 responses annually) increase to the current Form S-1.

#### **Form S-11**

- The elimination of Form SB-2 would also cause the number of Form S-11s to increase. We estimate there were approximately 15 Form SB-2s filed by real estate companies in the last fiscal year so that there would be a corresponding increase of 15 Form S-11s filed.
- We estimate that 15 more Form S-11s would result in an increase in the compliance burden by 7,414 hours (15 company responses x 494.25 internal hours per response) and an annual cost of \$8,898,000 (1,483 professional hours x \$400 per hour = \$593,200 cost per response x 15 responses annually) increase in the current Form S-11.

The annual decrease in incremental disclosure burden resulting from the proposed revisions would average 4,457,000 hours per Form 10-KSB, 7,387 hours per Form 10-SB, 1,540,458 hours per Form 10-QSB, 3,009 hours per Form SB-1, and 141,158 hours per Form SB-2. The annual decrease in incremental cost burden resulting from the proposed revisions would average

\$594,278,000 per Form 10-KSB, \$8,864,000 per Form 10-SB, \$151,786,000 per Form 10-QSB, \$3,610,800 per Form SB-1, and \$169,389,000 per Form SB-2. The plain English requirements would apply to these disclosure statements and is factored into the incremental burden of preparing these forms.

These estimates were based on the following assumptions:

#### **Form 10-KSB**

- We estimate that the elimination of 3,504 Form 10-KSBs filed would result in a decrease in the compliance burden by 4,457,088 hours (3,504 responses by companies x 1,272 internal hours per response) and an annual cost decrease of \$594,278,400 (424 professional hours x \$400 per hour = \$169,600 cost per response x 3,504 responses annually).

#### **Form 10-QSB**

- We estimate that the elimination of 11,299 Form 10-QSBs filed would result in a decrease in the compliance burden by 1,155,209 hours (11,299 responses by companies x 102.24 internal hours per response) and an annual cost decrease of \$154,027,968 (34.08 professional hours x \$400 per hour = \$13,632 cost per response x 11,299 filings annually).

#### **Form 10-SB**

- We estimate that the elimination of 166 Form 10-SBs filed would result in a decrease in the compliance burden by 7,387 hours (166 responses by companies x 44.5 internal hours per response) and an annual cost decrease of \$8,864,000 (133.5 professional hours x \$400 per hour = \$53,400 cost per response x 166 responses annually).

## Form SB-1

- We estimate that the elimination of 17 Form SB-1s would result in a decrease in the compliance burden by 3,009 hours (17 company responses x 177 internal hours per response) and an annual cost decrease of \$3,610,800 (531 professional hours x \$400 per hour = \$212,400 cost per response x 17 responses annually).

## Form SB-2

- We estimate the elimination of 885 Form SB-2s would result in a decrease in the compliance burden by 141,157.5 hours (885 company responses x 159.5 internal hours) and an annual cost decrease of \$169,389,000 (478.5 professional hours x \$400 per hour = \$191,400 cost per response x 885 responses annually).

Additionally, we estimate that approximately 1,581 companies would become newly eligible to use scaled disclosure for smaller reporting companies or have a new opportunity to assess whether they should avail themselves of scaled regulation under the restructured regime and could experience significant burden and cost savings if these proposals are adopted.<sup>99</sup> We estimate that if these smaller reporting companies use all of the scaled smaller reporting company requirements, they would save 713,031 burden hours and an aggregate cost of \$95,018,100.<sup>100</sup> We do not expect all of the 1,581 companies, however, to use all of the scaled disclosure available to smaller reporting companies.

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<sup>99</sup> We estimate that 1,227 companies would be newly eligible to use the scaled disclosure available to smaller reporting companies in addition to another 354 companies that currently are eligible for scaled disclosure but do not use it, resulting in a total of 1,581 companies. Approximately 1,227 companies have a public float between \$25 and \$75 million, in addition to approximately 354 companies with a public float below \$25 million that currently use the “SK” forms rather than the “SB” forms.

<sup>100</sup> A smaller reporting company generally may choose to comply with one, some, all, or none of the scaled disclosure requirements available for smaller reporting companies under our proposals. If a smaller reporting company used all scaled disclosure available, it would decrease the compliance burden by up to 713,031 hours (1,581 responses by companies using regular Regulation S-K disclosure x 1,723 internal hours per company = 2,724,063 hours minus 1,581 responses by companies using scaled disclosure x 1,272 internal hours per company = 2,011,032 hours for smaller reporting companies) and decrease the annual cost by up to \$95,018,100 (574.25 professional hours x \$400 per hour = \$229,700 cost per response using the regular Regulation S-K disclosure x 1,581 annual responses minus 424 professional hours x \$400 per hour = \$169,600 cost per response x 1,581 annual responses).

While we are unsure how many of the 1,581 smaller reporting companies would use the scaled disclosure requirements, for purposes of this analysis, we estimate that approximately 50% of these companies would use the proposed scaled disclosure available to smaller reporting companies. As a result, we estimate that these 790 smaller reporting companies could save 356,390 internal burden hours and costs of \$47,479,000 as indicated in the table below showing our estimates if 50% of the companies used the scaled disclosure in preparing their Form 10-K.<sup>101</sup>

### Totals

The tables below illustrate the incremental annual compliance burden in the collection of information in hours and cost for Exchange Act periodic reports, Exchange Act registration statements, and Securities Act registration statements.

### Calculation of Paperwork Reduction Act Burden Estimates for Exchange Act Reports, Exchange Act Registration Statements, and Securities Act Registration Statements

**Table 1-Decreases**

Form	Annual Responses	Burden Hours	Annual Costs
10-KSB	3,504	4,457,000	\$594,278,000
10-QSB	11,299	1,540,458	\$151,786,000
10-SB	166	7,387	\$8,864,000
SB-1	17	3,009	\$3,610,800
SB-2	885	141,158	\$169,389,000
<b>Total</b>		<b>6,149,012</b>	<b>\$927,927,800</b>

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<sup>101</sup> This estimate of a decrease in the compliance burden by 356,290 hours is based upon 790 responses by companies using regular Regulation S-K disclosure x 1,723 internal hours per company = 1,361,170 hours minus 790 responses by companies x 1,272 internal hours per company = 1,004,880 hours for smaller reporting companies and a decrease in the annual cost by \$47,479,000 (574.25 professional hours x \$400 per hour = \$229,700 cost per response using regular Regulation S-K disclosure x 790 responses minus 424 professional hours X \$400 per hour = \$169,600 cost per response using the scaled disclosure x 790 annual responses).

**Table 2-Increases**

Form	Current Annual Responses	Increased Annual Responses	Proposed Annual Responses	Current Burden Hours	Increase in Burden Hours	Proposed Burden Hours	Current Professional Costs	Increase in Professional Costs	Proposed Professional Costs
10-K	8,602	3,504	12,106	14,819,096	4,457,088	19,276,184	\$1,975,879,000	\$594,278,000	2,570,157,000
10-Q	20,264	11,299	31,563	2,918,263	1,540,458	4,458,721	\$291,826,000	\$151,786,000	\$443,612,000
10	72	166	238	4,338	7,387	11,725	\$5,206,000	\$8,864,000	\$14,070,000
S-1	528	887	1,415	155,232	138,765	293,997	\$186,278,000	\$170,128,800	\$356,406,800
S-11	60	15	75	29,655	7,414	37,069	\$35,586,000	\$8,898,000	\$44,484,000
<b>Total</b>					6,151,112			\$933,954,800	

**Table 1- Decreases for Newly Eligible Companies**

Companies between \$25 Million and \$75 Million	Current Burden Hours under Standard Regulation S-K	Proposed Burden Hours using Scaled Disclosure	Decrease in Burden Hours using Scaled Disclosure	Current Professional Costs under Standard Regulation S-K	Proposed Professional Costs using Scaled Disclosure	Decrease in Professional Costs using Scaled Disclosure
790	1,361,170	1,004,880	356,290	\$181,463,000	\$133,984,000	\$47,479,000

**D. Request for Comment**

We request comment in order to (a) evaluate whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of collections of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology.<sup>102</sup>

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the

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<sup>102</sup> Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-15-07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-15-07, and be submitted to the Securities and Exchange Commission, Records Management, 6432 General Green Way, Alexandria, VA 22312. Because OMB is required to make a decision concerning the collection of information requirements between 30 and 60 days after publication of this release, your comments are best assured of having their full effect if OMB receives them within 30 days of publication.

## **V. Cost-Benefit Analysis**

### **A. Background**

We are proposing to eliminate our “SB” forms and integrate Regulation S-B item requirements into amended Regulation S-K. We propose to amend all relevant rules and forms under the Securities Act, the Exchange Act, and the Trust Indenture Act to replace the existing definition of “small business issuer” with the new definition of a “smaller reporting company.” The “smaller reporting company” would replace the current “small business issuer” eligibility standards to allow a broader range of public companies to provide disclosure based on the scaled disclosure requirements. The proposed new definition for smaller reporting company would include companies with a public float of less than \$75 million and would therefore provide a significant increase from the \$25 million levels for public float and revenue under the current “small business issuer” definition.

## **B. Summary of Proposals**

As noted above, our proposals would eliminate the separate disclosure framework of Regulation S-B by integrating those requirements into Regulation S-K. The proposed new definition for “smaller reporting company” would expand the number of filers that would qualify to provide disclosure under the more scaled item requirements of the current Regulation S-B framework. As proposed, smaller reporting companies and non-accelerated filers would both be subject to Regulation S-K, but smaller reporting companies would have the option to provide disclosure on an item-by-item basis according to the scaled item requirements of amended Regulation S-K.

### New Definition of Smaller Reporting Company in Regulation S-K

Under the proposals, the newly defined term “smaller reporting company” would include previously excluded companies with public float levels of between \$25 and \$75 million. Additionally, companies that do not have a public float as defined, or are unable to calculate it, would be eligible for scaled disclosure if their revenues are below \$50 million annually. A smaller reporting company would have the option to prepare disclosure based on the scaled disclosure item requirements of amended Regulation S-K. The proposed amendments to Regulation S-K would foster regulatory flexibility because eligible filers would be able to choose the level of disclosure to provide on an item-by-item basis. We believe providing disclosure choice is consistent with a principles-based approach, which encourages filers to provide more meaningful and relevant disclosure that is specific to the needs of the company and its investors.

### Description of Business

Under the proposal, companies with public float levels of less than \$75 million would be able to elect to provide disclosure regarding the development of their business for three years

rather than the current requirement applicable to companies between \$25 million and \$75 million in public float to disclose the general development of the business for the past five years.

#### Financial Information

As part of our proposals to reduce costs associated with regulatory compliance, we are proposing to simplify financial statement disclosure requirements for smaller reporting companies.

As proposed, the current financial statement requirements in Item 310 of Regulation S-B would be available to smaller reporting companies. As proposed, Item 310 of Regulation S-K would permit smaller reporting companies to provide an audited balance sheet for the last fiscal year and audited statements of income, cash flows, and changes in stockholders' equity for each of the latest two fiscal years. In addition, the expanded category of smaller reporting companies (companies with public float levels between \$25 and \$75 million) would no longer be required to provide an audited balance sheet for the latest two fiscal years and audited statements of income, cash flows, and changes in stockholders' equity for each of the latest three fiscal years as required by Regulation S-X. Other simplified aspects under proposed Item 310 of Regulation S-K would include:

- the historical and pro forma financial statements for significant acquired businesses;
- the maximum age of financial statements; and
- limited partnerships financial statement disclosure of general partners.

#### Executive Compensation

As proposed to be amended, Item 402 of Regulation S-K would require smaller reporting companies to provide:

- disclosure about the chief executive officer and two other highly compensated executive officers only, rather than the information for the Chief Executive Officer,

- Chief Financial Officer and three other executive officers required of larger registrants; and
- only three of the seven tables (Summary Compensation, Outstanding Equity Awards, and Director Compensation) required of larger reporting companies.

Transactions with related persons, promoters, and certain control persons

Under the proposals, smaller reporting companies would be able to use the scaled disclosure requirements for transactions with related persons currently in Item 404 of Regulation S-B. Unlike Item 404 of Regulation S-K, Item 404 of Regulation S-B does not require disclosure regarding the company's policies and procedures for approving related person transactions. Smaller reporting companies would be required, however, to report transactions occurring within the last two years, whereas Item 404 of Regulation S-K requires disclosure for the last fiscal year, unless the information is included in a Securities Act or Exchange Act registration statement, where information as to the last three fiscal years is required.

**C. Benefits**

As discussed above, our proposals would promote regulatory simplification by eliminating all "SB" forms and consolidating the Regulation S-B disclosure item requirements into Regulation S-K. The integrated Regulation S-K regime would enable a larger category of public companies to have more flexibility in tailoring disclosure standards to fit the realities of their company. The proposed increased public float standards in the definition of smaller reporting company would provide more companies the flexibility to choose between scaled item requirements such as financial statement information and executive compensation disclosure.

Eliminating the "SB" forms would mitigate the perceived notion that smaller companies are currently reporting under a completely different disclosure framework. Integrating smaller reporting companies into the Regulation S-K framework and importing Regulation S-B

disclosure standards into Regulation S-K would provide regulatory flexibility and reduce compliance costs for companies. We believe that these proposals will benefit the capital markets by encouraging private companies to consider offerings that are registered under the Securities Act or to enter the Exchange Act reporting system.

As proposed, an integrated disclosure system for all companies filing forms using Regulation S-K would promote efficiency because practitioners and investors would refer to one disclosure framework. Filers and their practitioners would have one consolidated regulation to find all relevant disclosure item requirements, which would reduce complexity and improve regulatory efficiencies.

The disclosure requirements will not change for current small business issuers that have filed under Regulation S-B. We nonetheless believe that the benefits of increased flexibility and efficiency and mitigating the perceived notion that small business issuers are reporting under a different framework are important to small business issuers.

As discussed earlier in this release, we estimate that approximately 1,581 companies would have a new opportunity to use the restructured scaled disclosure requirements for smaller reporting companies and could experience significant burden and cost savings if these proposals are adopted.<sup>103</sup> If all 1,581 smaller reporting companies provided scaled disclosure, they could save 713,031 burden hours and costs of \$95,018,100, using the assumptions from our Paperwork Reduction Analysis.<sup>104</sup> However, we do not expect all of the 1,581 companies to use all of the scaled disclosure available to smaller reporting companies.

For purposes of the Paperwork Reduction Analysis, we assumed that approximately 50% of the 1,581 companies (or 790 companies) would use the scaled disclosure requirements. We

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<sup>103</sup> See footnote 100 above.

<sup>104</sup> Id.

estimate that these 790 smaller reporting companies could save 356,390 internal burden hours and costs in the amount of \$47,479,000 by using the scaled disclosure requirements.<sup>105</sup>

We believe investors would benefit from the proposed scaled and proportional disclosure amendments to Regulation S-K because the proposals would allow issuers to make disclosure based on the size, business operations, and financial condition of the smaller reporting company. Allowing smaller reporting companies to choose scaled disclosure on an item-by-item basis allows companies to tailor their disclosure to meet their own needs.

Finally, another benefit to smaller reporting companies is that by using Registration Statement Form S-1 a company may be permitted to incorporate by reference its previously filed periodic reports. We believe that this would result in some minor cost savings and efficiencies in preparing registration statements for smaller reporting companies.

#### **D. Costs**

In our view, the proposed elimination of the “SB” forms and the proposed consolidation of the Regulation S-B disclosure standards into Regulation S-K would not increase significantly the costs of complying with the Commission’s rules. For current “SB” filers, we estimate the net difference of reporting under Regulation S-K would be an increase of 2,100 burden hours and a cost of \$6,027,000.<sup>106</sup> The reason for the net difference is that small real estate companies, which are currently eligible to use Form SB-2, would be required to use Form S-11 if these proposals are adopted. Form S-11 is a form tailored to the real estate industry and requires more internal burden hours and increased professional costs.

As proposed, we are not creating new rules or item requirements that would increase burdens or impose new requirements other than requiring foreign private issuers that elect to file

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<sup>105</sup> See footnote 101 above.

<sup>106</sup> See Section C. Paperwork Reduction Act Burden Estimates.

reports as smaller reporting companies to provide financial statements according to U.S. GAAP. We believe that combining disclosure standards into one centralized source in amended Regulation S-K would streamline and simplify the disclosure burdens associated with the registration process for many filers. Under the proposed amendments, our intention is to provide regulatory relief to a broader category of filers consistent with investor protection. We anticipate that companies would be able to reduce costs associated with the preparation of disclosure.

We recognize that some of the 1,581 companies may choose to avail themselves of the scaled disclosure requirements when they have complied with standard Regulation S-K previously. These companies may be providing less information to the marketplace. But more information is not necessarily better if the cost to provide the information is greater than the benefit. These companies would be providing scaled disclosure to fit the characteristics of their company while balancing the burdens of providing information with their benefits.

### **Request for Comments**

We solicit comments, especially quantitative data, to assist in our assessment of the benefits and costs of scaled disclosure resulting from:

- expanding the category of filers that may be eligible for “smaller reporting company” status by increasing the public float threshold to a level of less than \$75 million in public float;
- eliminating all forms associated with Regulation S-B;
- allowing smaller reporting companies to provide disclosure based on the scaled item requirements of amended Regulation S-K, which would include Items 101, 303, 310, 402, 404, and any others that would be amended based on the current scaled standards set forth in Regulation S-B;

- indexing the public float threshold for “smaller reporting company” eligibility to provide for periodic adjustments based on inflation; and
- making the scaled disclosure requirements in current Regulation S-B Items 101, 303, 310, 402, and 404 available to more companies eligible for “smaller reporting company” status.”

