



# Federal Register

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**Monday,  
March 22, 2004**

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**Part III**

## **Securities and Exchange Commission**

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**17 CFR Parts 232, 239, 249, et al.  
Mandated Electronic Filing for Form ID;  
Proposed Rule**

## SECURITIES AND EXCHANGE COMMISSION

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

[Release Nos. 33-8399, 34-49416, 35-27815, 39-2416, IC-26385; File No. S7-14-04]

RIN 3235-AJ09

#### Mandated Electronic Filing for Form ID

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing rule and form amendments to mandate the electronic filing of Form ID. Form ID is the application for access codes to file on EDGAR. The intended effect of the proposals is to facilitate the more efficient transmission and processing of the information Form ID requires in a manner that will benefit investors, filers and the Commission.

**DATES:** Comments should be submitted on or before April 5, 2004.

**ADDRESSES:** Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC Web site (<http://www.sec.gov>) or (2) e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to file number S7-14-04; 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>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. 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:** Mark W. Green, Senior Special Counsel (Regulatory Policy), at (202) 942-1940, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459-0301.

**SUPPLEMENTARY INFORMATION:** We propose to amend Rules 10<sup>1</sup>, 101<sup>2</sup>, 104<sup>3</sup>,

201<sup>4</sup> and 202<sup>5</sup> under Regulation S-T<sup>6</sup> and Form ID<sup>7</sup>.

#### I. Background and New Filing System

Currently, applicants applying for access codes to file on the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") must file a Form ID in paper<sup>8</sup> by fax.<sup>9</sup> When we initially launched the EDGAR system, we required applicants<sup>10</sup> to file Form ID in paper by mail. In November 2001, however, we began to require that applicants file Form ID solely by fax.<sup>11</sup> The electronic filing of Form ID will facilitate the more efficient transmission and processing of the information Form ID requires in a manner that will benefit investors, filers and the Commission. The information will be transmitted in a speedy, secure and reliable manner and will directly enter the Commission's records rather than having to be keyed in by Commission personnel.

We currently expect that the rules requiring electronic filing of Forms ID will be effective in late April, possibly after little further notice. By that time, a related new on-line filing system accessed through an EDGAR Filer Management website is scheduled to be completed.<sup>12</sup>

Applicants who are new filers will be required to file Forms ID.<sup>13</sup> Applicants

<sup>1</sup> 17 CFR 232.201.

<sup>2</sup> 17 CFR 232.202.

<sup>3</sup> 17 CFR 232.10 *et seq.*

<sup>4</sup> 17 CFR 239.63, 249.446, 259.602, 269.7 and 274.402.

<sup>5</sup> Regulation S-T Rule 10(b) [17 CFR 232.10(b)].

<sup>6</sup> Section 1.3.1 of EDGAR Release 8.6 EDGARLink Filer Manual (Volume I) and Onlineforms Filer Manual (Volume III). In some instances, applicants can acquire replacement codes through our EDGAR website without use of a Form ID. Applicants will be able to continue this practice under specified circumstances.

<sup>7</sup> The three categories of individuals or entities that apply for access codes are "filers", "filing agents" and "training agents" (collectively, "applicants"). A filer is an individual or entity on whose behalf an electronic filing is made. A filing agent is an individual or entity that uses access codes to send all or part of a filing on behalf of a filer. A training agent is an individual or entity that will be sending only test filings in connection with training others.

<sup>8</sup> The former requirement to file by mail still is reflected in Part V of the General Instructions to Form ID. This requirement, however, has been superseded by the fax requirement in the Filer Manual.

<sup>9</sup> An on-line filing system currently is available for Forms 3 [17 CFR 249.103 and 274.202], 4 [17 CFR 249.104 and 274.203] and 5 [249.105] filed under Section 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78p(a)].

<sup>10</sup> A "new filer" is an applicant that has not previously filed with the Commission or has filed only paper Forms 3, 4 or 5 (all required to be filed electronically since June 30, 2003) or paper Forms 144 [17 CFR 239.144], under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a *et seq.*], and, as a result, has not been assigned by the

Commission a Central Index Key (CIK) code. The CIK code is a unique publicly available identifier and EDGAR access code.

will be required to access the EDGAR Filer Management website to fill out and submit the forms, as EDGARLink filing will not be available for submission of these forms. Other types of filers (*i.e.*, those who are not new filers) that wish to obtain access codes will be able to do so through the EDGAR Filer Management website or, in generally the same manner as available today, the current EDGAR Filer or Online Forms websites, in all cases without filing a Form ID.<sup>14</sup>

To access and file Forms ID through our EDGAR Filer Management website, each applicant must have available all the information Form ID requires when the applicant accesses the website because the system will not provide a way to save an incomplete form on-line from session to session. A time-out that ends the session will occur one hour following the user's last activity on the system. We expect that there will be more than enough time to prepare, review and submit a Form ID given the nature and quantity of information required. Unlike the current system, only one applicant per Form ID will be permitted. The system will validate for data type and required fields as many fields as possible during the submission process. Applicants will have the chance to correct errors and verify the accuracy of the information prior to submission. An on-line help function will be available. The applicant will be able to add attachments before submission and print the information submitted after submission.

#### II. The Proposed Rule Amendments

##### A. Required Electronic Filing of Form ID

We propose to amend Regulation S-T<sup>15</sup> to require applicants who are new filers to file Forms ID with us

Commission a Central Index Key (CIK) code. The CIK code is a unique publicly available identifier and EDGAR access code.

<sup>14</sup> Modifications to EDGAR in connection with establishing the EDGAR Filer Management Web site will require applicants who file Form ID and users who log onto EDGAR for filing to choose a passphrase. A passphrase will enable a user to change its access codes easily. The passphrase system will provide advantages over the current system for changing access codes. In the current system, users often forget the access code needed to change easily another access code and have greater difficulty changing a code that has expired. Under the new system, users should remember more easily their passphrase since they choose it and an access code's expiration will not affect the passphrase. A passphrase remains valid unless and until the user changes it. Further details about passphrases and access codes will be provided in revisions to the EDGAR Filer Manual.

<sup>15</sup> Regulation S-T is the general regulation governing electronic filing. In addition to complying with Regulation S-T, filers must submit electronic documents in accordance with the instructions in the EDGAR Filer Manual.

<sup>1</sup> 17 CFR 232.10.

<sup>2</sup> 17 CFR 232.101.

<sup>3</sup> 17 CFR 232.104.

electronically. As noted above, Rule 10 of Regulation S–T currently requires Forms ID to be filed in paper.<sup>16</sup> The proposed amendment would revise subparagraph (b) of Rule 10 to replace the paper filing requirement with an electronic filing requirement.<sup>17</sup> For clarity and ease of reference, the amendment also would revise subparagraph (a)(1) of Rule 101 of Regulation S–T<sup>18</sup> to add a new subparagraph (ix) to add Form ID to the rule’s list of documents required to be filed electronically.<sup>19</sup>

We also propose to amend Regulation S–T to make hardship exemptions unavailable to Forms ID. The proposed amendments would revise subparagraph (a) of Rules 201<sup>20</sup> and 202<sup>21</sup> to exclude Form ID from the filings for which hardship exemptions are available. We believe hardship exemptions should not be available to Forms ID because a filer unable to file electronically a Form ID also, presumably, would be unable to file on EDGAR even with the access codes obtained in response to a Form ID filing. Consequently it appears that there would be no practical need for a hardship exemption, and granting the exemption could undermine the purposes of mandated electronic filing of Forms ID.<sup>22</sup>

### B. Required Faxing of Confirming Document Authenticating Form ID

Because only new filers will file the electronic Form ID, we believe the form should be supplemented with additional verification to help ensure

<sup>16</sup> As also noted above, currently, the EDGAR Filer Manual requires Form ID to be filed by fax and Form ID contains a superseded instruction to file Form ID by mail.

<sup>17</sup> We plan to amend the EDGAR Filer Manual accordingly. We also plan to amend Rule 104(a) of Regulation S–T to make it clear that unofficial PDF copy submissions are unavailable to Form ID.

<sup>18</sup> 17 CFR 232.101(a)(1).

<sup>19</sup> Rule 101(a)(1) also requires the electronic submission of any related correspondence and supplemental information pertaining to a document that is the subject of mandated electronic filing “except as otherwise provided.” Proposed Rule 101(a)(1)(ix) would prohibit electronic submission of the notarized confirming authenticating document described in Section II.B of this release. Further, the proposed rule would prohibit electronic submission of related correspondence and supplemental information submitted after electronic filing of Form ID and before the Commission assigns access codes to the applicant to file on EDGAR.

<sup>20</sup> 17 CFR 232.201(a).

<sup>21</sup> 17 CFR 232.202(a).

<sup>22</sup> See the note to Rule 10 of Regulation S–T [17 CFR 232.10] (“The Commission strongly urges any person or entity about to become subject to the disclosure and filing requirements of the federal securities laws to submit a Form ID well in advance of the first required filing, including a registration statement relating to an initial public offering, in order to facilitate electronic filing on a timely basis.”).

the security of the system. Accordingly, we also propose to amend Regulation S–T to require these applicants to file in paper by fax within two business days before or after electronically filing Form ID a notarized document, manually signed by the applicant over its typed signature, that includes the information contained in the Form ID filed or to be filed and confirms the authenticity of the Form ID.<sup>23</sup> The purpose of this requirement is to help assure that the Form ID is authentic. We expect that eventually we will replace this procedure with a requirement that applicants use a certificate from a certification authority to authenticate their Form ID filings.<sup>24</sup>

### C. Form ID

We propose some minor changes to Form ID to facilitate the electronic filing provisions, as follows:

1. Amend the section immediately above the heading for Part I to delete the phrase “Applicant’s CIK (if known)”, the checkboxes and the checkboxes’ related labels “Initial Application” and “Amendment.” A new filer would not have a CIK or have filed a Form ID to amend. Information previously reported on Form ID will continue to be able to be corrected or updated through the EDGAR Filer or EDGAR Online Forms website. As a result, applicants will not need to amend Forms ID.