Additionally, we request comments on the following:

- Do members of the public have comments, especially quantitative data, to assist our assessment of the benefits and costs of scaled disclosure resulting from our proposed amendments?
- Are there costs or benefits to our proposals that we have not identified?
- Some companies with a public float between \$25 million and \$75 million may choose to use the scaled disclosure to provide less information to investors than they have in the past. Would this loss of information have a negative or positive effect on investors? Would it affect the cost of capital?
- It may be more difficult under the current proposal for a smaller reporting company that filed as a Regulation S-K filer in the past to differentiate itself from other smaller companies. Would the lack of differentiation affect investors and, if so, what impact will it have? Would it affect the cost of capital?
- Would any reporting companies that would newly qualify for scaled disclosure requirements incur increased costs as a result of adoption of our proposed amended and scaled item requirements of Regulation S-K?

## **VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation**

Section 23(a)(2) of the Exchange Act requires us to consider the impact that any new rule would have on competition.<sup>107</sup> Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate to carry out the purposes of the Exchange Act.

Securities Act Section 2(b) and Exchange Act Section 3(f) require us to consider or determine, when engaged in rulemaking, whether an action is necessary or appropriate in the public interest and whether the action will promote efficiency, competition, and capital formation.

The proposed amendments to Regulation S-K are intended to result in regulatory simplification and efficiency by removing the duplicative sections of Regulation S-B and consolidating the scaled item requirements of Regulation S-B, such as financial statement information and executive compensation, into amended Regulation S-K. As proposed, amended Regulation S-K would consolidate into a single framework the disclosure requirements applicable to all filers that are subject to the reporting requirements of Sections 13 and 15 of the Exchange Act and companies filing registration statements under the Securities Act. To comply with disclosure item requirements, practitioners and companies would no longer need to refer to two disclosure frameworks. Practitioners and companies would benefit from the ease of reference that a single disclosure framework would provide.

It is intended that the proposed amendments would promote capital formation for smaller reporting companies and improve their ability to compete with larger companies for capital. For

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<sup>107</sup> 15 USC 78 w(a)(2).

example, we believe capital formation would be improved by providing more flexibility to smaller reporting companies to tailor their disclosure to their investors' needs. In addition, the costs to raise capital could be reduced to the extent compliance costs would be reduced as a result of the proposed scaled disclosure requirements. If smaller reporting companies allocate the capital they raise and save as a result of our proposed scaled disclosure requirements to business development in an effective manner, these companies could be more competitive.

The proposed amendments to Regulation S-K are intended to make the scaled disclosure requirements of the current Regulation S-B regime available to a broader category of filers on an optional basis. More companies would be able to take advantage of more scaled disclosure item requirements such as those contained currently in Item 310 and Item 402 of Regulation S-B. Smaller reporting companies that avail themselves of the scaled disclosure requirements would provide tailored disclosure that may better meet the needs of their investors. The proposed amendments to Regulation S-K are intended to provide more disclosure choice without adding additional requirements.

We request comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their view, if possible.

## **VII. Initial Regulatory Flexibility Act Analysis**

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. The following analysis relates to proposed revisions to the rules and forms under the Securities Act and Exchange Act, which would include a new definition of smaller reporting company under Regulation S-K. The new definition would expand the group of smaller companies that qualify to provide disclosure in accordance with the scaled requirements of the current Regulation S-B disclosure framework.

As proposed, a smaller reporting company would be defined as a company that meets all of the following criteria: is not an investment company, an asset-backed issuer, or the majority-owned subsidiary of a parent that was not a smaller reporting company and that had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter, and in the case of an issuer whose public float was zero because the issuer had no significant equity outstanding or no market price for its equity, had annual revenues of less than \$50 million during its most recently completed fiscal year for which audited financial statements are available on the date of the filing that establishes whether or not the issuer is a smaller reporting company for any fiscal year.

The proposed revisions also would eliminate the separate disclosure regime of Regulation S-B by removing all related “SB” forms and merging the Regulation S-B item requirements into Regulation S-K. The proposed revisions to Regulation S-K include revising item requirements to offer smaller reporting companies optional disclosure alternatives that are designed to provide flexibility, cost efficiencies and regulatory simplification. The revisions would result in greater uniformity of rules and regulations and compliance simplification for filers.

**A. Reasons for and Objectives of the Proposed Action**

**1. The Advisory Committee on Smaller Public Companies Recommended Scaled Federal Securities Regulation for Smaller Companies**

In March 2005, the Commission chartered the Advisory Committee on Smaller Public Companies to assess the current regulatory system for smaller companies under the federal securities laws and to make recommendations for changes to improve regulatory conditions for smaller companies. The Commission directed the Advisory Committee on Smaller Public

Companies to consider the impact that the Sarbanes-Oxley Act of 2002<sup>108</sup> and several other areas, including the disclosure and reporting requirements applicable to smaller companies under the federal securities laws.

In 2005, the Advisory Committee received numerous comments stating that the \$25 million eligibility thresholds in the Regulation S-B definition of small business issuer are too low. The comments also indicated that the \$25 million thresholds for public float and revenue in the current definition for small business issuer should be increased to permit a much larger group of smaller public companies to qualify for the scaled disclosure benefits of Regulation S-B, particularly in light of the increased costs associated with reporting obligations under the Exchange Act since passage of the Sarbanes-Oxley Act.

The Advisory Committee made three recommendations in this area, which included expanding the definition of smaller public company, incorporating Regulation S-B into Regulation S-K, and incorporating Item 310 of Regulation S-B into Regulation S-K to make the scaled financial statement accommodations available to a much larger group of smaller companies.

## **2. Expanding Eligibility for Smaller Company Scaled Regulation Under Amended Regulation S-K**

To make the scaled requirements of the Regulation S-B disclosure framework applicable to many more companies, the Advisory Committee recommended revising the definition of “small business issuer” to include a company with a higher public float threshold than the \$25 million ceiling currently required in the small business issuer definition found in Item 10 of Regulation S-B.

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<sup>108</sup> Pub. L. No. 107-204, 116 Stat. 745 (2002).

Although the Advisory Committee did not recommend that we use a public float threshold, increased to \$75 million, as we propose today, the proposed \$75 million public float threshold is based on the reference to that number in the accelerated filer definition set forth in Rule 12b-2 of the Exchange Act. To maintain uniformity with current regulation, we believe setting a public float threshold based on the current levels established for non-accelerated filers is practical and avoids regulatory complexity.

### **3. Integrating Substantive Requirements of Regulation S-B into Regulation S-K**

The overall goal of the rule proposals is to integrate the most substantive provisions of Regulation S-B into Regulation S-K and make these scaled disclosure requirements available to more companies as smaller reporting companies. We believe that the proposals would:

- further the goals of regulatory simplification by eliminating the current Regulation S-B framework as a separate stand-alone disclosure standard for the smallest reporting companies;
- update the public float threshold and eliminate the revenue threshold restriction in the current “small business issuer” definition to accommodate many more companies that are contemplating an offering registered under the Securities Act or entry into the Exchange Act reporting system;
- streamline and modernize forms under the Securities Act and the Exchange Act by eliminating all of the “SB” forms; and
- provide regulatory flexibility by permitting smaller reporting companies to provide financial statement information in accordance with Item 310 of Regulation S-K instead of Regulation S-X.

## **B. Legal Basis**

We are proposing the amendments pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act, Sections 12, 13, 14(a), 15(d), and 23(a) of the Exchange Act, and Section 319(a) of the Trust Indenture Act, as amended.

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

The proposals would affect small entities, the securities of which are registered under Section 12 of the Exchange Act or that are required to file reports under Section 15(d) of the Exchange Act. The proposals also would affect small entities that file, or have filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn. Securities Act Rule 157<sup>109</sup> and Exchange Act Rule 0-10(a)<sup>110</sup> define an issuer to be a “small entity” for purposes of the Regulatory Flexibility Act if it had total assets of \$5 million or less on the last day of its most recent fiscal year. We believe the proposals would affect some small entities. We estimate that there are approximately 1,100 issuers that may be considered small entities.<sup>111</sup>

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

As proposed, integrating Regulation S-B requirements into Regulation S-K and rescinding all of the “SB” forms would shift the location of disclosure requirements and would require that smaller reporting companies adapt to new formats in preparing their disclosure for Form S-1. The proposed amendments to Regulation S-K would include a new definition for smaller reporting company, which would broaden the category of filers preparing disclosure to comply with the scaled item requirements of amended Regulation S-K. Companies with public

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<sup>109</sup> 17 CFR 230.157.

<sup>110</sup> 17 CFR 240.0-10(a).

<sup>111</sup> The estimated number of reporting small entities is based on 2007 data including the Commission’s internal computerized filing system and Thomson Financial’s Worldscope database. This represents an update from the number of reporting small entities estimated in prior rulemakings.

floats between \$25 and \$75 million would be included in the class of filers that is eligible to provide disclosure based on the scaled requirements of proposed revisions to amended Regulation S-K. Under the proposals, the scope and presentation of information disclosed based on the item requirements of amended Regulation S-K would differ in a number of significant ways from the current Regulation S-K disclosure framework. Under amended Regulation S-K, smaller reporting companies would:

- provide three years rather than five years of business development activities and not be required to provide segment disclosure under amended Item 101 of Regulation S-K;
- not be required to provide disclosure required by Items 301 and 302 relating to selected financial data and supplementary financial information;
- provide more streamlined disclosure for management's discussion and analysis of financial condition and results of operation found in Item 303 by requiring only two years of analysis if the company is presenting only two years of financial statements instead of the three years currently required of larger companies;
- provide an audited balance sheet as of the end of the last fiscal year and audited statements of income, cash flows and changes in stockholders' equity for each of the last two fiscal years in new Item 310 instead of an audited balance sheet as of the end of the last two fiscal years and audited statement of income, cash flows and changes in stockholders' equity for each of the last three fiscal years as required by Regulation S-X;
- under Item 402, limit the named executive officers for whom disclosure will be required to a smaller group, consisting of the principal executive officer and the other

- two highest paid executive officers, require that the Summary Compensation Table disclose the two most recent fiscal years, require a Outstanding Equity Awards at Fiscal Year-End Table, and require the Director Compensation Table;
- under Item 402, smaller reporting companies would not be required to provide a Compensation Discussion and Analysis or a Compensation Committee Report; information regarding two additional executive officers; the third fiscal year of Summary Compensation Table disclosure; or the supplementary Grants of Plan-Based Awards Table, the Option Exercises and Stock Vested Table, the Pension Benefits Table, and the Nonqualified Deferred Compensation Table and the separate Potential Payments Upon Termination or Change-in-Control narrative section; and
  - under Item 404, a smaller reporting company would be required to describe any transaction where the amount involved exceeds the lesser of \$120,000 or 1% of the average of the smaller reporting company's total assets at the year-end for the last two completed fiscal years, and in which any related person had or will have a direct or indirect material interest. A smaller reporting company need not provide disclosure relating to policies and procedures for reviewing related person transactions.

The proposed amendments to Regulation S-K would not increase the disclosure requirements for former small business issuers and could substantially decrease the disclosure required for issuers with public float levels between \$25 million and \$75 million.

Proposed amended Item 404 of Regulation S-K is the only example where it is possible that the disclosure required for smaller reporting companies could be more extensive than for standard Regulation S-K filers. Item 404 would contain a provision that would require disclosure of transactions with related persons that exceed the lesser of \$120,000 or 1% of the average of the smaller reporting company's total assets at the fiscal year end for the last two

completed fiscal years. This requirement may be more burdensome to a smaller reporting company if 1% of total assets are less than \$120,000. We believe transactions involving related persons are important to disclose, especially for smaller reporting companies, which may generally have lower materiality thresholds. While larger companies are bound by the higher \$120,000 threshold, we believe this difference is important for the protection of investors. This disclosure issue would only affect smaller reporting companies that have related person transactions.

**E. Overlapping or Conflicting Federal Rules**

We do not believe any current federal rules duplicate, overlap or conflict with the proposed amendments.

**F. Significant Alternatives**

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

- (a) establishing different compliance or reporting requirements which take into account the resources available to smaller entities;
- (b) the clarification, consolidation or simplification of disclosure for small entities;
- (c) use of performance standards rather than design standards; and
- (d) exempting smaller entities from coverage of the disclosure requirements or any part thereof.

As proposed, our amendments are intended to maintain current disclosure standards for small entities while further expanding the scope of eligibility for companies that would elect to comply with the scaled disclosure item requirements currently set forth in Regulation S-B. Our proposals do not exempt smaller entities from coverage of the disclosure requirements; but

rather, they would provide a greater number of smaller reporting companies the choice to provide scaled disclosure as set forth in the proposed smaller reporting company amendments to Regulation S-K.

As amended, a new definition for smaller reporting company would eliminate the current \$25 million revenue threshold and increase the public float threshold requirement up to \$75 million from the \$25 million level currently set forth in the small business issuer definition of Regulation S-B.

We considered alternatives such as including a revenue cap in the new definition of smaller reporting company but currently believe that only requiring less than \$75 million in public float was preferable, given its ease of reference and uniformity with current rules under the Securities Act and the Exchange Act.

As proposed, we would consolidate, clarify and simplify disclosure requirement compliance by integrating Regulation S-B into Regulation S-K. The proposed amendments would include a new definition of smaller reporting company, which would greatly expand the number of small entities that would qualify to provide disclosure based on the scaled disclosure item requirements of the current Regulation S-B framework. We considered maintaining the Regulation S-B framework and making it available to many more companies, but believe a single disclosure framework would be more efficient. The proposed amendments also would eliminate all “SB” forms, which would result in regulatory simplification for smaller entities by requiring that all registrants rely on one set of forms, such as Forms S-1, S-3, 10-K and 10-Q, for example. These forms would include scaled item requirements for smaller reporting companies under proposed amended Regulation S-K.

Finally, we considered the use of performance rather than design standards and concluded that it would be inconsistent with the purposes of the Securities Act and Exchange Act

and investor protection to specify different requirements other than those set forth in the item requirements of Regulation S-B and Regulation S-K.

**Request for Comments:**

- Are there any other significant alternatives we should consider in our final regulatory flexibility analysis?

**G. Solicitation of Comments**

We encourage the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis, especially empirical data on the impact on small businesses. In particular, we request comment on: (1) the number of small entities that would be affected by the proposed amendments of Form 10-K, Form 10-Q, Form 10, Form S-1, and Form S-11 as well as the elimination of Regulation S-B and Form 10-KSB, Form 10-QSB, Form 10-SB, Form SB-1, and Form SB-2; and (2) whether these amendments would increase the reporting, record keeping and other compliance requirements for small businesses. Such written comments will be considered in the preparation of the final regulatory flexibility analysis if the proposed amendments are adopted.

**VIII. Small Business Regulatory Enforcement Fairness Act**

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996<sup>112</sup> a rule is “major” if it has resulted, or is likely to result in:

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

We request comment on whether our proposals would be a “major rule” for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data

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<sup>112</sup> Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

on (a) the potential effect on the U.S. economy on an annual basis; (b) any potential increase in costs or prices for consumers or individual industries; and (c) any potential effect on competition, investment or innovation.

## **IX. Statutory Basis and Text of Proposal**

We are proposing rule amendments pursuant to Sections 6, 7, 10, and 19(a) of the Securities Act, as amended, Sections 12, 13, 14(a), 15(d), and 23(a) of the Exchange Act, as amended, and Section 319(a) of the Trust Indenture Act, as amended.

List of Subjects

### 17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

### 17 CFR Parts 210, 229, 230, 239, 240, 249, 260, and 269

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, under the authority of 15 U.S.C. 19(a) Title 17,

Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

### **PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975**

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w(a), 78ll, 78mm, 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

2. Amend § 210.3-01 by revising paragraphs (b), the introductory text of paragraph (c) and (f) to read as follows:

**§ 210.3–01 Consolidated balance sheets.**

\* \* \* \* \*

(b) If the filing, other than a filing on Form 10–K or Form 10, is made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include an additional balance sheet as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year.

(c) The instruction in paragraph (b) of this section is also applicable to filings, other than on Form 10–K or Form 10, made after 45 days but within the number of days of the end of the registrant's fiscal year specified in paragraph (i) of this section: Provided, That the following conditions are met:

\* \* \* \* \*

(f) Any interim balance sheet provided in accordance with the requirements of this section may be unaudited and need not be presented in greater detail than is required by § 210.10–01. Notwithstanding the requirements of this section, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Commission on Form 10–Q.

\* \* \* \* \*

3. Amend § 210.3–10 by revising paragraphs (h)(3) and (h)(4) to read as follows:

**§ 210.3–10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.**

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(3) Annual report refers to an annual report on Form 10-K or Form 20-F (§ 249.310 or 249.220f of this chapter).

(4) Quarterly report refers to a quarterly report on Form 10-Q (§ 249.308a of this chapter).

\* \* \* \* \*

4. Amend § 210.3-12 by revising paragraphs (a) and (d) to read as follows:

**§ 210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.**

(a) If the financial statements in a filing are as of a date the number of days specified in paragraph (g) of this section or more prior to the date the filing is expected to become effective or proposed mailing date in the case of a proxy statement, the financial statements shall be updated, except as specified in the following paragraphs, with a balance sheet as of an interim date within the number of days specified in paragraph (g) of this section and with statements of income and cash flows for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided and for the corresponding period of the preceding fiscal year. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by § 210.10-01. Notwithstanding the above requirements, the most recent interim financial statements shall be at least as current as the most recent financial statements filed with the Commission on Form 10-Q.

\* \* \* \* \*

(d) The age of the registrant's most recent audited financial statements included in a registration statement filed under the Securities Act of 1933 or filed on Form 10 (17 CFR 249.210) under the Securities Exchange Act of 1934 shall not be more than one year and 45 days old at the date the registration statement becomes effective if the registration statement relates to

the security of an issuer that was not subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

\* \* \* \* \*

5. Amend § 210.3–14 by removing the authority citations following the section and revising paragraph (b) to read as follows:

**§ 210.3–14 Special instructions for real estate operations to be acquired.**

\* \* \* \* \*

(b) Information required by this section is not required to be included in a filing on Form 10–K.