2. Amend Part I of Form ID to:

- Refer consistently to “applicant” rather than “registrant”;
- Clarify how to present an individual’s name;
- Delete the subsection regarding former name as unnecessary;
- Clarify that a foreign address must include the name of the foreign country rather than the name of a state;

<sup>23</sup> The proposed amendment also would revise subparagraph (b) of Rule 10 of Regulation S–T to add this requirement. One way to satisfy the authenticating document requirement, though only after electronic submission, would be to use a print-out of the Form ID application acknowledgement generated by the EDGAR Filer Management website. To use the print-out to satisfy the requirement, the applicant must notarize the print-out and add an authenticity confirming statement. Before faxing the print-out, the applicant also should make illegible the passphrase that appears on it. The passphrase should be made illegible because, as a code that enables the acquisition of new EDGAR access codes, it should be kept highly confidential.

<sup>24</sup> A certification authority issues a certificate that works like an electronic “pass card” that verifies the holder’s identity when filing. The certification authority’s digital signature would allow us to verify that the certificate is authentic. Certificates currently are optional for filing on EDGAR. They may be purchased from Verisign, the current certification authority for EDGAR.

• Clarify that a foreign telephone number must include a country code in addition to an area code;<sup>25</sup>

• Add applicant type checkboxes for individual and foreign private issuer<sup>26</sup> applicants that are to be marked by applicants, as applicable, in addition to one of the three types (filer, filing agent and training agent) currently on the form; and

• Delete the last three subsections of the part relating to the superseded concepts of initial and amended applications.

3. Amend Part II of Form ID to:

• Revise the heading of the part to clarify that it applies only to filers that are not individuals;

• Delete the subsection asking whether the applicant currently files with the Commission and, if so, what at least one of the applicant’s Commission file numbers is (this information no longer is necessary);

• Refer consistently to “filer” rather than “registrant”;

• Add subsections for the name under which the filer does business and, for foreign private issuer filers, the name of the filer in any language other than English; and

• Clarify that a Social Security number must not be entered as the filer’s tax or federal identification number.

4. Amend Part III of Form ID to delete the subsection regarding the EDGAR Private Mail system that no longer exists.

5. Amend Part V of Form ID to add a warning regarding federal criminal liability for misstatements or omissions.

6. Amend the statutory authority section immediately below Part V of Form ID to make two authority citations more precise and to correct a typographical error in another citation.

7. Amend the introductory section of the General Instructions to Form ID to

• Delete the superseded reference to amendments;

• Delete the language cautioning that an incomplete form may delay codes because a complete form will be necessary to obtain codes;

• Add descriptions of the requirements to file Form ID electronically and fax to the Commission a notarized document, manually signed by the applicant over a typed signature, that confirms the authenticity of the Form ID; and

<sup>25</sup> The described amendments to clarify what foreign addresses and telephone numbers must include also are proposed as to Parts II, III and IV of Form ID.

<sup>26</sup> The term “foreign private issuer” is used in this release as defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)].

- Add contact information for questions.
8. Amend Part I of the General Instructions to Form ID to
- Add and define the applicant type “Individual”;
  - Place the applicant type definitions in bullet format;
  - Add the requirement that the applicant’s individual or foreign private issuer status be indicated, as applicable; and
  - Delete all the text after the applicant type definitions because that text addresses the superseded notions of initial and amended Form ID filings.
9. Amend Part II of the General Instructions to Form ID to
- Clarify in the parenthetical in the heading that Part II of Form ID only should be completed by filers that are not individuals;
  - Refer consistently to “filer” rather than “registrant”;
  - Clarify in the text that Part II of Form ID does not apply to individuals and that, accordingly, a Social Security number must not be entered as a tax or federal identification number;
  - Clarify that if an investment company filer is organized as a series company, the investment company may use the tax or federal identification number of any one of its constituent series;
  - Clarify that issuers that have applied for but not yet received their tax or federal identification number must include all zeroes;
  - Provide that if the filer’s fiscal year does not end on the same date each year (*e.g.*, falls on the last Saturday in December), the filer must enter the date the current fiscal year will end; and
  - Delete the sentence regarding individuals’ providing state of incorporation or organization information since individuals no longer will be filling in Part II of Form ID.
10. Amend Part III of the General Instructions to Form ID to replace all the text, after the first sentence, regarding EDGAR Private Mail system and Internet e-mail with text that omits reference to the now defunct EDGAR Private Mail system and instead provides guidance regarding default and additional per filing e-mail contact addresses.
11. Amend Part IV of the General Instructions to Form ID to add a sentence directing applicants to advise us through the EDGAR filing website of changed address information to help assure that account statements reach the specified contact person.
12. Amend Part V of the General Instructions to Form ID to add guidance on how to sign the form.

#### D. Comment Solicited

We request comment on the rule and form changes we propose in this release. Questions regarding safeguards to help us authenticate Form ID filings:

- Is the proposed faxed notarized document to help authenticate Form ID filings an effective safeguard? Would it be overly burdensome to filers?
- Would its operation, effectiveness or burden differ for foreign applicants and, if so, how?
- If a faxed notarized document can be an effective safeguard:
- What document should we require to be notarized and faxed (*e.g.*, Form ID itself, a document similar to Form ID or a letter)?
- Within how many business days before or after the electronic filing of Form ID should we require the notarized document to be faxed?
- If a faxed notarized document is not adequate to help authenticate Form ID filings or is overly burdensome to filers, what safeguard would be adequate as to domestic or foreign applicants before it is feasible to use a certification authority?

Question regarding hardship exemptions:

- Is there a practical need for a hardship exemption to allow paper filing of Form ID and, if so, under what circumstances?

#### III. General Request for Comments

We request and encourage any interested person to submit comments regarding:

- The proposed changes that are the subject of this release;
- Additional or different changes; or
- Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of investors, applicants, issuers and others who use or otherwise are involved with electronic filing. With regard to any comments, we note that comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

#### IV. Paperwork Reduction Act

The proposed rule amendments would affect one form that contains “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>27</sup> The title of the affected information collection is the EDGAR Form ID.

Form ID (OMB Control Number 3235–0328) is used by applicants to request

the assignment of access codes that permit the filing of securities documents on EDGAR. This form enables the Commission to assign an identification number (“CIK”), confirmation code (“CCC”), password (“PW”) and password modification authorization code (“PMAC”) to each EDGAR filer, each of which is essential to the security of the EDGAR system.

Compliance with the proposed amendments would be mandatory. The information required by the proposed amendments would be kept confidential by the Commission, subject to a request under the Freedom of Information Act.<sup>28</sup>

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. We expect that, if adopted, the proposed amendments would obligate applicants to disclose on Forms ID essentially the same information that they are required to disclose today.<sup>29</sup> We therefore believe that the overall information collection burden of Form ID would remain approximately the same. As a result, we have not submitted the revisions to the collections of information to the Office of Management and Budget for review under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

We are soliciting comment on the expected Paperwork Reduction Act effects of the proposed rule amendments. In particular, we solicit comment on the accuracy of our estimate that no additional burden would result from the proposed amendments. We further request comment on whether the proposed changes to the collection of information are necessary for the proper performance of the Commission’s functions, including whether the additional information garnered will have practical utility. In addition, we solicit comment on whether there are ways to enhance the quality, utility, and clarity of the information to be collected. We further solicit comment on whether there are ways to minimize the burden of information collection on those applicants who file Form ID, including through the use of automated collection techniques or other forms of information technology. Finally, we solicit comment on whether the proposed amendments will have any effects on any other collection of

<sup>28</sup> 5 U.S.C. 552. The Commission’s regulations that implement the Act are at 17 CFR 200.80 *et seq.*

<sup>29</sup> The information required in any notarized confirming authenticating document would be no more extensive than would be needed for the Form ID itself.

<sup>27</sup> 44 U.S.C. 3501 *et seq.*

information not previously identified in this section.

## V. Cost-Benefit Analysis

We expect that the proposed amendments will benefit investors, applicants and the Commission.

### A. Expected Benefits

The proposed amendments should benefit investors, applicants and the Commission because the information contained in Form ID would be transmitted in a speedy, secure and reliable manner and would directly enter the Commission's records rather than be keyed in by Commission personnel, which currently must be done. This should improve the speed and accuracy of the process that leads to applicants' receipt of the codes needed to file on EDGAR. This improvement would enable applicants to disseminate information sooner to investors.

### B. Expected Costs

We expect that the proposed amendments would result in some costs to applicants. However, we expect that many applicants will not bear the full range of costs resulting from the adoption of these amendments for the reasons described below.

As noted above, we expect that, if adopted, the proposed amendments would obligate applicants to disclose on Form ID essentially the same information that they are required to disclose today. We therefore believe that the overall information collection burden of Form ID would remain approximately the same. As a result, the cost of collecting the information would remain approximately the same.

The expected costs of mandated electronic filing of Form ID consist of both initial and ongoing costs. Initial costs include those associated with learning about the electronic filing system, obtaining a computer, placing the filing data in electronic format for the initial electronic filing and subscribing to an Internet service provider. Ongoing costs are those associated with maintaining the framework developed through the initial costs by updating information required by Form ID.