\* \* \* \* \*

6. Amend § 210.4–01 by revising paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) to read as follows:

**§ 210.4–01 Form, order, and terminology.**

(a) \* \* \*

(3)(i) \* \* \*

(A) The first interim or annual reporting period of the registrant's first fiscal year beginning on or after June 15, 2005, provided the registrant does not file as a smaller reporting company; and

(B) The first interim or annual reporting period of the registrant's first fiscal year beginning on or after December 15, 2005, provided the registrant files as a smaller reporting company.

\* \* \* \* \*

7. Amend § 210.10-01 by revising paragraphs (b)(6) and the introductory text of paragraph (c) to read as follows:

**§ 210.10-01 Interim financial statements.**

\* \* \* \* \*

(b) \* \* \*

(6) In addition to meeting the reporting requirements specified by existing standards for accounting changes, the registrant shall state the date of any material accounting change and the reasons for making it. In addition, for filings on Form 10-Q, a letter from the registrant's independent accountant shall be filed as an exhibit (in accordance with the provisions of Item 601 of Regulation S-K, 17 CFR 229.601) in the first Form 10-Q subsequent to the date of an accounting change indicating whether or not the change is to an alternative principle which in the accountant's judgment is preferable under the circumstances; except that no letter from the accountant need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

\* \* \* \* \*

(c) Periods to be covered. The periods for which interim financial statements are to be provided in registration statements are prescribed elsewhere in this Regulation (see §§ 210.3-01 and 3-02). For filings on Form 10-Q, financial statements shall be provided as set forth in this paragraph (c):

\* \* \* \* \*

8. Part 228 is removed and reserved.

**PART 229- STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 - REGULATION S-K**

9. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 et seq.; 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

10. Amend § 229.10 by adding paragraph (f) before the Instructions to Item 10 to read as follows:

**§ 229.10 (Item 10) General.**

\* \* \* \* \*

(f) Smaller reporting companies. The requirements of this part apply to smaller reporting companies. Where an item of this part sets forth requirements for smaller reporting companies that are different from the requirements applicable to other companies, a smaller reporting company may comply with either the requirement applicable to smaller reporting companies or the requirement applicable to other companies:

(1) Definition of smaller reporting company. As used in this part, the term smaller reporting company means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(i) Had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(ii) In the case of an initial registration statement under the Securities Act for shares of its common equity, had a public float of less than \$75 million as of a date within 30 days of the date

of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(iii) In the case of an issuer whose public float as calculated under paragraph (i) or (ii) of this definition was zero because the issuer had no significant public common equity outstanding or no market price for its common equity existed, had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available on the date of the filing that establishes whether or not the issuer is a smaller reporting company for any fiscal year.

(2) Determination: Whether or not an issuer is a smaller reporting company is determined for an entire fiscal year on the basis of the information in a quarterly report on Form 10-Q or an initial registration statement under the Securities Act or the Exchange Act, whichever is the first to be filed that year. Once an issuer fails to qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (f)(1) of this definition was less than \$50 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no significant public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of less than \$40 million during its previous fiscal year. An issuer making this determination becomes a smaller reporting company for the purpose of filings for the next fiscal year.

\* \* \* \* \*

11. Amend § 229.101 by:

a. Revising the introductory text of paragraph (a)(2); and

b. Adding paragraph (h).

The revision and addition read as follows:

**§ 229.101 (Item 101) Description of business.**

\* \* \* \* \*

(a) (1) \* \* \*

(2) Registrants:

(i) Filing a registration statement on Form S-1 (§ 239.11 of this chapter) under the Securities Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act:

(ii) Not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of such registration statement; and

(iii) That (including predecessors) have not received revenue from operations during each of the 3 fiscal years immediately prior to the filing of registration statement, shall provide the following information:

\* \* \* \* \*

(h) Smaller reporting companies. A smaller reporting company, as defined by § 229.10(f)(1), may satisfy its obligations under this item by describing the development of its business during the last three years. If the smaller reporting company has not been in business for three years, give the same information for predecessor(s) of the smaller reporting company if there are any. This business development description should include:

(1) Form and year of organization;

(2) Any bankruptcy, receivership or similar proceeding; and

(3) Any material reclassification, merger, consolidation, or purchase or sale of a significant amount of assets not in the ordinary course of business.

- (4) Business of the smaller reporting company. Briefly describe the business and include, to the extent material to an understanding of the smaller reporting company:
- (i) Principal products or services and their markets;
  - (ii) Distribution methods of the products or services;
  - (iii) Status of any publicly announced new product or service;
  - (iv) Competitive business conditions and the smaller reporting company's competitive position in the industry and methods of competition;
  - (v) Sources and availability of raw materials and the names of principal suppliers;
  - (vi) Dependence on one or a few major customers;
  - (vii) Patents, trademarks, licenses, franchises, concessions, royalty agreements or labor contracts, including duration;
  - (viii) Need for any government approval of principal products or services. If government approval is necessary and the small reporting company has not yet received that approval, discuss the status of the approval within the government approval process;
  - (ix) Effect of existing or probable governmental regulations on the business;
  - (x) Estimate of the amount spent during each of the last two fiscal years on research and development activities, and if applicable, the extent to which the cost of such activities are borne directly by customers;
  - (xi) Costs and effects of compliance with environmental laws (federal, state and local); and
  - (xii) Number of total employees and number of full time employees.
- (5) Reports to security holders. Disclose the following in any registration statement you file under the Securities Act of 1933:

(i) If you are not required to deliver an annual report to security holders, whether you will voluntarily send an annual report and whether the report will include audited financial statements;

(ii) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the Commission; and

(iii) That the public may read and copy any materials you file with the Commission at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the Commission at 1-800-SEC-0330. State that the Commission maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available.

(6) Canadian issuers. Provide the information required by Items 101(f)(2) and 101(g) of Regulation S-K (§229.101(f)(2) and (g)):

\* \* \* \* \*

12. Amend § 229.201 by:

- a. Revising paragraph (a)(2); and
- b. Revising Instruction 6. to Item 201(e).

The revision and addition read as follows:

**§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.**

(a) \* \* \*

(2) If the information called for by this paragraph (a) is being presented in a registration statement on Form S-1 (§ 239.11 of this chapter) under the Securities Act or on Form 10

(§ 249.210 of this chapter) under the Exchange Act relating to a class of common equity for which at the time of filing there is no established United States public trading market, indicate the amount(s) of common equity:

(i) That is subject to outstanding options or warrants to purchase, or securities convertible into, common equity of the registrant;

(ii) That could be sold pursuant to § 230.144 of this chapter or that the registrant has agreed to register under the Securities Act for sale by security holders; or

(iii) That is being, or has been publicly proposed to be, publicly offered by the registrant (unless such common equity is being offered pursuant to an employee benefit plan or dividend reinvestment plan), the offering of which could have a material effect on the market price of the registrant's common equity.

\* \* \* \* \*

Instructions to Item 201(e):

\* \* \* \* \*

(6) Smaller reporting companies. A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by paragraph (e) of this Item.

\* \* \* \* \*

13. Amend § 229.301 by removing the authority citation following the section and adding paragraph (c) before the Instruction to Item 301 to read as follows:

**§ 229.301 (Item 301) Selected financial data.**

\* \* \* \* \*

(c) Smaller reporting companies. A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by this Item.

\* \* \* \* \*

14. Amend § 229.302 by adding paragraph (c) to read as follows:

**§ 229.302 (Item 302) Supplementary financial information.**

\* \* \* \* \*

(c) Smaller reporting companies. A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by this Item.

15. Amend § 229.303 by adding paragraph (d) to read as follows:

**§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.**

\* \* \* \* \*

(d) Smaller reporting companies. A smaller reporting company, as defined by § 229.10(f)(1), may provide the information required in paragraph (a)(3)(iv) for the last two most recent fiscal years of the registrant if it provides financial information on net sales and revenues and on income from continuing operations for only two years. A smaller reporting company is not required to provide the information required by paragraph (a)(5) of this Item.

16. Amend § 229.305 by revising paragraph (e) to read as follows:

**§ 229.305 (Item 305) Quantitative and qualitative disclosures about market risk.**

\* \* \* \* \*

(e) Smaller reporting companies. A smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by this Item.

\* \* \* \* \*

17. Add § 229.310 to read as follows:

**§ 229.310 (Item 310) Financial statements for smaller reporting companies.**

Note 1 to § 229.310: Financial statements of a smaller reporting company, as defined by § 229.10(f)(1), its predecessors or any businesses to which the smaller reporting company is a successor shall be prepared in accordance with generally accepted accounting principles in the United States.

Note 2 to § 229.310: Regulation S-X (17 CFR 210.1-01 through 210.12-29) Form and Content of and Requirements for Financial Statements shall not apply to the preparation of such financial statements, except that the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of Regulation S-X (17 CFR 210.2-01), Item 8.A of Form 20-F (17 CFR 249.220f) and Article 210.3-20 of Regulation S-X (17 CFR 210.3-20) shall apply to financial statements of foreign private issuers, the description of accounting policies shall comply with Article 4-08(n) of Regulation S-X (17 CFR 210.4-08(n)), and smaller reporting companies engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4-10 of Regulation S-X (17 CFR 210.4-10) with respect to such activities. To the extent that Article 11-01 (17 CFR 210.11-01) (Pro Forma Presentation Requirements) offers enhanced guidelines for the preparation, presentation and disclosure of pro forma financial information, smaller reporting companies may wish to consider these items.

Note 3 to § 229.310: Financial statements for a subsidiary of a smaller reporting company that issues securities guaranteed by the smaller reporting company or guarantees securities issued by the smaller reporting company must be presented as required by Rule 3-10

of Regulation S-X (17 CFR 210.3–10), except that the periods presented are those required by paragraph (a) of this Item.

Note 4 to § 229.310: Financial statements for a smaller reporting company's affiliates whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered must be presented as required by Rule 3–16 of Regulation S-X (17 CFR 210.3–16), except that the periods presented are those required by paragraph (a) of this Item.

Note 5 to § 229.310: The Commission, where consistent with the protection of investors, may permit the omission of one or more of the financial statements or the substitution of appropriate statements of comparable character. The Commission by informal written notice may require the filing of other financial statements where necessary or appropriate.

Note 6 to § 229.310: Rule 4–01(a)(3) of Regulation S-X, 17 CFR 210.4–01(a)(3), shall apply to the preparation of financial statements of smaller reporting companies.

(a) Annual financial statements. Smaller reporting companies shall file an audited balance sheet as of the end of the most recent fiscal year, or as of a date within 135 days if the issuers existed for a period less than one fiscal year, and audited statements of income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the date of such audited balance sheet (or such shorter period as the registrant has been in business).

(b) Interim financial statements. Interim financial statements may be unaudited; however, prior to filing, interim financial statements included in quarterly reports on Form 10–Q (17 CFR § 229.310) must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission. If, in any filing, the issuer states that interim financial statements have been reviewed by an independent public

accountant, a report of the accountant on the review must be filed with the interim financial statements. Interim financial statements shall include a balance sheet as of the end of the issuer's most recent fiscal quarter and income statements and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year.

(1) Condensed format. Interim financial statements may be condensed as follows:

(i) Balance sheets should include separate captions for each balance sheet component presented in the annual financial statements which represents 10% or more of total assets. Cash and retained earnings should be presented regardless of relative significance to total assets. Registrants which present a classified balance sheet in their annual financial statements should present totals for current assets and current liabilities.

(ii) Income statements should include net sales or gross revenue, each cost and expense category presented in the annual financial statements which exceeds 20% of sales or gross revenues, provision for income taxes, discontinued operations, extraordinary items and cumulative effects of changes in accounting principles or practices. (Financial institutions should substitute net interest income for sales for purposes of determining items to be disclosed.) Dividends per share should be presented.

(iii) Cash flow statements should include cash flows from operating, investing and financing activities as well as cash at the beginning and end of each period and the increase or decrease in such balance.

(iv) Additional line items may be presented to facilitate the usefulness of the interim financial statements including their comparability with annual financial statements.

(2) Disclosure required and additional instructions as to content. —

(i) Footnotes. Footnote and other disclosures should be provided as needed for fair presentation and to ensure that the financial statements are not misleading.

(ii) Material subsequent events and contingencies. Disclosure must be provided of material subsequent events and material contingencies notwithstanding disclosure in the annual financial statements.

(iii) Significant equity investees. Sales, gross profit, net income (loss) from continuing operations and net income must be disclosed for equity investees which constitute 20% or more of a registrant's consolidated assets, equity or income from continuing operations.

(iv) Significant dispositions and purchase business combinations. If a significant disposition or purchase business combination has occurred during the most recent interim period and the transaction required the filing of a Form 8-K (§249.308 of this chapter), pro forma data must be presented which reflects revenue, income from continuing operations, net income and income per share for the current interim period and the corresponding interim period of the preceding fiscal year as though the transaction occurred at the beginning of the periods.

(v) Material accounting changes. Disclosure must be provided of the date and reasons for any material accounting change. The registrant's independent accountant must provide a letter in the first Form 10-Q (§ 249.308a of this Chapter) filed subsequent to the change indicating whether or not the change is to a preferable method. Disclosure must be provided of any retroactive change to prior period financial statements, including the effect of any such change on income and income per share.

(vi) Development stage companies. A registrant in the development stage must provide cumulative financial information from inception.

Instruction 1 to Item 310(b): Where Item 310 is applicable to a Form 10–Q and the interim period is more than one quarter, income statements must also be provided for the most recent interim quarter and the comparable quarter of the preceding fiscal year.

Instruction 2 to Item 310(b): Interim financial statements must include all adjustments which in the opinion of management are necessary in order to make the financial statements not misleading. An affirmative statement that the financial statements have been so adjusted must be included with the interim financial statements.

(c) Financial statements of businesses acquired or to be acquired. (1) If a business combination accounted for as a “purchase” has occurred or is probable, financial statements of the business acquired or to be acquired shall be furnished for the periods specified in paragraph (c)(3) of this Item.

(i) The term “purchase” encompasses the purchase of an interest in a business accounted for by the equity method.

(ii) Acquisitions of a group of related businesses that are probable or that have occurred subsequent to the latest fiscal year end for which audited financial statements of the issuer have been filed shall be treated as if they are a single business combination for purposes of this Item. The required financial statements of related businesses may be presented on a combined basis for any periods they are under common control or management. A group of businesses are deemed to be related if:

(A) They are under common control or management;

(B) The acquisition of one business is conditional on the acquisition of each other business; or

(C) Each acquisition is conditioned on a single common event.

(iii) Annual financial statements required by this paragraph (c) shall be audited. The form and content of the financial statements shall be in accordance with paragraphs (a) and (b) of this Item.

(2) The periods for which financial statements are to be presented are determined by comparison of the most recent annual financial statements of the business acquired or to be acquired and the smaller reporting company's most recent annual financial statements filed at or prior to the date of acquisition to evaluate each of the following conditions:

(i) Compare the smaller reporting company's investments in and advances to the acquiree to the total consolidated assets of the smaller reporting company as of the end of the most recently completed fiscal year. (ii) Compare the smaller reporting company's proportionate share of the total assets (after intercompany eliminations) of the acquiree to the total consolidated assets of the smaller reporting company as of the end of the most recently completed fiscal year.

(iii) Compare the smaller reporting company's equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the acquiree to such consolidated income of the smaller reporting company for the most recently completed fiscal year.

Computational note to paragraph (c)(2): For purposes of making the prescribed income test the following guidance should be applied: If income of the smaller reporting company and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

(3)(i) If none of the conditions specified in paragraph (c)(2) of this Item exceeds 20%, financial statements are not required. If any of the conditions exceed 20%, but none exceeds

40%, financial statements shall be furnished for the most recent fiscal year and any interim periods specified in paragraph (b) of this Item. If any of the conditions exceed 40%, financial statements shall be furnished for the two most recent fiscal years and any interim periods specified in paragraph (b) of this Item.

(ii) The separate audited balance sheet of the acquired business is not required when the smaller reporting company's most recent audited balance sheet filed is for a date after the acquisition was consummated.

(iii) If the aggregate impact of individually insignificant businesses acquired since the date of the most recent audited balance sheet filed for the registrant exceeds 50%, financial statements covering at least the substantial majority of the businesses acquired shall be furnished. Such financial statements shall be for the most recent fiscal year and any interim periods specified in paragraph (b) of this Item.

(iv) Registration statements not subject to the provisions of § 230.419 of this chapter (Regulation C) and proxy statements need not include separate financial statements of the acquired or to be acquired business if it does not meet or exceed any of the conditions specified in paragraph (c)(2) of this Item at the 50 percent level, and either:

(A) The consummation of the acquisition has not yet occurred; or

(B) The effective date of the registration statement, or mailing date in the case of a proxy statement, is no more than 74 days after consummation of the business combination, and the financial statements have not been filed previously by the registrant.

(v) An issuer that omits from its initial registration statement financial statements of a recently consummated business combination pursuant to paragraph (c)(3)(iv) of this Item shall furnish those financial statements and any pro forma information specified by paragraph (d) of

this Item under cover of Form 8–K (§249.308 of this chapter) no later than 75 days after consummation of the acquisition.

(4) If the smaller reporting company made a significant business acquisition subsequent to the latest fiscal year end and filed a report on Form 8–K, which included audited financial statements of such acquired business for the periods required by paragraph (c)(3) of this Item and the pro forma financial information required by paragraph (d) of this Item, the determination of significance may be made by using pro forma amounts for the latest fiscal year in the report on Form 8–K rather than by using the historical amounts of the registrant. The tests may not be made by “annualizing” data.

(d) Pro forma financial information. (1) Pro forma information showing the effects of the acquisition shall be furnished if financial statements of a business acquired or to be acquired are presented.

(2) Pro forma statements should be condensed, in columnar form showing pro forma adjustments and results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any; or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet required by paragraph (a) or (b) of this Item, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet. For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, are required.