We expect that most applicants will need to incur few, if any, additional costs from electronic filing. Applicants who are new filers likely would be prepared to become electronic filers and, accordingly, would be prepared to access the EDGAR Filer Management Web site.

To the extent applicants who file Forms ID are officers or directors, we

understand that many issuers will help them or make their filings for them. To the extent officers and directors do not receive this help, we believe many already will have the computer equipment and Internet access to enable them to file using the EDGAR Filer Management Web site.

Even issuers that file Form ID electronically on their own behalf or help their officers or directors, whether to a greater or lesser extent, to file electronically are not likely to incur additional costs. Issuers are required to file on EDGAR and generally have the needed computer equipment and Internet service provider access to enable them to file or facilitate filing using the EDGAR Filer Management Web site.

Finally, we believe that faxing a notarized confirming authenticating document would result in negligible additional costs. An applicant currently must incur the cost of faxing a Form ID, and the information in the confirming authenticating document would be no more extensive than would be needed for the Form ID itself. Based on what appear to be common practices at Washington, DC area banks, we believe that banks generally will notarize customer documents for no additional fee and that those banks that notarize for non-customers generally will notarize a document for less than ten dollars.

### C. Comment Solicited

We solicit comments on the costs and benefits of the proposed amendments for applicants. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of the mandated electronic filing requirements. We also request data as to what percentage of Form ID filings by non-issuers are done by or with the help of an issuer.

## VI. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act<sup>30</sup> requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act<sup>31</sup> and Section 3(f) of the Exchange Act<sup>32</sup> require us, when

engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments regarding mandated electronic filing of Form ID are intended to facilitate the more efficient transmission and processing of the information that Form ID requires. This should improve the speed and accuracy of the process that leads to applicants' receipt of the codes needed to file on EDGAR. This improvement would enable applicants to disseminate information sooner to investors. As a result, the amendments should improve investors' ability to make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. We believe the proposed amendments would not impose a burden on competition.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition and capital formation. Finally, we request commenters to provide empirical data and other factual support for their views if possible.

## VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments regarding mandated electronic filing of Form ID.

### A. Reasons for the Proposed Action

An applicant uses Form ID to apply for the access codes required to file electronically on EDGAR. We believe the proposed amendments will benefit investors, applicants and the Commission.

### B. Objectives

Our objective in proposing the mandated electronic filing amendments is to facilitate the more efficient transmission and processing of the information Form ID requires in a manner that will benefit investors, applicants and the Commission.

### C. Legal Basis

We are proposing the amendments under the authority set forth in Section 19(a)<sup>33</sup> of the Securities Act, Sections

<sup>30</sup> 15 U.S.C. 78w(a)(2).

<sup>31</sup> 15 U.S.C. 77b(b).

<sup>32</sup> 15 U.S.C. 78c(f).

<sup>33</sup> 15 U.S.C. 77s(f).

3(b),<sup>34</sup> 13(a),<sup>35</sup> 23(a)<sup>36</sup> and 35A<sup>37</sup> of the Exchange Act, Section 20<sup>38</sup> of the Public Utility Holding Company Act ("Public Utility Act"), Section 319<sup>39</sup> of the Trust Indenture Act of 1939 ("Trust Indenture Act") and Sections 30<sup>40</sup> and 38<sup>41</sup> of the Investment Company Act of 1940 ("Investment Company Act").

#### *D. Small Entities Subject to the Proposed Revisions*

The proposed amendments would affect small entities that are applicants that are not natural persons. Exchange Act Rule 0-10(a)<sup>42</sup> defines an entity, other than an investment company, to be a "small business" or "small organization" if it had total assets of \$5 million or less on the last day of its most recent fiscal year. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year. The proposed amendments would apply to all small entities that are applicants.

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

Currently, applicants must file Forms ID in paper by fax. The amendments would require applicants to file these forms electronically and fax to the Commission a notarized confirming authenticating document containing at least the information the Form ID contains. Because applicants already file Forms ID in paper by fax, the only additional professional skills applicants would need would be those required to file electronically. We expect that filing electronically would increase costs incurred by some small entities. However, we expect that many small entities would not bear the full range of costs resulting from the adoption of these amendments for the reasons described below.

The expected costs of mandated electronic filing consist of both initial and ongoing costs. Initial costs include those associated with learning about the electronic filing system, obtaining a computer, placing the filing data in electronic format for the initial electronic filing and subscribing to an Internet service provider. Ongoing costs

are those associated with maintaining the framework developed through the initial costs by updating information required by Form ID.

We expect that many small entity applicants will need to incur few, if any, additional costs from electronic filing. Some issuers may help related small entity applicants (such as subsidiaries) or make the related small entity applicants' filings for them. To the extent small entity applicants do not receive this help, we believe many already will have the computer equipment and Internet access to enable them to file using the EDGAR Filer Management Web site.