(e) Real estate operations acquired or to be acquired. If, during the period for which income statements are required, the smaller reporting company has acquired one or more

properties which in the aggregate are significant, or since the date of the latest balance sheet required by paragraph (a) or (b) of this Item, has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements (not including earnings per unit) for the two most recent years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and federal and state income taxes; Provided, however, that such audited statements need be presented for only the most recent fiscal year if:

(i) The property is not acquired from a related party;

(ii) Material factors considered by the smaller reporting company in assessing the property are described with specificity in the registration statement with regard to the property, including source of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expenses (including but not limited to, utilities, ad valorem tax rates, maintenance expenses, and capital improvements anticipated); and

(iii) The smaller reporting company indicates that, after reasonable inquiry, it is not aware of any material factors relating to the specific property other than those discussed in response to paragraph (e)(1)(ii) of this Item that would cause the reported financial information not to be necessarily indicative of future operating results.

(2) If the property will be operated by the smaller reporting company, a statement shall be furnished showing the estimated taxable operating results of the smaller reporting company based on the most recent twelve-month period including such adjustments as can be factually supported. If the property will be acquired subject to a net lease, the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the

estimated amount of cash to be made available by operations shall be shown. Disclosure must be provided of the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, a table should be provided which shows, for a limited number of years, the estimated cash distribution per unit indicating the portion reportable as taxable income and the portion representing a return of capital with an explanation of annual variations, if any. If taxable net income per unit will be greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

(f) Limited partnerships. (1) Smaller reporting companies which are limited partnerships must provide the balance sheets of the general partners as described in paragraphs (f)(2) through (f)(4) of this Item.

(2) Where a general partner is a corporation, the audited balance sheet of the corporation as of the end of its most recently completed fiscal year must be filed. Receivables, other than trade receivables, from affiliates of the general partner should be deducted from shareholders' equity of the general partner. Where an affiliate has committed itself to increase or maintain the general partner's capital, the audited balance sheet of such affiliate must also be presented.

(3) Where a general partner is a partnership, there shall be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(4) Where the general partner is a natural person, there shall be filed, as supplemental information, a balance sheet of such natural person as of a recent date. Such balance sheet need not be audited. The assets and liabilities should be carried at estimated fair market value, with provisions for estimated income taxes on unrealized gains. The net worth of such general partner(s), based on such balance sheet(s), singly or in the aggregate, shall be disclosed in the registration statement.

(g) Age of financial statements. At the date of filing, financial statements included in filings other than filings on Form 10–K must be not less current than financial statements, which would be required in Forms 10–K and 10–Q if such reports were required to be filed. If required financial statements are as of a date 135 days or more prior to the date a registration statement becomes effective or proxy material is expected to be mailed, the financial statements shall be updated to include financial statements for an interim period ending within 135 days of the effective or expected mailing date. Interim financial statements should be prepared and presented in accordance with paragraph (b) of this Item:

(1) When the anticipated effective or mailing date falls within 45 days after the end of the fiscal year, the filing may include financial statements only as current as the end of the third fiscal quarter; Provided, however, that if the audited financial statements for the recently completed fiscal year are available or become available prior to effectiveness or mailing, they must be included in the filing; and

(2) If the effective date or anticipated mailing date falls after 45 days but within 90 days of the end of the smaller reporting company's fiscal year, the smaller reporting company is not required to provide the audited financial statements for such year end provided that the following conditions are met:

(i) If the smaller reporting company is a reporting company, all reports due must have been filed;

(ii) For the most recent fiscal year for which audited financial statements are not yet available, the smaller reporting company reasonably and in good faith expects to report income from continuing operations before taxes; and

(iii) For at least one of the two fiscal years immediately preceding the most recent fiscal year the smaller reporting company reported income from continuing operations before taxes.

18. Amend § 229.401 by revising Instruction 3 to paragraph (b) to read as follows:

**§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.**

\* \* \* \* \*

(b) \* \* \*

Instructions to Paragraph (b) of Item 401:

\* \* \* \* \*

3. The information regarding executive officers called for by this Item need not be furnished in proxy or information statements prepared in accordance with Schedule 14A under the Exchange Act (§ 240.14a-101 of this Chapter) by those registrants relying on General Instruction G of Form 10-K under the Exchange Act (§ 249.310 of this Chapter); Provided, that such information is furnished in a separate item captioned "Executive officers of the registrant" and included in Part I of the registrant's annual report on Form 10-K.

\* \* \* \* \*

19. Amend § 229.402 by adding paragraph (l) before the Instruction to Item 402 to read as follows:

**§ 229.402 (Item 402) Executive Compensation.**

\* \* \* \* \*

(l) Smaller reporting companies. A registrant that qualifies as a "smaller reporting company," as defined by § 229.10(f)(1), is required to:

(1) Provide information only with respect to the following persons (the "named executive officers") in lieu of the persons determined under paragraphs (a)(3)(i) - (iii) of this Item substituting the Instruction to Items 402(l)(1)(i) - (iii) for Instruction 2 to Item 402(a)(3), and substituting paragraph (l)(1)(iv) for paragraph (a)(4):

(i) All individuals serving as the smaller reporting company's principal executive officer or acting in a similar capacity during the last completed fiscal year ("PEO"), regardless of compensation level;

(ii) The smaller reporting company's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (1)(1)(ii) of this Item but for the fact that the individual was not serving as an executive officer of the smaller reporting company at the end of the last completed fiscal year.

Instruction to Items 402(1)(1)(i) - (iii):

Determination of most highly compensated executive officers. The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (c)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (c)(2)(viii) of this Item, provided, however, that no disclosure need be provided for any executive officer, other than the PEO, whose total compensation, as so reduced, does not exceed \$100,000.

(iv) If the PEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO) served as an executive officer of the smaller reporting company (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(2) Provide the information required by paragraph (c) of this Item only for each of the registrant's last two completed fiscal years, without providing the information required by paragraph (c)(2)(viii)(A), without applying Instructions 1 and 3 to paragraph (c)(2)(viii), and substituting:

(i) The following for Instruction 2 to Item 402(c)(2)(iii) and (iv): Registrants shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (1)(3) of this Item) where the material terms of the stock, option or non-equity incentive plan award elected by the named executive officer are reported.

(ii) The following for Item 402(c)(2)(ix)(G): The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value for the stock or option award;

(iii) The following for Instruction 2 to Item 402(c)(2)(ix): Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraph (1)(5)(i) of this Item.

(iv) The following for Instructions 3 and 4 to Item 402(c)(2)(ix): Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in the columns as tax reimbursements (paragraph (c)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the aggregate amount of such

compensation is less than \$10,000. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant.

(3) Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the Table required by paragraph (c) of this Item. Examples of such factors may include, in given cases, among other things:

(i) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(ii) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(iii) The waiver or modification of any specified performance target, goal or condition to payout with respect to any amount included in non-stock incentive plan compensation or payouts reported in column (g) to the Summary Compensation Table required by paragraph (c) of this Item, stating whether the waiver or modification applied to one or more specified named executive officers or to all compensation subject to the target, goal or condition;

(iv) The material terms of each grant, including but not limited to the date of exercisability, any conditions to exercisability, any tandem feature, any reload feature, any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered;

(v) The material terms of any non-equity incentive plan award made to a named executive officer during the last completed fiscal year, including a general description of the formula or criteria to be applied in determining the amounts payable and vesting schedule;

(vi) The method of calculating earnings on nonqualified deferred compensation plans including nonqualified defined contribution plans; and

(vii) An identification to the extent material of any item included under All Other Compensation (column (i)) in the Summary Compensation Table. Identification of an item shall not be considered material if it does not exceed the greater of \$25,000 or 10% of all items included in the specified category in question set forth in paragraph (c)(2)(ix) of this Item. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

Instruction to Item 402(1)(3).

The disclosure required by paragraph (1)(3)(ii) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(4) Provide this information required by paragraph (f) of this Item;

(5) Provide a narrative description of the following to the extent material:

(i) The material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans, supplemental executive retirement plans, tax-qualified defined contribution plans and nonqualified defined contribution plans.

(ii) The material terms of each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with the resignation, retirement or other termination of a named executive officer, or

a change in control of the registrant or a change in the named executive officer's responsibilities following a change in control, with respect to each named executive officer.

(6) Provide the information required by paragraph (k) of this Item, without providing the information required by paragraph (k)(2)(vi)(A), without applying Instructions 2 and 3 to Item 402(k)(2)(vii), and by substituting:

(i) The following for Item 402(k)(2)(i): The name of each director unless such director is also a named executive officer under paragraph (a) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (c) of this Item and otherwise as required pursuant to paragraphs (f), (l)(3) and (l)(5) of this Item (column (a));

(ii) The following for the Instruction to Item 402(k)(2)(iii) and (iv): For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end; and

(iii) The following for the Instruction to Item 402(k): In addition to Instruction 1 to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; the Instructions to paragraphs (c)(2)(iii) and (iv) of this Item, modifying Instruction 2 to paragraphs (c)(2)(iii) and (iv) as provided by paragraph (l)(2)(i) of this Item; the Instruction to paragraphs (c)(2)(v) and (vi) of this Item; the Instructions to paragraph (c)(2)(vii) of this Item; Instruction 2 to paragraph (c)(2)(viii) of this Item; the Instructions to paragraph (c)(2)(ix) of this Item, modifying Instruction 2 to paragraph (c)(2)(ix) as provided by paragraph (l)(2)(iii) of this Item and modifying Instructions 3 and 4 to paragraph (c)(2)(ix) as provided by paragraph (l)(2)(iv) of this Item; and paragraph (l)(3)(vii) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to

disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer. Further, each Item reported pursuant to paragraph (k)(2)(vii) of this Item must be identified and quantified in a footnote if it is deemed material in accordance with paragraph (1)(3)(vii) of this Item.

\* \* \* \* \*

20. Amend § 229.404 by revising the introductory text of paragraph (c)(1) and adding paragraph (d) before the Instruction to Item 404 to read as follows:

**§ 229.404 (Item 404) Transactions with related persons, promoters and certain control persons.**

\* \* \* \* \*

(c) Promoters and certain control persons. (1) Registrants that are filing a registration statement on Form S-1 under the Securities Act (§ 239.11 of this chapter) or on Form 10 under the Exchange Act (§ 249.210 of this chapter) and that had a promoter at any time during the past five fiscal years shall:

\* \* \* \* \*

(d) Smaller reporting companies. A registrant that qualifies as a “smaller reporting company,” as defined by § 229.10(f)(1), will be deemed to comply with this Item if it provides:

(i) The information required by paragraph (a) of this Item for the period specified there and, in addition, for the fiscal year preceding the smaller reporting company’s last fiscal year, for a transaction in which the amount involved exceeds the lesser of \$120,000 or one percent of the average of the smaller reporting company’s total assets at year end for the last two completed fiscal years; and

(ii) A list of all parents of the smaller reporting company showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Instruction to Item 404(d)

Include the information for any material underwriting discounts and commissions upon the sale of securities by the smaller reporting company where any of the persons specified in paragraph (a) was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principal underwriter.

\* \* \* \* \*

21. Amend § 229.407 by revising paragraph (d)(4)(i)(B) and adding paragraph (g) before the Instructions to Item 407 to read as follows:

**§ 229.407 (Item 407) Corporate Governance.**

\* \* \* \* \*

(d) \* \* \*

(4) (i) \* \* \*

(B) The registrant is filing an annual report on Form 10-K (17 CFR 249.310) or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a et seq.) if action is to be taken with respect to the election of directors; and

\* \* \* \* \*

(g) Smaller reporting companies. A registrant that qualifies as a “smaller reporting company,” as defined by § 229.10(f)(1), is not required to provide:

(i) The disclosure required in paragraph (d)(5) of this Item in its first annual report filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m (a) or 78o(d)) following the effective date of its first registration statement filed under the Securities Act (15 U.S.C. 77a et seq.) or Exchange Act (15 U.S.C. 78a et seq.); and

(ii) Need not provide the disclosures required by paragraphs (g)(4) and (g)(5) of this Item.

\* \* \* \* \*

22. Amend § 229.503 by adding paragraph (e) before the Instruction to Item 503 to read as follows:

**§ 229.503 (Item 503) Prospectus summary, risk factors, and ratio of earnings to fixed charges.**

\* \* \* \* \*

(e) Smaller reporting companies. A smaller reporting company need not comply with paragraph (d) of this Item.

\* \* \* \* \*

23. Amend § 229.504 by revising Instruction 6 to read as follows:

**§ 229.504 (Item 504) Use of proceeds.**

\* \* \* \* \*

Instructions to Item 504:

\* \* \* \* \*

6. Where the registrant indicates that the proceeds may, or will, be used to finance acquisitions of other businesses, the identity of such businesses, if known, or, if not known, the nature of the businesses to be sought, the status of any negotiations with respect to the acquisition, and a brief description of such business shall be included. Where, however, pro forma financial statements reflecting such acquisition are not required by Regulation S-X (17 CFR 210.01 through 210.12-29) (or by § 229.310 in the case of a smaller reporting company, as defined in § 229.10(f)(1)), to be included, in the registration statement, the possible terms of any transaction, the identification of the parties thereto or the nature of the business sought need not be disclosed, to the extent that the registrant reasonably determines that public disclosure of such information would jeopardize the acquisition. Where Regulation S-X or §229.310, as applicable,

would require financial statements of the business to be acquired to be included, the description of the business to be acquired shall be more detailed.

\* \* \* \* \*

24. Amend § 229.512 by adding paragraph (m) to read as follows:

**§ 229.512 (Item 512) Undertakings.**

\* \* \* \* \*

(m) Smaller reporting companies. A smaller reporting company is not required to provide information under paragraphs (a)(1)(iii)(C), (a)(4), (e), (j), (k), and (l) of this Item.

25. Amend § 229.601 by:

(a) Revising paragraph (a)(4); the Exhibit Table; and paragraphs (b)(4) (ii), (b)(4)(v), (b)(7), (b)(10)(iii)(C)(6), (b)(13)(i), (b)(15), (b)(19), and (b)(22); and

(b) Adding paragraph (c) to read as follows:

**§ 229.601 (Item 601) Exhibits.**

(a) \* \* \*

(4) If a material contract or plan of acquisition, reorganization, arrangement, liquidation or succession is executed or becomes effective during the reporting period reflected by a Form 10-Q or Form 10-K, it shall be filed as an exhibit to the Form 10-Q or Form 10-K filed for the corresponding period. Any amendment or modification to a previously filed exhibit to a Form 10, 10-K or 10-Q document shall be filed as an exhibit to a Form 10-Q and Form 10-K. Such amendment or modification need not be filed where such previously filed exhibit would not be currently required.

\* \* \* \* \*

Exhibit Table

\* \* \* \* \*

EXHIBIT TABLE												
	Securities Act Forms								Exchange Act Forms			
	S-1	S-3	S-4 <sup>1</sup>	S-8	S-11	F-1	F-3	F-4 <sup>1</sup>	10	8-K <sup>2</sup>	10-Q	10-K
(1) Underwriting agreement	X	X	X	---	X	X	X	X	---	X	---	---
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	---	X	X	X	X	X	X	X	X
(3) (i) Articles of incorporation	X	---	X	---	X	X	---	X	X	X	X	X
(ii) Bylaws	X	---	X	---	X	X	---	X	X	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	---	---	---	---
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review	---	---	---	---	---	---	---	---	---	X	---	---
(8) Opinion re tax matters	X	X	X	---	X	X	X	X	---	---	---	---
(9) Voting trust agreement	X	---	X	---	X	X	---	X	X	---	---	X
(10) Material contracts	X	---	X	---	X	X	---	X	X	---	X	X
(11) Statement re computation of per share earnings	X	---	X	---	X	X	---	X	X	---	X	X
(12) Statements re computation of ratios	X	X	X	---	X	X	---	X	X	---	---	X
(13) Annual report to security holders, Form 10-Q or quarterly report to security holders <sup>3</sup>	---	---	X	---	---	---	---	---	---	---	---	X
(14) Code of Ethics										X		X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	---	---	X	---
(16) Letter re change in certifying accountant <sup>4</sup>	X	---	X	---	X	---	---	---	X	X	---	X
(17) Correspondence on departure of director	---	---	---	---	---	---	---	---	---	X	---	---
(18) Letter re change in accounting principles	---	---	---	---	---	---	---	---	---	---	X	X
(19) Report furnished to security holders	---	---	---	---	---	---	---	---	---	---	X	---
(20) Other documents or statements to security holders	---	---	---	---	---	---	---	---	---	X	---	---
(21) Subsidiaries of the registrant	X	---	X	---	X	X	---	X	X	---	---	X

(22) Published report regarding matters submitted to vote of security holders	---	---	---	---	---	---	---	---	---	---	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	---	X <sup>5</sup>	X <sup>5</sup>	X <sup>5</sup>
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee	X	X	X	---	---	X	X	X	---	---	---	---
(27) through (30) [Reserved]												
(31) Rule 13a-14(a)/15d-14(a) Certifications	---	---	---	---	---	---	---	---	---	---	X	X
(32) Section 1350 Certifications <sup>6</sup>	---	---	---	---	---	---	---	---	---	---	X	X
(33) through (98) [Reserved]	N/A	N/A	N/A									
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X

<sup>1</sup> An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Forms S-3 or F-3 and (2) the form, the level of which has been elected under Forms S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

<sup>2</sup> A Form 8-K exhibit is required only if relevant to the subject matter reported on the Form 8-K report. For example, if the Form 8-K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

<sup>3</sup> Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10-K, where the annual report to security holders is incorporated by reference into the text of the Form 10-K.

<sup>4</sup> If required pursuant to Item 304 of Regulation S-K.

<sup>5</sup> Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

<sup>6</sup> Pursuant to §§ 240.13-13(b)(3) and 240.15d-13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10-Q.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) Except as set forth in paragraph (b)(4)(iii) of this Item for filings on Forms S-1, S-4, S-11, N-14, and F-4 under the Securities Act (§ 239.11, 239.25, 239.18, 239.23 and 239.34 of this chapter) and Forms 10 and 10-K under the Exchange Act (§ 249.210 and 249.310 of this chapter) all instruments defining the rights of holders of long-term debt of the registrant and its

consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

\* \* \* \* \*

(v) With respect to Forms 8-K and 10-Q under the Exchange Act which are filed and which disclose, in the text of the Form 10-Q, the interim financial statements, or the footnotes thereto the creation of a new class of securities or indebtedness or the modification of existing rights of security holders, file all instruments defining the rights of holders of these securities or indebtedness. However, there need not be filed any instrument with respect to long-term debt not being registered which meets the exclusion set forth in paragraph (b)(4)(iii)(A) of this Item.

\* \* \* \* \*

(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review. Any written notice from the registrant's current or previously engaged independent accountant that the independent accountant is withdrawing a previously issued audit report or that a previously issued audit report or completed interim review, covering one or more years or interim periods for which the registrant is required to provide financial statements under Regulation S-X (part 210 of this chapter), or Item 310 if the registrant is a smaller reporting company, should no longer be relied upon. In addition, any letter, pursuant to Item 4.02(c) of Form 8-K (§ 249.308 of this chapter), from the independent accountant to the Commission stating whether the independent accountant agrees with the statements made by the registrant describing the events giving rise to the notice.

\* \* \* \* \*

(10) \* \* \*

(iii) (A) \* \* \*

(C) \* \* \*

(6) Any compensatory plan, contract, or arrangement if the registrant is a wholly owned subsidiary of a company that has a class of securities registered pursuant to section 12 or files reports pursuant to section 15(d) of the Exchange Act and is filing a report on Form 10-K or registering debt instruments or preferred stock which are not voting securities on Form S-2.

\* \* \* \* \*

(13) Annual report to security holders, Form 10-Q or quarterly report to security holders.

(i) The registrant's annual report to security holders for its last fiscal year, its Form 10-Q (if specifically incorporated by reference in the prospectus) or its quarterly report to security holders, if all or a portion thereof is incorporated by reference in the filing. Such report, except for those portions thereof which are expressly incorporated by reference in the filing, is to be furnished for the information of the Commission and is not to be deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy. See Rule 411(b) (§ 230.411 (b) of this chapter).

\* \* \* \* \*

(15) Letter re unaudited interim financial information. A letter, where applicable, from the independent accountant which acknowledges awareness of the use in a registration statement of a report on unaudited interim financial information which pursuant to Rule 436(c) under the Securities Act (§ 230.436(c) of this chapter) is not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of that Act. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10-Q which is incorporated by reference into the registration statement.

\* \* \* \* \*

(19) Report furnished to security holders. If the registrant makes available to its security holders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of Form 10-Q, the information called for may be incorporated by reference to such published document or statement, provided copies thereof are included as an exhibit to the registration statement or to Part I of the Form 10-Q report.

\* \* \* \* \*

(22) Published report regarding matters submitted to vote of security holders. Published reports containing all of the information called for by Item 4 of Part II of Form 10-Q or Item 4 of Part I of Form 10-K which is referred to therein in lieu of providing disclosure in Form 10-Q or 10-K, which are required to be filed as exhibits by Rule 12b-23(a)(3) under the Exchange Act (§ 240.12b-23(a)(3) of this chapter).

\* \* \* \* \*

(c) Smaller reporting companies. A smaller reporting company need not provide the disclosure required in paragraph (b)(12) of this Item, Statements re computation of ratios. Correspondence from an independent accountant under paragraph (b)(7) concerning financial statements of a smaller reporting company shall be made using the financial disclosure required in § 229.310.

26. Amend § 229.701 by revising paragraph (e) to read as follows:

**§ 229.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.**

\* \* \* \* \*

(e) Terms of conversion or exercise. If the information called for by this paragraph (e) is being presented on Form 8-K, Form 10-Q, or Form 10-K under the Exchange Act (§ 249.308, § 249.308(a), and § 240.310) of this chapter, and where the securities sold by the

registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

\* \* \* \* \*

27. Amend § 229.1118 by revising paragraph (b)(2) to read as follows:

**§ 229.1118 (Item 1118) Reports and additional information.**

\* \* \* \* \*

(b) \* \* \*

(2) State that the public may read and copy any materials filed with the Commission at the Commission's Public Reference Room at 100 F Street, NE, Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1-800-SEC-0330. State that the Commission maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (<http://www.sec.gov>).

\* \* \* \* \*

**PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

28. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll, 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

29. Amend § 230.110 by revising paragraph (a) to read as follows:

**§ 230.110 Business hours of the Commission.**

(a) General. The principal office of the Commission, at 100 F Street, NE, Washington, DC 20549, is open each day, except Saturdays, Sundays, and Federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, provided that hours for the filing of documents pursuant to the Act or the rules and regulations thereunder are as set forth in paragraphs (b), (c) and (d) of this section.

\* \* \* \* \*

30. Amend § 230.138 by revising paragraph (a)(2)(i) to read as follows:

**§ 230.138 Publications or distributions of research reports by brokers or dealers about securities other than those they are distributing.**

(a) \* \* \*

(2) \* \* \*

(i) Is required to file reports, and has filed all periodic reports required during the preceding 12 months (or such shorter time that the issuer was required to file such reports) on Forms 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter), and 20–F (§ 249.220f of this chapter) pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

\* \* \* \* \*

31. Amend § 230.139 by revising paragraph (a)(2) to read as follows:

**§ 230.139 Publications or distributions of research reports by brokers or dealers distributing securities.**

(a) \* \* \*

(2) As of the date of reliance on this section, has filed all periodic reports required during the preceding 12 months on Forms 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter), and 20–F (§ 249.220f of this chapter) pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); or

\* \* \* \* \*

32. Amend § 230.158 by revising paragraphs (a)(1)(i), (a)(2)(i), and (b)(2) to read as follows.

**§ 230.158 Definitions of certain terms in the last paragraph of section 11(a).**

(a) \* \* \*

(1) \* \* \*

(i) In Item 8 of Form 10-K (§ 239.310 of this chapter), part I, Item 1 of Form 10-Q (§ 240.308a of this chapter), or Rule 14a-3(b) (§ 240.14a-3(b) of this chapter) under the Securities Exchange Act of 1934;

\* \* \* \* \*

(2) \* \* \*

(i) On Form 10-K, Form 10-Q, Form 8-K (§ 249.308 of this chapter), or in the annual report to security holders pursuant to Rule 14a-3 under the Securities Exchange Act of 1934 (§ 240.14a-3 of this chapter); or

\* \* \* \* \*

(b) \* \* \*

(2) Has filed its report or reports on Form 10-K, Form 10-Q, Form 8-K, Form 20-F, Form 40-F, or Form 6-K, or has supplied to the Commission copies of the annual report sent to security holders pursuant to Rule 14a-3(c) under the Securities Exchange Act of 1934 (§ 240.14a-3(c) of this chapter), containing such information.

\* \* \* \* \*

33. Amend § 230.175 by revising paragraphs (b)(1), (b)(1)(i), and (b)(2) to read as follows:

**§ 230.175 Liability for certain statements by issuers.**

\* \* \* \* \*

(b) \* \* \*

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q, § 249.308a of this chapter, or in an annual report to shareholders meeting the requirements of Rule 14a-3(b) and (c) or 14c-3(a) and (b) under the Securities Exchange Act of 1934 ( § 240.14a-3 of this chapter), a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward-looking statement made prior to the date the document was filed or the date the annual report was publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10-Q, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement; Provided, that

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 (§239.13a-1 or 239.15d-1 of this chapter) thereunder, if applicable, to file its most recent annual report on Form 10-K, Form 20-F, or Form 40-F; or if the issuer is not subject to the reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Act, offering statement or solicitation of interest written document or broadcast script under Regulation A or pursuant to sections 12(b) or (g) of the Securities Exchange Act of 1934; and

\* \* \* \* \*

(2) Information which is disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q (§ 249.308a of this chapter) or in an annual report to shareholders meeting the requirements of Rules 14a-3 (b) and (c) or 14c-3 (a) and (b) under the

Securities Exchange Act of 1934 (§§ 240.14a–3(b) and (c) or 240.14a–3(a) and (b) of this chapter) and which relates to:

(i) The effects of changing prices on the business enterprise, presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter) “Management's Discussion and Analysis of Financial Condition and Results of Operations, or Item 5 of Form 20–F, Operating and Financial Review and Prospects, (§ 249.220f of this chapter)” or Item 302 of Regulation S-K (§ 229.302 of this chapter), “Supplementary financial information,” or Rule 3-20(c) of Regulation S-X (§ 210.3–20(c) of this chapter); or

(ii) The value of proved oil and gas reserves (such as a standardized measure of discounted future net cash flows relating to proved oil and gas reserves as set forth in paragraphs 30–34 of Statement of Financial Accounting Standards No. 69) presented voluntarily or pursuant to Item 302 of Regulation S-K (§ 229.302 of this chapter).

\* \* \* \* \*

34. Amend § 230.405 by removing the definition of small business issuer and adding the definition of smaller reporting company in alphabetical order to read as follows:

**§ 230.405 Definitions of Terms.**

\* \* \* \* \*

Smaller reporting company: As used in this part, the term smaller reporting company means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price

at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(2) In the case of an initial registration statement under the Securities Act for shares of its common equity, had a public float of less than \$75 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(3) In the case of an issuer whose public float as calculated under paragraph (1) or (2) of this definition was zero because the issuer had no significant public common equity outstanding or no market price for its common equity existed, had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available on the date of the filing that establishes whether or not the issuer is a smaller reporting company for any fiscal year.

(4) Determination: Whether or not an issuer is a smaller reporting company is determined for an entire fiscal year on the basis of the information in a quarterly report on Form 10-Q or an initial registration statement under the Securities Act or Exchange Act, whichever is the first to be filed during that year. Once an issuer fails to qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (1) of this definition was less than \$50 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no significant public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of less than \$40 million during its previous fiscal year. An issuer making

this determination becomes a smaller reporting company for the purpose of filings for the next fiscal year.

\* \* \* \* \*

35. Amend § 230.415 by revising paragraph (a)(3) to read as follows:

**§ 230.415 Delayed or continuous offerings and sale of securities.**

(a) \* \* \*

(3) The registrant furnishes the undertakings required by Item 512(a) of Regulation S-K (§ 229.512(a) of this chapter), except that a registrant that is an investment company filing on Form N-2 must furnish the undertakings required by Item 34.4 of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter).

\* \* \* \* \*

36. Amend § 230.428 by revising paragraphs (b)(2)(ii), (b)(2)(iii), (b)(2)(iv), and (b)(4) to read as follows:

**§ 230.428 Documents constituting a section 10(a) prospectus for Form S-8 registration statement; requirements relating to offerings of securities registered on Form S-8.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) The registrant's annual report on Form 10-K (§ 249.310 of this chapter), 20-F (§ 249.220f of this chapter) or, in the case of registrants described in General Instruction A.(2) of Form 40-F (§ 249.240f of this chapter), for its latest fiscal year;

(iii) The latest prospectus filed pursuant to Rule 424(b) (§ 230.424(b) of this chapter) under the Act that contains audited financial statements for the registrant's latest fiscal year, Provided that the financial statements are not incorporated by reference from another filing, and Provided further that such prospectus contains substantially the information required by Rule

14a-3(b) (§ 240.14a-3(b) of this chapter) or the registration statement was on Form S-1 (§ 239.11 of this chapter) or F-1 (§ 239.31 of this chapter); or

(iv) The registrant's effective Exchange Act registration statement on Form 10 (§ 249.210 of this chapter), 20-F or, in the case of registrants described in General Instruction A.(2) of Form 40-F, containing audited financial statements for the registrant's latest fiscal year.

\* \* \* \* \*

(4) Where interests in a plan are registered, the registrant shall deliver or cause to be delivered promptly, without charge, to each employee to whom information is required to be delivered, upon written or oral request, a copy of the then latest annual report of the plan filed pursuant to section 15(d) of the Exchange Act, whether on Form 11-K (§ 249.311 of this chapter) or included as part of the registrant's annual report on Form 10-K.

\* \* \* \* \*

37. Amend § 230.430B by revising the introductory text of paragraphs (f)(4), (f)(4)(ii), and (i) to read as follows:

**§ 230.430B Prospectus in a registration statement after effective date.**

\* \* \* \* \*

(f)(1) \* \* \*

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S-K (§ 229.512(a)(1)(ii) of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

\* \* \* \* \*

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S-K (such person except for such reports being deemed not to be a person who signed the registration statement within the meaning of section 11(a) of the Act).

\* \* \* \* \*

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S-K.

\* \* \* \* \*

38. Amend § 230.430C by revising paragraph (d) to read as follows:

**§ 230.430C Prospectus in a registration statement pertaining to an offering other than pursuant to Rule 430A or Rule 430B after the effective date.**

\* \* \* \* \*

(d) Issuers subject to paragraph (a) of this section shall furnish the undertakings required by Item 512(a) of Regulation S-K (§ 229.512(a) of this chapter) or Item 34.4 of Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), as applicable.

\* \* \* \* \*

39. Revise § 230.455 to read as follows:

**§ 230.455 Place of filing.**

All registration statements and other papers filed with the Commission shall be filed at its principal office. Such material may be filed by delivery to the Commission through the mails or otherwise; provided, however, that only registration statements and post-effective amendments thereto filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) may be filed by means of facsimile transmission.

40. Amend § 230.502 by revising paragraphs (b)(2)(i)(B)(1), (b)(2)(i)(B)(2), (b)(2)(ii)(A), (b)(2)(ii)(B), and (b)(2)(iii) to read as follows:

**§ 230.502 General conditions to be met.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(B) Financial statement information. (1) Offerings up to \$2,000,000. The information required in Item 310 of Regulation S-K (§ 229.310 of this chapter), except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(2) Offerings up to \$7,500,000. The financial statement information required in Form S-1 (§ 239.10 of this chapter) for smaller reporting companies. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of Federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

\* \* \* \* \*

(ii) \* \* \*

(A) The issuer's annual report to shareholders for the most recent fiscal year, if such annual report meets the requirements of § 240.14a-3 or § 240.14c-3 under the Exchange Act, the definitive proxy statement filed in connection with that annual report, and if requested by the

purchaser in writing, a copy of the issuer's most recent Form 10-K (17 CFR 249.310) under the Exchange Act.

(B) The information contained in an annual report on Form 10-K (§ 249.310 of this chapter) under the Exchange Act or in a registration statement on Form S-1 (§ 239.11 of this chapter) or S-11 (§ 239.18 of this chapter) under the Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act, whichever filing is the most recent required to be filed.

\* \* \* \* \*

(iii) Exhibits required to be filed with the Commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

\* \* \* \* \*

## **PART 239-FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

41. 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, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

42. Amend § 239.0-1 by revising paragraph (b) to read as follows:

### **§239.0-1 Availability of forms.**

\* \* \* \* \*

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

Any persons may inspect the forms at this address and at the Commission's regional offices. (See § 200.11 of this chapter for the addresses of the SEC regional offices.)

\* \* \* \* \*

43. By removing and reserving §§ 239.9 and 239.10 and removing Forms SB-1 and Form SB-2.

**Note- The text of Forms SB-1 and SB-2 does not appear in the Code of Federal Regulations.**

44. Amend Form S-1 (referenced in § 239.11) by:

a. Adding to the cover page, above the calculation of the registration fee table, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company; and

b. Revising Items 11(e), 11A, and 12(a)(1) in Part I.

The revisions and addition read as follows:

**Note- The text of Form S-1 does not and this amendment will not appear in the Code of Federal Regulations.**

\* \* \* \* \*

## FORM S-1

### REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

\* \* \* \* \*

**PART I-INFORMATION REQUIRED IN PROSPECTUS**

\* \* \* \* \*

**Item 11. Information with Respect to the Registrant.**

\* \* \* \* \*

(e) Financial statements meeting the requirements of Regulation S-X (17 CFR Part 210) (Schedules required under Regulation S-X shall be filed as “Financial Statements Schedules” pursuant to Item 15, Exhibits and Financial Statement Schedules, of this form), as well as any financial information required by Rule 3-05 and Article 11 of Regulation S-X. A smaller reporting company may provide the information in Item 310 of Regulation S-K in lieu of the financial information required by Rule 3-05 and Article 11 of Regulation S-X;

\* \* \* \* \*

**Item 11A. Material Changes.**

If the registrant elects to incorporate information by reference pursuant to General Instruction VII, describe any and all material changes in the registrant’s affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10-K and which have not been described in a Form 10-Q, or Form S-8 filed under the Exchange Act.

\* \* \* \* \*

**Item 12. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(a) \* \* \*

(1) The registrant’s latest annual report on Form 10-K filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act which contains financial statements for the registrant’s latest fiscal year for which a Form 10-K was required to have been filed; and

\* \* \* \* \*

45. Amend Form S-3 (referenced in § 239.13) by adding to the cover page, above the calculation of the registration fee table, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company and revising General Instruction II C., and in Part I, Items 11(a) and 12(a)(1) to read as follows.

**Note- The text of Form S-3 does not and this amendment will not appear in the Code of Federal Regulations.**

\* \* \* \* \*

### **FORM S-3**

#### **REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

\* \* \* \* \*

#### **GENERAL INSTRUCTIONS**

\* \* \* \* \*

#### **II. Application of General Rules and Regulations**

\* \* \* \* \*

C. A smaller reporting company, defined in Rule 405 (17 CFR 230.405), that is eligible to use Form S-3 shall use the disclosure items in Regulation S-K (17 CFR 229.10 et .seq.) with

specific attention to the subparagraph describing scaled disclosure, if any. Smaller reporting companies may provide the financial information called for by Item 310 of Regulation S-K in lieu of the financial information called for by Item 11 in this form.