Even small entity issuers that file Form ID electronically on their own behalf or help their related small entity applicants, whether to a greater or lesser extent, to file electronically are not likely to incur additional costs. Small entity issuers are required to file on EDGAR and generally have the needed computer equipment and Internet service provider access to enable them to file or facilitate filing using the EDGAR Filer Management Web site.

Finally, we believe that faxing a notarized confirming authenticating document would result in negligible additional costs. A small entity applicant currently must incur the cost of faxing a Form ID and the information in the authenticating document would be no more extensive than would be needed for the Form ID itself. Based on what appear to be common practices at Washington, DC area banks, we believe that banks generally will notarize customer documents for no additional fee and that those banks that notarize for non-customers generally will notarize a document for less than ten dollars.

#### *F. Duplicative, Overlapping, or Conflicting Federal Rules*

The proposed mandated electronic filing amendments would not duplicate, overlap, or conflict with other federal rules.

#### *G. Significant Alternatives*

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed mandated electronic filing amendments, we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of filing requirements;

- The use of performance rather than design standards; and

- An exemption from the electronic filing requirements, or any part of them, for small entities.

We believe that differing compliance or reporting requirements or timetables for small entities or a partial or complete exemption would be inconsistent with the more efficient transmission and processing of the information Form ID requires in a manner that will benefit investors, applicants and the Commission. We solicit comment, however, on whether differing compliance or reporting requirements or timetables for small entities would be consistent with the described goals. We believe that the proposed electronic filing requirements are clear and straightforward. We are attempting to design an electronic filing system for Forms ID that will be simple for all filers to use. Therefore, it does not seem necessary to develop separate requirements for small entities. We have used design rather than performance standards in connection with the proposed electronic filing revisions because we want the Commission to be able to process readily the information involved. We do not believe that performance standards for small entities would be consistent with the purpose of the proposed revisions.

#### *H. Solicitation of Comments*

We encourage commenters to submit comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed revisions;
- The existence or nature of the potential impact of the proposed revisions on small entities as discussed in the analysis; and
- How to quantify the impact of the proposed revisions.

We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis or certification, if the proposed revisions are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

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

For purposes of the Small Business Regulatory Enforcement Fairness Act of

<sup>34</sup> 15 U.S.C. 78c(b).

<sup>35</sup> 15 U.S.C. 78m(a).

<sup>36</sup> 15 U.S.C. 78w(a).

<sup>37</sup> 15 U.S.C. 78ll.

<sup>38</sup> 15 U.S.C. 79t.

<sup>39</sup> 15 U.S.C. 77sss.

<sup>40</sup> 15 U.S.C. 80-29.

<sup>41</sup> 15 U.S.C. 80-37.

<sup>42</sup> 17 CFR 240.0-10(a).

1996 ("SBREFA"),<sup>43</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 that commenters provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation. We also request comment on the reasonableness of this estimate.

## IX. Statutory Basis

We are proposing the amendments to Regulation S-T and Form ID under the authority in Section 19(a) of the Securities Act, Sections 3(b), 13(a), 23(a) and 35A of the Exchange Act, Section 20 of the Public Utility Act, Section 319 of the Trust Indenture Act and Sections 30 and 38 of the Investment Company Act.

### Text of Proposed Rule Amendments

#### List of Subjects in 17 CFR Parts 232, 239, 249, 259, 269 and 274

Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, we propose to amend title 17, chapter II of the Code of Federal Regulations as follows.

#### PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

\* \* \* \* \*

2. Amend § 232.10 by revising paragraph (b) to read as follows:

#### § 232.10 Application of part 232.

\* \* \* \* \*

(b) Each registrant, third party filer, or agent to whom the Commission previously has not assigned a Central Index Key (CIK) code, must, before filing on EDGAR:

(1) File electronically a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), the uniform application for access codes to file on EDGAR, and

(2) File in paper by fax, within two business days before or after

electronically filing the Form ID, a notarized document, manually signed by the applicant over the applicant's typed signature, that includes the information contained in the Form ID and confirms the authenticity of the Form ID.

\* \* \* \* \*

3. Amend § 232.101 by adding paragraph (a)(1)(ix) to read as follows:

#### § 232.101 Mandated electronic submissions and exceptions.

(a) \* \* \*

(1) \* \* \*

(ix) Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), except that the authenticating document required by Rule 10(b) of Regulation S-T (§ 232.10(b)) shall not be filed in electronic format, and related correspondence and supplemental information submitted after filing Form ID and before the Commission assigns access codes to file on EDGAR, shall not be submitted in electronic format.

\* \* \* \* \*

4. Amend § 232.104 by revising paragraph (a) to read as follows:

#### § 232.104 Unofficial PDF copies included in an electronic submission.

(a) An electronic submission, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter) or a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), may include one unofficial PDF copy of each electronic document contained within that submission, tagged in the format required by the EDGAR filer manual.

\* \* \* \* \*

5. Amend § 232.201 by revising paragraph (a) introductory text to read as follows:

#### § 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter) or a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 259.604, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

\* \* \* \* \*

6. Amend § 232.202 by revising paragraph (a) introductory text to read as follows:

#### § 232.202 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings, other than a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

\* \* \* \* \*

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

7. The authority citation for Part 239 continues to read in part as follows:

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

\* \* \* \* \*

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

8. The authority citation for Part 249 continues to read in part as follows:

**Authority:** 15 U.S.C. 78a *et seq.*, unless otherwise noted.

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

9. The authority citation for Part 259 continues to read as follows:

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

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

10. The authority citation for Part 269 continues to read as follows:

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

<sup>43</sup>

Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933****PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934****PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935****PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939****PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

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

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

\* \* \* \* \*

12. Revise §§ 239.63, 249.446, 259.602, 269.7, and 274.402 to read as follows:

**§ 239.63 Form ID, uniform application for access codes to file on EDGAR.**

**§ 249.446 Form ID, uniform application for access codes to file on EDGAR.**

**§ 259.602 Form ID, uniform application for access codes to file on EDGAR.**

**§ 269.7 Form ID, uniform application for access codes to file on EDGAR.**

**§ 274.402 Form ID, uniform application for access codes to file on EDGAR.**

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

(a) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(b) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(c) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(d) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

13. Revise Form ID (referenced in § 239.63, § 249.446, § 259.602, § 269.7 and § 274.402) to read as follows:

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

**BILLING CODE 8010-01-P**



**Form ID Uniform Application for Access Codes to File on EDGAR**

Form ID

**United States  
Securities and Exchange Commission  
Washington, D.C. 20549**

<b>OMB APPROVAL</b>
OMB Number: 3235-0328
Expires: January 31, 2005
Estimated average burden hours per response: . .0.15

**FORM ID  
UNIFORM APPLICATION FOR ACCESS CODES TO FILE ON EDGAR**

**PART I — APPLICATION FOR ACCESS CODES TO FILE ON EDGAR**

Name of applicant (applicant's name as specified in its charter, except, if individual, last name, first name, middle name, suffix (e.g., "Jr."))

Mailing Address or Post Office Box No.

City

State or Country

Zip

Telephone number (Include Area and, if Foreign, Country Code) ( )

Applicant is (see definitions in the General Instructions)

Filer

Filing Agent

Training  
Agent

Individual (if check this  
box, must also check Filer,  
 Filing Agent or Training  
Agent box)

Foreign Private Issuer (if  
check this box, must also  
 check Filer, Filing Agent or  
Training Agent box)

**PART II — FILER INFORMATION (To be completed only by filers that are not individuals)**

Filer's Tax Number or Federal Identification Number (Do Not Enter a Social Security Number)	Doing Business As
	Foreign Name (if Foreign Private Issuer Filer)

Primary Business Address or Post Office Box No. (if different from mailing address)		
City	State or Country	Zip

State of Incorporation/Organization	Fiscal Year End (mm/dd)
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**PART III — CONTACT INFORMATION (To be completed by all applicants)**

Person to receive EDGAR Information, Inquiries and Access Codes

Telephone Number (Include Area and, if foreign, Country Code) ( )

Mailing Address or Post Office Box No. (if different from applicant's mailing address)		
City	State or Country	Zip

E-Mail Address

**PART IV — ACCOUNT INFORMATION (To be completed by filers and filing agents only)**

Person to receive SEC Account Information and Billing Invoices	Telephone Number (Include Area and, if Foreign, Country Code) ( )
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Mailing Address or Post Office Box No. (if different from applicant's mailing address)		
City	State or Country	Zip

**PART V — SIGNATURE (To be Completed by all Applicants)**

Signature:	Type or Print Name:
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Position or Title:	Date:
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Intentional misstatements or omissions of facts constitute federal criminal violations.  
See 18 U.S.C. 1001.

Section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), sections 13(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) and 78w(a)), section 319 of the Trust Indenture Act of 1939 (15 U.S.C. 77sss), section 20 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79t) and sections 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-29 and 80a-37) authorize solicitation of this information. We will use this information to assign system identification to filers, filing agents, and training agents. This will allow the Commission to identify persons sending electronic submissions and grant secure access to the EDGAR system.

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SEC 2084  
(02-02)  
Previous  
form obsolete

**Persons who potentially are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.**

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## Form ID GENERAL INSTRUCTIONS

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### USING AND PREPARING FORM ID

Form ID must be filed by registrants, third party filers, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

- Central Index Key (CIK) - The CIK uniquely identifies each filer, filing agent, and training agent. We assign the CIK at the time you make an initial application. You may not change this code. The CIK is a public number.
- CIK Confirmation Code (CCC) - You will use the CCC in the header of your filings in conjunction with your CIK to ensure that you authorized the filing.
- Password (PW) - The PW allows you to log onto the EDGAR system, submit filings, and change your CCC.
- Password Modification Authorization Code (PMAC) - The PMAC allows you to change your password.