\* \* \* \* \*

## **Part I**

### **INFORMATION REQUIRED IN PROSPECTUS**

\* \* \* \* \*

#### **Item 11. Material Changes.**

(a) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which have not been described in a report on Form 10-Q (§ 249.308a of this chapter) or Form 8-K (§ 249.308 of this chapter) filed under the Exchange Act.

\* \* \* \* \*

#### **Item 12. Incorporation of Certain Information by Reference.**

a. \* \* \*

(1) the registrant's latest annual report on Form 10-K (17 CFR 249.310) filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10-K was required to be filed; and

\* \* \* \* \*

46. Amend Form S-8 (referenced in § 239.16b) by adding to the cover page, above the calculation of registration fee table, check boxes requesting the registrant to indicate whether a registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company and revising General Instructions A.1(a)(6) and B.3. to read as follows:

**Note- The text of Form S-8 does not and this amendment will not appear in the Code of Federal Regulations.**

**FORM S-8**

**REGISTRATION OF SECURITIES UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

**A. Rule as to Use of Form S-8**

1. \* \* \*

(a) \* \* \*

(6) The term “Form 10 information” means the information that is required by Form 10 or Form 20-F (§ 249.210 or § 249.220f of this chapter), as applicable to the registrant, to register under the Securities Exchange Act of 1934 each class of securities being registered using this form. A registrant may provide the Form 10 information in another Commission filing with respect to the registrant.

\* \* \* \* \*

**B. Application of General Rules and Regulations**

\* \* \* \* \*

3. A “smaller reporting company,” defined in § 230.405, shall refer to the disclosure items in Regulation S-K (17 CFR 229.10 et seq.) and may use the scaled disclosure provided for smaller reporting companies.

\* \* \* \* \*

47. Amend Form S-11 (referenced in § 229.18) by:

- a. Adding to the cover page, above the calculation of registration fee table, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company; and
- b. Revising Item 27.

The revision and addition read as follows:

**Note- The text of Form S-11 does not and this amendment will not appear in the Code of Federal Regulations.**

### **FORM S-11**

#### **FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

- |                         |                          |                           |                          |
|-------------------------|--------------------------|---------------------------|--------------------------|
| Large accelerated filer | <input type="checkbox"/> | Accelerated filer         | <input type="checkbox"/> |
| Non-accelerated filer   | <input type="checkbox"/> | Smaller reporting company | <input type="checkbox"/> |
- (Do not check if a smaller reporting company)

\* \* \* \* \*

#### **Item 27. Financial Statements and Information.**

Include in the prospectus the financial statements required by Regulation S-X, the supplementary financial information required in Item 302 of Regulation S-K (§ 229.302 of this chapter) and the information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304 of this chapter). Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12-12, 12-28, and 12-29 of the Regulation may be omitted from the prospectus. A smaller reporting company may provide the information in Item 310 of Regulation S-K (§ 229.310 of this chapter), in lieu of the financial information required by Regulation S-X and need not provide the supplementary financial information required in Item 302 of Regulation S-K.

\* \* \* \* \*

48. Amend Form S-4 (referenced in § 239.25) by:

- a. Adding to the cover page, above the calculation of the registration fee table, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company;
- b. Removing paragraph 4 of General Instruction D; and
- c. Revising paragraph 1 of General Instruction I and in Part I Item 5, Item 12(a) before the Instruction, the introductory text of Item 12(b), paragraph 3 of Item 12(c), Item 17(b)(8), Item 18(b), and Item 19(c).

The addition and revisions read as follows:

\* \* \* \* \*

**Note- The text of Form S-4 does not and this amendment will not appear in the Code of Federal Regulations.**

\* \* \* \* \*

**FORM S-4**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**I. Roll-Up Transactions.**

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)), then the disclosure provisions of Subpart 229.900 of Regulation S-K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form. A smaller reporting company, defined in § 230.405, that is engaged in a roll-up transaction shall refer to the disclosure items in subpart 900 of Regulation S-K. To the extent that the disclosure requirements of Subpart 229.900 are inconsistent with the disclosure requirements of any other applicable forms or schedules, the requirements of Subpart 229.900 are controlling.

\* \* \* \* \*

**PART I**

**INFORMATION REQUIRED IN THE PROSPECTUS**

\* \* \* \* \*

**Item 5. Pro Forma Financial Information.**

Furnish financial information required by Article 11 of Regulation S-X (§ 210.11-01 et.seq. of this chapter) with respect to this transaction. A smaller reporting company may provide the information in Item 310 of Regulation S-K (§ 229.310 of this chapter) in lieu of the financial information required by Article 11 of Regulation S-X.

\* \* \* \* \*

**Item 12. Information with Respect to S-3 Registrants.**

\* \* \* \* \*

(a) If the registrant elects to deliver this prospectus together with a copy of either its latest Form 10-K filed pursuant to Sections 13(a) or 15(d) of the Exchange Act or its latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a-3 or Rule 14c-3:

(1) Indicate that the prospectus is accompanied by either a copy of the registrant's latest Form 10-K or a copy of its latest annual report to security holders, whichever the registrant elects to deliver pursuant to paragraph (a) of this Item.

(2) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10-Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest Form 10-K or the latest report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item), and more than forty-five days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

- (i) including such information in the prospectus;
- (ii) providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest Form 10-Q; or

(iii) providing without charge to each person to whom a prospectus is delivered a copy of the registrants latest quarterly report that we delivered to security holders and which included the required financial information.

(3) If not reflected in the registrant's latest Form 10-K or its latest annual report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item) provide information required by Rule 3-05 (§ 210.3-05 of this chapter) and Article 11 (§ 210.11-01 through 210.11.03 of this chapter) of Regulation S-X.

(4) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10-K or latest annual report to security holders (whichever the registrant elects to deliver pursuant to paragraph (a) of this Item) and that were not described in a Form 10-Q or quarterly report delivered with the prospectus in accordance with paragraphs (a)(2)(ii) or (iii) of this Item.

\* \* \* \* \*

(b) If the registrant does not elect to deliver its latest Form 10-K or its latest annual report to security holders:

\* \* \* \* \*

(c) \* \* \*

(3) such restatement of financial statements or disposition of assets was not reflected in the registrant's latest annual report to security holders and/or in its latest Form 10-K filed pursuant to Section 13(a) or 15(d) of the Exchange Act.

\* \* \* \* \*

**Item 17. Information with Respect to Companies Other than S-3 Companies.**

\* \* \* \* \*

(b) \* \* \*

(8) the quarterly financial and other information as would have been required had the company being acquired been required to file Part I of Form 10-Q (§ 249.308a of this chapter) for the most recent quarter for which such a report would have been on file at the time of the registration statement becomes effective or for a period ending as of a more recent date.

\* \* \* \* \*

**Item 18. Information if Proxies, Consents or Authorizations are to be solicited.**

\* \* \* \* \*

(b) If the registrant or the company being acquired meets the requirements for use of Form S-3, any information required by paragraphs (a)(5)(ii) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10-K.

**Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Offer.**

\* \* \* \* \*

(c) If the registrant or the company being acquired meets the requirements for use of Form S-3, any information required by paragraphs (a)(5) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10-K.

\* \* \* \* \*

49. Revise §239.42 to read as follows:

**§ 239.42 Form F-X, for appointment of agent for service of process and undertaking for issuers registering securities on Form F-8, F-9, F-10, or F-80 (§§239.38, 239.39, 239.40, or 239.41), or registering securities or filing periodic reports on Form 40-F (§ 249.240f), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F, or 14D-9F (§§ 240.13e-102, 240.14d-102, or 240.14d-103 of this chapter), by any non-U.S. person acting as trustee with respect to securities registered on Form F-7 (§ 239.37), F-8, F-9, F-10, or by a Canadian issuer qualifying an offering statement pursuant to Regulation A (§ 230.251 et seq.) on Form 1-A (§ 239.90), or by any non-U.S. issuer providing Form CB (§ 249.480) of this chapter to the Commission in connection with a tender offer, rights offering or business combination.**

Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Form F-8, F-9, F-10, or F-80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40-F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40-F, if it has not previously filed a Form F-X in connection with the class of securities in relation to which the obligation to file a report on Form 40-F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F, or 14D-9F;

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F-7, F-8, F-9, F-10, or F-80;

(f) By a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A; and

(g) By any non-U.S. issuer providing Form CB to the Commission in connection with a tender offer, rights offering or business combination.

50. Amend Form F-X (referenced in § 239.42) by revising General Instructions I.(e) and II. F. (a) and (c) to read as follows:

**Note- The text of Form F-X does not and this amendment will not appear in the Code of Federal Regulations.**

## **FORM F-X**

### **APPOINTMENT OF AGENT FOR SERVICE OF PROCESS AND UNDERTAKING**

#### **GENERAL INSTRUCTIONS**

I. \* \* \*

\* \* \* \* \*

(e) by any non-U.S. person acting as trustee with respect to securities registered on Form F-7, F-8, F-9, F-10, or F-80; and

\* \* \* \* \*

II. \* \* \*

F. Each person filing this Form in connection with:

(a) the use of Form F-9, F-10, or 40-F or Schedule 13E-4F, 14D-1F, or 14D-9F stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date the issuer of the securities to which such Forms and Schedules relate has ceased reporting under the Exchange Act;

\* \* \* \* \*

(c) its status as trustee with respect to securities registered on Form F-7, F-8, F-9, F-10, or F-80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time during which any of the securities subject to the indenture remain outstanding; and

\* \* \* \* \*

51. Amend Form 1-A (referenced in § 239.90) by revising paragraph B in Part II to read as follows:

**Note- The text of Form 1-A does not and this amendment will not appear in the Code of Federal Regulations.**

**FORM 1-A  
REGULATION A OFFERING STATEMENT  
UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

**PART II— OFFERING CIRCULAR**

\* \* \* \* \*

B. For all other issuers and for any issuer that so chooses — the information required by either Part I of Form S-1, (17 CFR 239.11), except for the financial statements called for there, or Model B of this Part II of Form 1-A. Offering circulars prepared pursuant to this instruction need not follow the order of the items or other requirements of the disclosure form. Such information shall not, however, be set forth in such a fashion as to obscure any of the required information or information necessary to keep the required information from being incomplete or misleading. Information requested to be presented in a specified tabular format shall be given in substantially the tabular form specified in the item.

\* \* \* \* \*

## **PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

52. The authority citations for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

53. Amend § 240.0-2 by revising paragraph (a) to read as follows:

### **§ 240.0-2 Business hours of the Commission.**

(a) The principal office of the Commission, at 100 F Street, NE, Washington, DC 20549, is open each day, except Saturdays, Sundays, and Federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever currently is in effect in Washington, DC, provided that hours for the filing of documents pursuant to the Act or the rules and regulations thereunder are as set forth in paragraphs (b) and (c) of this section.

\* \* \* \* \*

54. Amend § 240.0-12 by revising the second section of paragraph (c) to read as follows:

**§ 240.0-12 Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act.**

\* \* \* \* \*

(c) \* \* \* An applicant also may submit a request in paper format. Five copies of every paper application and every amendment to such an application must be submitted to the Office of the Secretary at 100 F Street, NE, Washington, DC 20549. \* \* \*

\* \* \* \* \*

55. Amend § 240.3b-6 by revising the introductory text of paragraph (b)(1), paragraphs (b)(1)(i) and (b)(2) to read as follows:

**§ 240.3b-6 Liability for certain statements by issuers.**

\* \* \* \* \*

(b) \* \* \*

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q, § 249.308a of this chapter, or in an annual report to share holders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b)(§§ 240.14a-3(b) and (c) or 240.14c-3(a) and (b)), a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10-Q, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement; Provided, that:

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Act and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K, Form 20-F or Form 40-F; or if the issuer is not subject to the reporting requirements of Sections 13(a) or 15(d) of the Act, the statements are made in a registration statement filed under the Securities Act of 1933 offering statement or solicitation of interest written document or broadcast script under Regulation A or pursuant to Section 12 (b) or (g) of the Securities Exchange Act of 1934; and

\* \* \* \* \*

(2) Information that is disclosed in a document filed with the Commission in Part I of a quarterly report on Form 10-Q (§ 249.308a of this chapter) or in an annual report to security holders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) under the Act (§§ 240.14a-3(b) and (c) or 240.14c-3(a) and (b) of this chapter) and which relates to:

(i) The effects of changing prices on the business enterprise, presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter) “Management's Discussion and Analysis of Financial Condition and Results of Operations” or Item 5 of Form 20-F, “Operating and Financial Review and Prospects,” or Item 302 of Regulation S-K (§ 229.302 of this chapter), “Supplementary financial information” or Rule 3-20(c) of Regulation S-X (§ 210.3-20(c)) of this chapter); or

(ii) The value of proved oil and gas reserves (such as a standardized measure of discounted future net cash flows relating to proved oil and gas reserves as set forth in paragraphs 30-34 of Statement of Financial Accounting Standards No. 69) presented voluntarily or pursuant to Item 302 of Regulation S-K (§ 229.302 of this chapter).

\* \* \* \* \*

56. Amend § 240.10A-1 by revising paragraphs (a)(4)(ii) and (b)(3) to read as follows:

**§ 240.10A-1 Notice to the Commission Pursuant to Section 10A of the Act.**

(a)(1) \* \* \*

(4) \* \* \*

(ii) The disclosure requirements of item 304 of Regulation S-K, § 229.304 of this chapter.

(b)(1) \* \* \*

(3) Submission of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (b)(2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under items 304(a)(2)(D) and 304(a)(3) of Regulation S-K, §§ 229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and shall not limit, reduce, or affect in any way the independent accountant's obligations to comply fully with all other legal and professional responsibilities, including, without limitation, those under generally accepted auditing standards and the rules or interpretations of the Commission that modify or supplement those auditing standards.

\* \* \* \* \*

57. Amend § 240.10A-3 by revising paragraph (a)(5)(i)(A) to read as follows:

**§ 240.10A-3 Listing standards relating to audit committees.**

(a) \* \* \*

(5) \* \* \*

(i) \* \* \*

(A) July 31, 2005 for foreign private issuers and smaller reporting companies (as defined in § 240.12b-2); and

\* \* \* \* \*

58. Amend § 240.12b-2 by:

- a. Revising paragraphs (1)(iv) and (2)(iv) in the definition of accelerated filer;
- b. Removing the definition of Small business issuer; and
- c. Adding the definition of Smaller reporting company in alphabetical order.

The revisions and addition to read as follows:

**§ 240.12b-2 Definitions**

\* \* \* \* \*

Accelerated filer and large accelerated filer

(1) Accelerated filer. \* \* \*

(i) \* \* \*

(iv) The issuer is not eligible to use the requirements for smaller reporting companies in Part 229 of this chapter for its annual and quarterly reports.

\* \* \* \* \*

(2) Large accelerated filer. \* \* \*

(i) \* \* \*

(iv) The issuer is not eligible to use the requirements for smaller reporting companies in Part 229 of this chapter for its annual and quarterly reports.

\* \* \* \* \*

Smaller reporting company. As used in this part, the term “smaller reporting company” means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide

number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(2) In the case of an initial registration statement under the Securities Act for shares of its common equity, had a public float of less than \$75 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(3) In the case of an issuer whose public float as calculated under paragraph (1) or (2) of this definition was zero because the issuer had no significant public common equity outstanding or no market price for its common equity existed, had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available on the date of the filing that establishes whether or not the issuer is a smaller reporting company for any fiscal year.

(4) Determination: Whether or not an issuer is a smaller reporting company is determined for an entire fiscal year on the basis of the information in a quarterly report on Form 10-Q or an initial registration statement under the Securities Act or this Act, whichever is first to be filed during that year. Once an issuer fails to qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (1) of this definition was less than \$50 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no significant public equity outstanding or no market price for its equity existed, if the issuer had annual revenues of

less than \$40 million during its previous fiscal year. An issuer making this determination becomes a smaller reporting company for the purpose of filings for the next fiscal year.

\* \* \* \* \*

59. Amend § 240.12b-23 by revising paragraphs (a)(3)(i) and (b) to read as follows:

**§ 240.12b-23 Incorporation by reference.**

(a) \* \* \*

(3) \* \* \*

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10-K (17 CFR 249.310);

\* \* \* \* \*

(b) Any incorporation by reference of matter pursuant to this section shall be subject to the provisions of § 229.10(d) of this chapter restricting incorporation by reference of documents which incorporate by reference other information. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, and caption or otherwise. Where only certain pages of a document are incorporated by reference and filed as an exhibit, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear or confusing.

60. Amend § 240.12b-25 by revising the section heading and paragraphs (a) and (b)(2)(ii) to read as follows:

**§ 240.12b-25 Notification of inability to timely file all or any required portion of a Form 10-K, 20-F, 11-K, N-SAR, N-CSR, 10-Q, or 10-D.**

(a) If all or any required portion of an annual or transition report on Form 10-K, 20-F or 11-K (17 CFR 249.310, 249.220f or 249.311), a quarterly or transition report on Form 10-Q (17 CFR 249.308a ), or a distribution report on Form 10-D (17 CFR 249.312) required to be filed pursuant to Section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and rules thereunder, or if all or any required portion of a semi-annual, annual or transition report on Form N-CSR (17 CFR 249.331; 17 CFR 274.128) or Form N-SAR (17 CFR 249.330; 17 CFR 274.101) required to be filed pursuant to Sections 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a-29) and the rules thereunder, is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b-25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) \* \* \*

(2) \* \* \*

(ii) The subject annual report, semi-annual report or transition report on Form 10-K, 20-F, 11-K, N-SAR, or N-CSR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10-Q or distribution report on Form 10-D, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

\* \* \* \* \*

61. Amend § 240.12h-3 by revising paragraph (e) to read as follows:

**§ 240.12h-3 Suspension of duty to file reports under section 15(d).**

\* \* \* \* \*

(e) If the suspension provided by this section is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) of this section on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) of the Act by filing an annual report on Form 10–K for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

62. Amend § 240.13a-10 by revising paragraphs (c), (d)(2)(ii), (d)(2)(iii), the introductory text of paragraph (e), paragraphs (e)(1), (e)(2), (e)(4), the Note to paragraphs (c) and (e) and the introductory text of paragraph (j)(2) to read as follows:

**§ 240.13a-10 Transition reports.**

\* \* \* \* \*

(c) If the transition period covers a period of less than six months, in lieu of the report required by paragraph (b) of this section, a report may be filed for the transition period on Form 10–Q (§ 249.308a of this chapter) not more than the number of days specified in paragraph (j) of this section after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report on Form 10–Q shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period shall be filed in the annual report only if the audited balance sheet as of the end of the fiscal year prior to the transition period is not filed. Schedules need not be filed in transition reports on Form 10–Q.

(d) \* \* \*

(2) \* \* \*

(ii) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is a quarterly report on Form 10-Q; and

(iii) Information on the transition period is included in the issuer's quarterly report on Form 10-Q for the first quarterly period (except the fourth quarter) of the newly adopted fiscal year that ends after the date of the determination to change the fiscal year. The information covering the transition period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for the transition period.

(e) Every issuer required to file quarterly reports on Form 10-Q pursuant to § 240.13a-13 of this chapter that changes its fiscal year end shall:

(1) File a quarterly report on Form 10-Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10-Q within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10-Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within the number of days specified in paragraph (j) of this section after the end of

such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year;

\* \* \* \* \*

(4) Unless such information is or will be included in the transition report, or the first annual report on Form 10–K for the newly adopted fiscal year, include in the initial quarterly report on Form 10–Q for the newly adopted fiscal year information on any period beginning on the first day subsequent to the period covered by the issuer's final quarterly report on Form 10–Q or annual report on Form 10–K for the old fiscal year. The information covering such period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for such period.

Note to paragraphs (c) and (e): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10–Q or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

\* \* \* \* \*

(j) \* \* \*

(2) For transition reports to be filed on Forms 10-Q (§ 249.308a of this chapter) the number of days shall be:

\* \* \* \* \*

63. Amend § 240.13a-13 by revising the section heading, paragraph (a), the introductory text of paragraph (c), and paragraph (d) to read as follows:

**§ 240.13a-13 Quarterly reports on Form 10-Q (§ 249.308a of this chapter).**

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to section 12 of the Act and is required to file annual reports pursuant to section 13 of the Act, and has filed or intends to file such reports on Form 10-K (§ 249.310 of this chapter), shall file a quarterly report on Form 10-Q (§ 249.308a of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S-X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer has been required to file reports on Form 10-Q as of its last fiscal quarter, whichever is later.

\* \* \* \* \*

(c) Part I of the quarterly reports on Form 10-Q need not be filed by:

\* \* \* \* \*

(d) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10-Q, shall not be deemed to be “filed” for the purpose of Section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

64. Amend § 240.13a-14 by revising paragraph (a) to read as follows:

**§ 240.13a-14 Certification of disclosure in annual and quarterly reports.**

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–K, Form 20–F or Form 40–F (§§ 249.308a, 249.310, 249.220f or 249.240f of this chapter) under Section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in § 229.1101 of this chapter) or a report on Form 20–F filed under § 240.13a–19, must include certifications in the form specified in the applicable exhibit filing requirements of such report and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification. The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15.

\* \* \* \* \*

65. Amend § 240.13a-16 by revising paragraph (a)(3) to read as follows:

**§ 240.13a-16 Reports of foreign private issuers on Form 6–K (17 CFR 249.306).**

(a) \* \* \*

(3) Issuers filing periodic reports on Forms 10–K, Form 10–Q, and Form 8–K; or

\* \* \* \* \*

66. Amend § 240.13a-20 by revising the introductory text of paragraph (a) to read as follows:

**§ 240.13a-20 Plain English presentation of specified information.**

(a) Any information included or incorporated by reference in a report filed under section 13(a) of the Act (15 U.S.C. 78m(a)) that is required to be disclosed pursuant to Item 402, 403, 404 or 407 of Regulation S–K (§ 229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

\* \* \* \* \*

67. Amend § 240.14a-3 by removing the Note to Small Business Issuers following the introductory text of paragraph (b), revising paragraph (b)(1) and Note 1, revising the heading “Note 2” to read “Note 2 to Paragraph (b)(i)”, revising paragraphs (b)(5)(ii), (b)(10) and its Note, and (d) to read as follows:

**§ 240.14a-3 Information to be furnished to security holders.**

\* \* \* \* \*

(b) \* \* \*

(1) The report shall include, for the registrant and its subsidiaries, consolidated and audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and cash flows for each of the three most recent fiscal years prepared in accordance with Regulation S-X (part 210 of this chapter), except that the provisions of Article 3 (other than §§210.3-03(e), 2103-04 and 210.3-20) and Article 11 shall not apply. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited. A smaller reporting company may provide the information in Item 310 of Regulation S-K

(§ 229.310 of this chapter) in lieu of the financial information required by Rule 14a-3(b)(1) (§ 240.14a-3(b)(1)).

Note 1 to Paragraph (b)(1): If the financial statements for a period prior to the most recently completed fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders provided the registrant has obtained from the predecessor accountant a reissued report covering the prior period presented and the successor accountant clearly indicates in the scope paragraph of his report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant and (d) the substantive reasons therefor, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant is required in filings with the Commission. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form 10-K, the separate report of a predecessor accountant shall be filed in Part II or in Part IV as a financial statement schedule.

\* \* \* \* \*

(5) \* \* \*

(ii) The report shall contain management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

\* \* \* \* \*

(10) The registrant's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited upon the written request of any such person, a copy of the registrant's annual report on Form 10-K, including the financial statements and the financial statement schedules, required to be filed with the Commission pursuant to Rule 13a-1 under the Act for the registrant's most recent

fiscal year, and shall indicate the name and address (including title or department) of the person to whom such a written request is to be directed. In the discretion of management, a registrant need not undertake to furnish without charge copies of all exhibits to its Form 10-K provided that the copy of the annual report on Form 10-K furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the registrant will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the registrant's reasonable expenses in furnishing such exhibit. If the registrant's annual report to security holders complies with all of the disclosure requirements of Form 10-K and is filed with the Commission in satisfaction of its Form 10-K filing requirements, such registrant need not furnish a separate Form 10-K to security holders who receive a copy of such annual report.

Note to Paragraph (b)(10): Pursuant to the undertaking required by paragraph (b)(10) of this section, a registrant shall furnish a copy of its annual report on Form 10-K (§ 249.310 of this chapter) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (b) of this section, the person making the request was a beneficial owner of securities entitled to vote.

\* \* \* \* \*

(d) An annual report to security holders prepared on an integrated basis pursuant to General Instruction H to Form 10-K (§ 249.310) may also be submitted in satisfaction of this section. When filed as the annual report on Form 10-K, responses to the Items of that form are subject to section 18 of the Act notwithstanding paragraph (c) of this section.

\* \* \* \* \*

68. Amend § 240.14a-5 by removing the authority citation following the section and revising paragraph (f) to read as follows:

**§ 240.14a-5 Presentation of information in proxy statement.**

\* \* \* \* \*

(f) If the date of the next annual meeting is subsequently advanced or delayed by more than 30 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform shareholders of such change, and the new dates referred to in paragraphs (e)(1) and (e)(2) of this section, by including a notice, under Item 5, in its earliest possible quarterly report on Form 10-Q (§ 249.308a of this chapter), or, in the case of investment companies, in a shareholder report under § 270.30d-1 of this chapter under the Investment Company Act of 1940, or, if impracticable, any means reasonably calculated to inform shareholders.

69. Amend § 240.14a-8, by revising paragraph (e)(1) to read as follows:

**§ 240.14a-8 Shareholder proposals.**

\* \* \* \* \*

(e) \* \* \*

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

\* \* \* \* \*

70. Amend § 240.14a-101 by revising Notes C. and D.1, and the introductory text of Note E.; and removing Notes F. and G. to the cover page and revising paragraph (e)(1) of Item 9, and revising paragraph (a)(1) of Item 13 to read as follows:

**§ 240.14a-101 Schedule 14A. Information required in proxy statement.**

\* \* \* \* \*

**Schedule 14A Information**

**Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934**

\* \* \* \* \*

**Notes: \* \* \***

C. Except as otherwise specifically provided, where any item calls for information for a specified period with regard to directors, executive officers, officers or other persons holding specified positions or relationships, the information shall be given with regard to any person who held any of the specified positions or relationship at any time during the period. Information, other than information required by Item 404 of Regulation S–K (§ 229.404 of this chapter), need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.

\* \* \* \* \*

**D. \* \* \***

1. Any incorporation by reference of information pursuant to the provisions of this schedule shall be subject to the provisions of § 229.10(d) of this chapter restricting incorporation by reference of documents which incorporate by reference other information. A registrant incorporating any documents, or portions of documents, shall include a statement on the last page(s) of the proxy statement as to which documents, or portions of documents, are

incorporated by reference. Information shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

\* \* \* \* \*

E. In Item 13 of this Schedule, the reference to “meets the requirement of Form S-3” shall refer to a registrant who meets the following requirements:

\* \* \* \* \*

Item 9. Independent public accountants.

\* \* \* \* \*

(e) (1) Disclose, under the caption Audit Fees, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant's annual financial statements and review of financial statements included in the registrant's Form 10-Q (17 CFR 249.308a) or services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

\* \* \* \* \*

Item 13. Financial and other information. (See Notes D and E at the beginning of this Schedule.)

(a) \* \* \*

(1) Financial statements meeting the requirements of Regulation S-X, including financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than pursuant to which action is to be taken as described in this proxy statement (A smaller reporting company may provide the information in Item 310 of Regulation S-K (§ 229.310 of this chapter) in lieu of the financial information required by Rule 3-05 and Article 11 of Regulation S-X);

\* \* \* \* \*

71. Amend § 240.14c-3 by removing the Note to Small Business Issuers following paragraph (a)(2).

72. Amend § 240.14c-101 by revising the Note that follows the cover page to read as follows:

**§ 240.14c-101 Schedule 14C. Information required in information statement.**

Schedule 14C Information

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934

\* \* \* \* \*

Note to Cover Page: Where any item, other than Item 4, calls for information with respect to any matter to be acted upon at the meeting or, if no meeting is being held, by written authorization or consent, such item need be answered only with respect to proposals to be made by the registrant. Registrants and acquirers that meet the definition of “smaller reporting company” under Rule 12b-2 of the Exchange Act (§ 240.12b-2) shall refer to the disclosure items in Regulation S-K (§§ 229.10 through 229.1123 of this chapter) and may use the scaled disclosure requirements provided therein for smaller reporting companies. A smaller reporting company may provide the information in Item 310 of Regulation S-K in lieu of any financial statements required by Item 1 of § 240.14c-101.

\* \* \* \* \*

73. Amend § 240.14d-3 by removing the authority citation following the section and revising paragraph (a)(3)(i) to read as follows:

**§ 240.14d-3 Filing and transmission of tender offer statement.**

(a) \* \* \*

(3) \* \* \*

(i) To each national securities exchange where such class of the subject company's securities is registered and listed for trading (which may be based upon information contained in the subject company's most recent Annual Report on Form 10–K (§ 249.310 of this chapter) filed with the Commission unless the bidder has reason to believe that such information is not current) which telephonic notice shall be made when practicable prior to the opening of each such exchange; and

\* \* \* \* \*

74. Amend § 240.15d-10 by revising paragraphs (c), (d)(2)(ii), (d)(2)(iii), the introductory text of (e), paragraphs (e)(1), (e)(2), (e)(4), the Note to paragraphs (c) and (e), paragraph (f), and the introductory text of (j)(2) to read as follows:

**§ 240.15d-10 Transition reports.**

\* \* \* \* \*

(c) If the transition period covers a period of less than six months, in lieu of the report required by paragraph (b) of this section, a report may be filed for the transition period on Form 10–Q (§ 249.308 of this chapter) not more than the number of days specified in paragraph (j) of this section after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report on Form 10–Q shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period shall be filed in the annual report only if the audited balance sheet as of the end

of the fiscal year prior to the transition period is not filed. Schedules need not be filed in transition reports on Form 10-Q.

(d) \* \* \*

(2)(i) \* \* \*

(ii) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is a quarterly report on Form 10-Q; and

(iii) Information on the transition period is included in the issuer's quarterly report on Form 10-Q for the first quarterly period (except the fourth quarter) of the newly adopted fiscal year that ends after the date of the determination to change the fiscal year. The information covering the transition period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for the transition period.

\* \* \* \* \*

(e) Every issuer required to file quarterly reports on Form 10-Q pursuant to § 240.15d-13 that changes its fiscal year end shall:

(1) File a quarterly report on Form 10-Q within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10-Q within the time specified in General Instruction A.1 to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the

issuer may file a quarterly report on Form 10-Q for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within the number of days specified in paragraph (j) of this section after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year;

\* \* \* \* \*

(4) Unless such information is or will be included in the transition report, or the first annual report on Form 10-K for the newly adopted fiscal year, include in the initial quarterly report on Form 10-Q for the newly adopted fiscal year information on any period beginning on the first day subsequent to the period covered by the issuer's final quarterly report on Form 10-Q or annual report on Form 10-K for the old fiscal year. The information covering such period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for such period.

Note to Paragraphs (c) and (e): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10-Q or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(f) Every successor issuer that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by

the last annual report of each predecessor and the date of succession. The report shall be filed for the transition period on the form appropriate for annual reports of the issuer not more than the number of days specified in paragraph (j) of this section after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, in lieu of a transition report on the form appropriate for the issuer's annual reports, the report may be filed for the transition period on Form 10-Q not more than the number of days specified in paragraph (j) of this section after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section. Notwithstanding the foregoing, if the transition period covers a period of one month or less, the successor issuer need not file a separate transition report if the information is reported by the successor issuer in conformity with the requirements set forth in paragraph (d) of this section.

\* \* \* \* \*

(j) \* \* \*

(2) For transition reports to be filed on Form 10-Q (§ 249.308 of this chapter), the number of days shall be:

\* \* \* \* \*

75. Amend § 240.15d-13 by revising the section heading, paragraph (a), the introductory text of (c), and paragraphs (d) and (e) to read as follows:

**§ 240.15d-13 Quarterly reports on Form 10-Q (§ 249.308 of this chapter).**

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to the Securities Act and is required to file annual reports pursuant to section 15(d) of the Act on Form 10-K (§ 249.310 of this chapter) shall file a quarterly report on Form 10-Q (§ 249.308 of this chapter) within the period specified in General Instruction A.1.

to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S-X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer had been required to file reports on Form 10-Q as of its last fiscal quarter, whichever is later.

\* \* \* \* \*

(c) Part I of the quarterly reports on Form 10-Q need not be filed by:

\* \* \* \* \*

(d) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10-Q shall not be deemed to be “filed” for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

(e) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10-Q, or financial information submitted in lieu thereof pursuant to paragraph (d) of this section, shall not be deemed to be “filed” for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

76. Amend § 240.15d-14 by revising paragraph (a) to read as follows:

**§ 240.15d-14 Certification of disclosure in annual and quarterly reports.**

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–K, Form 20–F or Form 40–F (§249.308a, 249.310, 249.220f or 249.240f of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)), other than a report filed by an Asset-Backed Issuer (as defined in §-229.1101 of this chapter) or a report on Form 20–F filed under § 240.15d–19, must include certifications in the form specified in the applicable exhibit filing requirements of such report and such certifications must be filed as an exhibit to such report. Each principal executive and principal financial officer of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification. The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15.

\* \* \* \* \*

77. Amend § 240.15d-20 by revising the introductory text of paragraph (a) to read as follows:

**§ 240.15d-20 Plain English presentation of specified information.**

(a) Any information included or incorporated by reference in a report filed under section 15(d) of the Act (15 U.S.C. 78o(d)) that is required to be disclosed pursuant to Item 402, 403, 404 or 407 of Regulation S–K (§229.402, 229.403, 229.404 or 229.407 of this chapter) must be presented in a clear, concise and understandable manner. You must prepare the disclosure using the following standards:

\* \* \* \* \*

78. Amend § 240.15d-21 by revising paragraph (a)(1) to read as follows:

**§ 240.15d-21 Reports for employee stock purchase, savings and similar plans.**

(a) \* \* \*

(1) The issuer of the stock or other securities offered to employees through their participation in the plan files annual reports on Form 10-K (§ 249.310 of this chapter); and

\* \* \* \* \*

## **PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934**

79. The authority citations for part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a et seq., 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

80. Amend § 249.0-1 by revising paragraph (b) to read as follows:

### **§ 249.0-1 Availability of forms.**

\* \* \* \* \*

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Any person may inspect the forms at this address and at the Commission's regional offices. (See § 200.11 of this chapter for the addresses of SEC regional offices).

81. Amend Form 8-A (referenced in § 249.208a) by revising Item 1 before the Instruction to read as follows:

**Note- The text of Form 8-A does not and this amendment will not appear in the Code of Federal Regulations.**

### **FORM 8-A**

#### **FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES ACT OF 1934**

\* \* \* \* \*

**Item 1. Description of Registrant's Securities to be Registered.**

Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter), as applicable.