An applicant must file this Form in electronic format via the Commission's EDGAR Filer Management website. Please see Regulation S-T (17 CFR Part 232) and the EDGAR Filer Manual for instructions on how to file electronically, including how to use the access codes.

An applicant also must file in paper by fax within two business days before or after filing electronically Form ID the notarized document, manually signed by the applicant over the applicant's typed signature, required by Regulation S-T Rule 10(b)(2) that includes the information contained in the Form ID filed or to be filed and confirms the authenticity of the Form ID. The applicant must fax the confirming document to the Branch of Filer Support of the Office of Filings and Information Services at (202) 504-2474 or (703) 914-4240. If the fax is not received timely, the application for access codes will not be approved. The applicant will receive an e-mail message at the contact's e-mail address informing the applicant of the staff's response to the application and providing further guidance. If the application is not approved, the message will state why. For assistance with technical questions about electronic filing, call the Branch of Filer Support at (202) 942-8900. For assistance with questions about the EDGAR rules, Division of Corporation Finance filers may call the Office of EDGAR and Information Analysis at (202) 942-2940; and Division of Investment Management filers may call the IM EDGAR Inquiry Line at (202) 942-0978.

**You must complete all items in any parts that apply to you. If any item in any part does not apply to you, please mark that part "NA."**

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**PART I - APPLICANT INFORMATION** (to be completed by all applicants)

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Provide the applicant's name in English.

Please check one of the boxes to indicate whether you will be sending electronic submissions as a filer, filing agent, or training agent. Mark only one of these boxes per application. If you are an individual or foreign private issuer, however, also mark the "Individual" or "Foreign Private Issuer" box, respectively, as applicable.

- "Filer" - Any individual or entity on whose behalf an electronic filing is made.
- "Filing Agent" - A financial printer, law firm, or other party, which will be using these access codes to send a filing or portion of a filing on behalf of a filer.
- "Training Agent" - Any individual or entity that will be sending only test filings in conjunction with training other persons.
- "Individual" - A natural person.
- "Foreign Private Issuer" - An entity so defined by Securities Act of 1933 (15 U.S.C. 77a *et seq.*) Rule 405 (17 CFR 230.405) and Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) Rule 3b-4(c) (17 CFR 240.3b-4(c)).

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**PART II - FILER INFORMATION** (to be completed only by filers that are not individuals)

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The filer's tax or federal identification number is the number issued by the Internal Revenue Service. This section does not apply to individuals. Accordingly, do not enter a Social Security number. If an investment company filer is organized as a series company, the investment company may use the tax or federal identification number of any one of its constituent series. Issuers that have applied for but not yet received their tax or federal identification number and foreign private issuers that do not have a tax or federal identification number must include all zeroes. Foreign private issuers should include their country of organization.

A foreign private issuer filer must provide its "doing business as" name in the language of the name under which it does business and must provide its foreign language name in the space so marked.

If the filer's fiscal year does not end on the same date each year (e.g., falls on the last Saturday in December), the filer must enter the date the current fiscal year will end.

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**PART III - CONTACT INFORMATION** (to be completed by all applicants)

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In this section, identify the individual who should receive the access codes and other EDGAR-related information. Please include an e-mail address that will become your default notification address for EDGAR filings; it will be stored in the Company Contact Information on the EDGAR Database. EDGAR will send all subsequent filing notifications automatically to that address. You can have one e-mail address in the EDGAR Company Contact Information. For information on including additional e-mail addresses on a per filing basis, refer to Chapter 1 of the EDGAR Filer Manual.

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**PART IV - ACCOUNT INFORMATION** (to be completed by filers and filing agents only)

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Identify in this section the individual who should receive account information and/or billing invoices from us. We will use this information to process electronically fee payments and billings.

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If the address changes, update it via the EDGAR filing website, or your account statements may be returned to us as undeliverable.

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**PART V - SIGNATURE** (to be completed by all applicants)

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If the applicant is a corporation, partnership, trust or other entity, state the capacity in which the representative individual, who must be duly authorized, signs the Form on behalf of the applicant.

If the applicant is an individual, the applicant must sign the form.

If another person signs on behalf of the representative individual or the individual applicant, confirm the authority of the other person to sign in writing in an electronic attachment to the Form. The confirming statement need only indicate that the representative individual or individual applicant authorizes and designates the named person or persons to file the Form on behalf of the applicant and state the duration of the authorization.

BILLING CODE 8010-01-C

By the Commission.

Dated: March 15, 2004.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-6187 Filed 3-19-04; 8:45 am]

BILLING CODE 8010-01-P