\* \* \* \* \*

82. Amend Form 10 (referenced in § 249.210) by:

- a. Adding check boxes to the cover page, above the Information Requested in Registration Statement, requesting the registrant indicate by check mark whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company; and
- b. Revising Item 13;

The addition and revision read as follows:

**Note-The text of Form 10 does not and this amendment will not appear in the Code of Federal Regulations.**

#### **FORM 10**

### **GENERAL FORM FOR REGISTRATION OF SECURITIES Pursuant to Section 12(b) or (g) of The Securities Exchange Act of 1934**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

- |  |  |
|--|--|
| Large accelerated filer <input type="checkbox"/> | Accelerated filer <input type="checkbox"/>         |
| Non-accelerated filer <input type="checkbox"/>   | Smaller reporting company <input type="checkbox"/> |
- (Do not check if a smaller reporting company)

\* \* \* \* \*

#### **Item 13. Financial Statements and Supplementary Data.**

Furnish all financial statements required by Regulation S-X and supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter). Smaller

reporting companies may provide financial information required by Item 310 of Regulation S-K in lieu of the information required by Regulation S-X.

\* \* \* \* \*

83. By removing and reserving § 249.210b and removing Form 10-SB.

**Note- The text of Form 10-SB does not appear in the Code of Federal Regulations.**

84. Amend Form 20-F (referenced in § 249.220f) by revising Item 11(e) to read as follows:

**FORM 20-F**

\* \* \* \* \*

Part I

\* \* \* \* \*

**Item 11. Quantitative and Qualitative Disclosures About Market Risk.**

\* \* \* \* \*

(e) Smaller reporting companies. A smaller reporting company, as defined in Rule 405 (§ 230.405 of this chapter) and Rule 12b-2 (§ 240.12b-2 of this chapter), need not provide the information required by this Item 11.

\* \* \* \* \*

85. Amend Form 8-K (referenced in § 249.308) by revising General Instruction B.4.; removing paragraph C.3; revising Item 2.01 paragraph (f) before the Instructions; Instructions 2 and 4 to Item 2.02; Item 2.03 paragraph (d); Item 3.02 paragraphs (a) and (b) before the Instructions and Instruction 2; Item 4.01 paragraphs (a) and (b) before the Instructions; Item 4.02 the introductory text of paragraph (a); Item 5.01 paragraphs (a)(8) and (b); Item 5.02 paragraphs (c)(2), (d)(4), (f), and Instruction 4; in Item 5.03 paragraph (b), revise the phrase “Form 10-K, Form 10-KSB, Form 10-Q or Form 10-QSB” to read “Form 10-K or Form 10-Q”, and revise

Instruction 1; Item 5.05 paragraph (a); and Item 9.01 paragraphs (a)(1), (b)(1) and (d) before the Instruction

The revisions read as follows:

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934**

\* \* \* \* \*

**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**B. Events to be Reported and Time for Filing of Reports.**

\* \* \* \* \*

4. Copies of agreements, amendments or other documents or instruments required to be filed pursuant to Form 8-K are not required to be filed or furnished as exhibits to the Form 8-K unless specifically required to be filed or furnished by the applicable Item. This instruction does not affect the requirement to otherwise file such agreements, amendments or other documents or instruments, including as exhibits to registration statements and periodic reports pursuant to the requirements of Item 601 of Regulation S-K.

\* \* \* \* \*

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

\* \* \* \* \*

(f) if the registrant was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), immediately before the transaction, the information that would be required if the registrant were filing a general form for registration of securities on Form 10 under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of Section 13 (15

U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the transaction, with such information reflecting the registrant and its securities upon consummation of the transaction. Notwithstanding General Instruction B.3 to Form 8-K, if any disclosure required by this Item 2.01(f) is previously reported, as that term is defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

\* \* \* \* \*

## **Item 2.02 Results of Operations and Financial Condition.**

\* \* \* \* \*

### Instructions.

\* \* \* \* \*

2. The requirements of paragraph (e)(1)(i) of Item 10 of Regulation S-K (17 CFR 229.10(e)(1)(i)) shall apply to disclosures under this Item 2.02.

\* \* \* \* \*

4. This Item 2.02 does not apply in the case of a disclosure that is made in a quarterly report filed with the Commission on Form 10-Q (17 CFR 249.308a) or an annual report filed with the Commission on Form 10-K (17 CFR 249.310).

## **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

\* \* \* \* \*

(d) For purposes of this Item 2.03, off-balance sheet arrangement has the meaning set forth in Item 303(a)(4)(ii) of Regulation S-K (17 CFR 229.303(a)(4)(ii)).

\* \* \* \* \*

## **Item 3.02 Unregistered Sales of Equity Securities.**

(a) If a registrant sells equity securities in a transaction that is not registered under the Securities Act, furnish the information set forth in paragraphs (a) and (c) through (e) of Item 701 of Regulation S-K (17 CFR 229.701(a) and (c) through (e)). For purposes of determining the required filing date for the Form 8-K under this Item 3.02(a), the registrant has no obligation to disclose information under this Item 3.02 until the registrant enters into an agreement enforceable against the registrant, whether or not subject to conditions, under which the equity securities are to be sold. If there is no such agreement, the registrant must provide the disclosure within four business days after the occurrence of the closing or settlement of the transaction or arrangement under which the equity securities are to be sold.

(b) No report need be filed under this Item 3.02 if the equity securities sold, in the aggregate since its last report filed under this Item 3.02 or its last periodic report, whichever is more recent, constitute less than 1% of the number of shares outstanding of the class of equity securities sold. In the case of a smaller reporting company, no report need be filed if the equity securities sold, in the aggregate since its last report filed under this Item 3.02 or its last periodic report, whichever is more recent, constitute less than 5% of the number of shares outstanding of the class of equity securities sold.

Instructions.

\* \* \* \* \*

2. A smaller reporting company is defined under Item 10(f)(1) of Regulation S-K (17 CFR 229.10(f)(1)).

\* \* \* \* \*

**Item 4.01 Changes in Registrant's Certifying Accountant.**

(a) If an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant upon whom the

principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates that it declines to stand for re-appointment after completion of the current audit) or is dismissed, disclose the information required by Item 304(a)(1) of Regulation S-K including compliance with Item 304(a)(3) of Regulation S-K (17 CFR 229.304(a)(1)).

(b) If a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements or as an independent accountant on whom the principal accountant is expected to express reliance in its report regarding a significant subsidiary, the registrant must disclose the information required by Item 304(a)(2) of Regulation S-K (17 CFR 229.302(a)(2)).

\* \* \* \* \*

**Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.**

(a) If the registrant's board of directors, a committee of the board of directors or the officer or officers of the registrant authorized to take such action if board action is not required, concludes that any previously issued financial statements, covering one or more years or interim periods for which the registrant is required to provide financial statements under Regulation S-X (17 CFR 210) or Item 310 of Regulation S-K in the case of a smaller reporting company, should no longer be relied upon because of an error in such financial statements as addressed in Accounting Principles Board Opinion No. 20, as may be modified, supplemented or succeeded, disclose the following information:

\* \* \* \* \*

**Item 5.01 Changes in Control of the Registrant.**

(a) \* \* \*

(8) if the registrant was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2),

immediately before the change in control, the information that would be required if the registrant were filing a general form for registration of securities on Form 10 under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the change in control, with such information reflecting the registrant and its securities upon consummation of the transaction. Notwithstanding General Instruction B.3. to Form 8-K, if any disclosure required by this Item 5.01(a)(8) is previously reported, as that term is defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

(b) Furnish the information required by Item 403(c) of Regulation S-K (17 CFR 229.403(c)).

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

\* \* \* \* \*

(c) \* \* \*

(2) the information required by Items 401(b), (d), (e) and Item 404(a) of Regulation S-K (17 CFR 229.401(b), (d), (e) and 229.404(a)); and

\* \* \* \* \*

(d) \* \* \*

(4) the information required by Item 404(a) of Regulation S-K (17 CFR 229.404(a)).

\* \* \* \* \*

(f) If the salary or bonus of a named executive officer cannot be calculated as of the most recent practicable date and is omitted from the Summary Compensation Table as specified in Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S-K, disclose the appropriate information under this Item 5.02(f) when there is a payment, grant, award, decision or other

occurrence as a result of which such amounts become calculable in whole or in part. Disclosure under this Item 5.02(f) shall include a new total compensation figure for the named executive officer, using the new salary or bonus information to recalculate the information that was previously provided with respect to the named executive officer in the registrant's Summary Compensation Table for which the salary and bonus information was omitted in reliance on Instruction 1 to Item 402(c)(2)(iii) and (iv) of Regulation S-K (17 CFR 229.402(c)(2)(iii) and (iv)).

**Instructions to Item 5.02.**

\* \* \* \* \*

(4) For purposes of this Item, the term "named executive officer" shall refer to those executive officers for whom disclosure was required in the registrant's most recent filing with the Commission under the Securities Act (15 U.S.C. 77a et seq.) or Exchange Act (15 U.S.C. 78a et seq.) that required disclosure pursuant to Item 402(c) of Regulation S-K (17 CFR 229.402(c)).

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

\* \* \* \* \*

**Instructions to Item 5.03.**

1. Refer to Item 601(b)(3) of Regulation S-K (17 CFR 229.601(b)(3)) regarding the filing of exhibits to this Item 5.03.

\* \* \* \* \*

**Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics.**

(a) Briefly describe the date and nature of any amendment to a provision of the registrant's code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar

functions and that relates to any element of the code of ethics definition enumerated in Item 406(b) of Regulation S-K (17 CFR 229.406(b)).

\* \* \* \* \*

**Item 9.01 Financial Statements and Exhibits.**

\* \* \* \* \*

(a) \* \* \*

(1) For any business acquisition required to be described in answer to Item 2.01 of this form, financial statements of the business acquired shall be filed for the periods specified in Rule 3-05(b) of Regulation S-X (17 CFR 210.3-05(b)). A smaller reporting company may provide the information in Item 310(c) of Regulation S-K (17 CFR 229.310(c)) in lieu of any financial statements required by Item 9(a) of this Form.

\* \* \* \* \*

(b) \* \* \*

(1) For any transaction required to be described in answer to Item 2.01 of this form, furnish any pro forma financial information that would be required pursuant to Article 11 of Regulation S-X (17 CFR 210.3-14) shall be filed. A smaller reporting company may provide the information in Item 310(d) of Regulation S-K (17 CFR 229.310(d)) in lieu of any financial statements required by Item 9(b) of this Form.

\* \* \* \* \*

(d) Exhibits. The exhibits will be deemed to be filed or furnished, depending upon the relevant item requiring such exhibit, in accordance with the provisions of Item 601 of Regulation S-K (17 CFR 229.601) and Instruction B.2 of this form.

\* \* \* \* \*

86. Amend Form 10-Q (referenced in § 249.308a) by:

a. Revising the cover page of Form 10-Q to add, above Part I Financial Information, check boxes requesting the registrant to indicate whether it is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company; and

b. In Part I, revising the text of Item 1.

The revision and addition read as follows:

**Note- The text of Form 10-Q does not and this amendment will not appear in the Code of Federal Regulations.**

### FORM 10-Q

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

### PART I—FINANCIAL INFORMATION

#### Item 1. Financial Statements.

Provide the information required by Rule 10-01 of Regulation S-X (17 CFR 210). A smaller reporting company, defined in Rule 12b-2 (§240.12b-2 of this chapter) may provide the information required by Item 310 of Regulation S-K (§229.310 of this chapter) in lieu of the information required by Regulation S-X.

\* \* \* \* \*

87. By removing and reserving § 249.308b and removing Form 10-QSB.

**Note- The text of Form 10-KSB does not appear in the Code of Federal Regulations.**

88. Amend Form 10-K (referenced in § 249.310) by:

a. Revising the cover page of Form 10-K to add, above the line asking the registrant to indicate whether it is a shell company, check boxes requesting the registrant to indicate whether it is a large accelerated filer, or an accelerated filer; a non-accelerated filer, or a smaller reporting company; and

b. Revising Item 5 paragraph (a), Item 8 and Item 14 paragraph (1).

The additions and revisions read as follows:

**Note- The text of Form 10-K does not and this amendment will not appear in the Code of Federal Regulations.**

#### **FORM 10-K**

#### **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

#### **FORM 10-K**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

\* \* \* \* \*

**Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

(a) Furnish the information required by Item 201 of Regulation S-K (17 CFR 229.201) and Item 701 of Regulation S-K (17 CFR 229.701) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. If the Item 701 information previously has been included in a Quarterly Report on Form 10-Q (17 CFR 249.308a) or in a Current Report on Form 8-K (17 CFR 249.308), it need not be furnished.

\* \* \* \* \*

#### **Item 8. Financial Statements and Supplementary Data.**

(a) Furnish financial statements meeting the requirements of Regulation S-X (§ 210 of this chapter), except § 210.3-05 and Article 11 thereof, and the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter). Financial statements of the registrant and its subsidiaries consolidated (as required by Rule 14a-3(b)) shall be filed under this item. Other financial statements and schedules required under Regulation S-X may be filed as “Financial Statement Schedules” pursuant to Item 15, Exhibits, Financial Statement Schedules, and Reports on Form 8-K, of this Form.

(b) A smaller reporting company may provide the information required by Item 310 of Regulation S-K in lieu of any financial statements required by Item 8 of this Form.

\* \* \* \* \*

#### **Item 14. Principal Accounting Fees and Services.**

\* \* \* \* \*

(1) Disclose, under the caption Audit Fees, the aggregate fees billed for each of the last two fiscal years for professional services rendered by the principal accountant for the audit of the registrant’s annual financial statements and review of financial statements included in the registrant’s Form 10-Q (17 CFR 249.308a) or services that are normally provided by the

accountant in connection with statutory and regulatory filings or engagements for those fiscal years.

\* \* \* \* \*

89. By removing and reserving § 249.310b and removing Form 10-KSB.

**Note- The text of Form 10-QSB does not appear in the Code of Federal Regulations.**

90. Amend Form 11-K (referenced in § 249.311) by revising General Instruction E(b) to read as follows:

#### **FORM 11-K**

### **FOR ANNUAL REPORTS OF EMPLOYEE STOCK PURCHASE, SAVINGS AND SIMILAR PLANS PURSUANT TO SECTION 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

#### **GENERAL INSTRUCTIONS**

\* \* \* \* \*

#### **E. Electronic Filers.**

\* \* \* \* \*

(b) Financial Data Schedules are not required to be submitted in connections with annual reports on this form. See Item 601(c)(1) of Regulation S-K (§ 229.601(c)(1)).

\* \* \* \* \*

91. Amend Form SE (referenced in § 249.444) by revising General Instruction 3.C.

\* \* \* \* \*

#### **FORM SE**

### **FORM FOR SUBMISSION OF PAPER FORMAT EXHIBITS BY EDGAR ELECTRONIC FILERS**

\* \* \* \* \*

#### **FORM SE GENERAL INSTRUCTIONS**

\* \* \* \* \*

3. Filing of Form SE.

\* \* \* \* \*

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 (§ 229.601 of this chapter).

\* \* \* \* \*

**PART 260--GENERAL RULE AND REGULATIONS, TRUST INDENTURE ACT OF 1939**

92. The authority citation for Part 260 continues to read as follows:

**Authority:** 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

93. Amend § 260.0-11 by revising the introductory text of paragraph (b)(1), paragraphs (b)(1)(i) and (b)(2) to read as follows:

**§ 260.0-11 Liability for certain statements by issuers.**

\* \* \* \* \*

(b) \* \* \*

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q, § 249.308a of this chapter, or in an annual report to share holders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) under the Securities Exchange Act of 1934 (§ 240.14a-3(b) and (c) or § 240.14c-3(a) and (b) of this chapter), a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10-Q, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement; Provided, that:

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 (§ 240.13a-1 or § 240.15d-1 of this chapter) thereunder, if applicable, to file its most recent annual report on Form 10-K, Form 20-F, or Form 40-F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934; and

\* \* \* \* \*

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter) or Item 5 of Form 20-F (§ 249.220f of this chapter), “Operating and Financial Review and Prospects,” or Item 302 of Regulation S-K (§ 229.302 of this chapter), “Supplementary Financial Information,” or Rule 3-20(c) of Regulation S-X (§ 210.3-20(c) of this chapter), and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q, or in an annual report to shareholders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) (§ 240.14a-3(b) and (c) or § 240.14c-3(a) and (b)) under the Securities Exchange Act of 1934.

\* \* \* \* \*

94. Amend § 260.4d-9 by revising the introductory text of § 260.4d-9 to read as follows:

**§ 260.4d-9 Exemption for Canadian Trust Indentures from Specified Provisions of the Act.**

Any trust indenture filed in connection with offerings on a registration statement on Form S-1, (§ 239.1 of this chapter) F-7, F-8, F-9, F-10 or F-80 (§§ 239.37 through 239.41 of this chapter) shall be exempt from the operation of sections 310(a)(3) and 310(a)(4), sections 310(b)

through 316(a), and sections 316(c) through 318(a) of the Act; provided that the trust indenture is subject to:

\* \* \* \* \*

95. Amend § 260.10a-5 by revising paragraph (a) to read as follows:

**§ 260.10a-5 Eligibility of Canadian Trustees.**

(a) Subject to paragraph (b) of this section, any trust company, acting as trustee under an indenture qualified or to be qualified under the Act and filed in connection with offerings on a registration statement on Form S-1 (§ 239.11 of this chapter) F-7, F-8, F-9, F-10 or F-80 (§§ 239.37 through 239.41 of this chapter) that is incorporated and regulated as a trust company under the laws of Canada or any of its political subdivisions and that is subject to supervision or examination pursuant to the Trust Companies Act (Canada), R.S.C. 1985, or the Canada Deposit Insurance Corporation Act, R.S.C. 1985 shall not be subject to the requirement of domicile in the United States under section 310(a) of the Act (15 U.S.C. 77jjj(a)).

\* \* \* \* \*

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

96. The authority citation for Part 269 is revised to read as follows:

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

97. Amend § 260.01 by revising paragraph (b) to read as follows:

**§ 269.0-1 Availability of forms.**

\* \* \* \* \*

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Any person may inspect the forms at this address and at the Commission's regional offices. (See § 200.11 of this chapter for the addresses of SEC regional offices.)

By the Commission.

Nancy M. Morris  
Secretary

July 5, 2007