

**SECURITIES AND EXCHANGE COMMISSION**

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

**[RELEASE NOS. 33-8876; 34-56994; 39-2451; FILE NO. S7-15-07]**

**RIN 3235-AJ86**

**SMALLER REPORTING COMPANY REGULATORY RELIEF AND SIMPLIFICATION**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is adopting amendments to its disclosure and reporting requirements under the Securities Act of 1933 and the Securities Exchange Act of 1934 to expand the number of companies that qualify for its scaled disclosure requirements for smaller reporting companies. Companies that have less than \$75 million in public equity float will qualify for the scaled disclosure requirements under the amendments. Companies without a calculable public equity float will qualify if their revenues were below \$50 million in the previous year. To streamline and simplify regulation, the amendments move the scaled disclosure requirements from Regulation S-B into Regulation S-K.

**DATES:** Effective Date: February 4, 2008, except for § 249.308b and Form 10-QSB, which will be removed effective October 31, 2008, and Part 228, § 249.310b and Form 10-KSB, which will be removed effective March 15, 2009.

Compliance Dates: After the effective date of the rule amendments, companies currently qualifying as “small business issuers” under Regulation S-B will have the option to file their next annual report for a fiscal year ending on or after December 15,

2007 on either Form 10-KSB, using the scaled disclosure requirements in Regulation S-B, or Form 10-K, using the new scaled disclosure requirements in Regulation S-K. After a “small business issuer” files that next annual report, it will be required to file quarterly reports on Form 10-Q and annual reports on Form 10-K, and may elect to comply with the new scaled disclosure requirements of Regulation S-K. Companies newly qualifying as “smaller reporting companies” will have the option to use the new scaled Regulation S-K requirements when filing their next periodic report due after the effective date of the amendments. These companies will determine eligibility for smaller reporting company status based on the last business day of their most recent second fiscal quarter, or based on the alternative initial registration statement calculation discussed in Section IV. If a registration statement was filed on an “SB” form before the effective date of the rule amendments, and the company seeks to amend it after the effective date of the rule amendments, the company must file the amendment on the appropriate form available to the issuer without an “SB” designation. As discussed in Section IV, to provide a transition period, these issuers will be able to continue using the disclosure format and content based on the “SB” form until six months after the effective date.

**FOR FURTHER INFORMATION CONTACT:** 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 are adopting amendments to Regulation

S-K,<sup>1</sup> and 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 are adopting amendments to Items 10, 101, 102, 201, 301, 302, 303, 305, 401, 402, 404, 407, 503, 504, 512, 601, 701, and 1118.<sup>5</sup> We are adopting amendments to Securities Act Rules 110, 138, 139, 158, 175, 405, 415, 428, 430B, 430C, 455, and 502.<sup>6</sup> Further, we are rescinding Regulation S-B<sup>7</sup> and eliminating the forms associated with it, Forms SB-1, SB-2, 10-SB, 10-QSB, and 10-KSB.<sup>8</sup> We are amending Securities Act Forms 0-1, S-1, S-3, S-4, S-8, S-11, 1-A, and F-X,<sup>9</sup> 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 are amending Schedules 14A and 14C.<sup>12</sup> In Regulation S-X,<sup>13</sup> we are amending Rules 210.3-01, 210.3-05,

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<sup>1</sup> 17 CFR 229.10 – 229.1123.

<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, 229.102, 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.

210.3-10, 210.3-12, 210.3-14, 210.4-01, and 210.10-01 and adding a new Article 8 containing the financial statement requirements available to smaller reporting companies.<sup>14</sup> Finally, we are amending Trust Indenture Act Rules 0-11, 4d-9, and 10a-5<sup>15</sup> and Section 269.0-1 of the Trust Indenture Act Forms.<sup>16</sup>

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<sup>14</sup> 17 CFR 210.3-01, 210.3-05, 210.3-10, 210.3-12, 210.3-14, 210.4-01, 210.10-01, and new Article 8 210.8-01 – 8-08.

<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 and Summary

At an open Commission meeting on May 23, 2007, we approved publication of eight releases designed to update and improve federal securities regulations that significantly affect smaller companies and their investors in today's capital markets.<sup>17</sup> These releases reflected our efforts during the past few years to provide responsive solutions addressing the special characteristics and needs of smaller companies and their investors. One of the releases (the "Proposing Release") proposed rule amendments intended to provide general regulatory relief and simplification for smaller companies reporting under our rules.<sup>18</sup> In that release, we proposed a series of amendments to our

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<sup>17</sup> These releases included (1) Release No. 33-8812 (June 20, 2007) [72 FR 35118] (proposing to expand eligibility requirements of Forms S-3 and F-3 to permit registration of annual primary offerings of up to a specified percentage of public float by companies with a public float of less than \$75 million). The Commission voted to approve this proposal at an December 11, 2007 open meeting (archived webcast available at <http://www.sec.gov/news/openmeetings.shtml>); (2) Release No. 33-8813 (June 22, 2007) [72 FR 36822] (proposing amendments to Rule 144 to revise the holding period for the resale of restricted securities, simplify compliance for non-affiliates, revise the Form 144 filing thresholds, and codify certain staff interpretations, as well as to amend Rule 145). This proposal was adopted in Release No. 33-8869 (Dec. 6, 2007) [72 FR 71546]; (3) Release No. 33-8814 (June 29, 2007) [72 FR 37376] (proposing revisions to Form D and to mandate electronic filing of Form D). The Commission voted to approve this proposal at the December 11, 2007 open meeting (archived webcast available at <http://www.sec.gov/news/openmeetings.shtml>); (4) Release No. 33-8819 (July 5, 2007) [72 FR 39670] (proposing to increase the number of companies eligible for our scaled disclosure and reporting requirements for smaller companies); (5) Release No. 33-8828 (Aug. 3, 2007) [72 FR 45116] (proposing new Regulation D exemption for offers and sales of securities to a newly defined category of "large accredited investors," as well as proposing revisions to the Regulation D definition of "accredited investor," disqualification provisions, and integration safe harbor); (6) Release No. 34-56010 (July 5, 2007) [72 FR 37608] (proposing exemptions from requirement to register class of securities for compensatory stock options granted by reporting and non-reporting companies). This proposal was adopted in Release No. 34-56887 (Dec. 3, 2007) [72 FR 69554]; (7) Release No. 33-8810 (June 20, 2007) [72 FR 35324] (providing interpretive guidance regarding management's report on internal control over financial reporting under Section 13(a) or 15(d) of the Securities Exchange Act of 1934); and (8) Release No. 33-8811 (June 20, 2007) [72 FR 35346] (requesting additional comment on the definition of a significant deficiency). The last proposal was adopted in Release No. 33-8829 (Aug. 3, 2007) [72 FR 44927] (adopting definition of "significant deficiency").

<sup>18</sup> Release No. 33-8819 (July 5, 2007) [72 FR 39670].

scaled disclosure and reporting requirements for smaller reporting companies. The release had three stated objectives:

- expanding the number of smaller companies eligible to use scaled disclosure requirements;
- reducing unnecessary complexity in our regulations by combining the category of “small business issuers” with the category of “non-accelerated filers” to the extent feasible; and
- simplifying disclosure requirements by moving our scaled disclosure requirements for smaller companies from Regulation S-B into Regulation S-K, the integrated disclosure system for other companies.

Several of the amendments in the Proposing Release had their genesis in the recommendations made by the Advisory Committee on Smaller Public Companies in 2006. The Commission had chartered the Advisory Committee in March 2005 to assess the current regulatory system for smaller companies under the federal securities laws and make recommendations for changes.<sup>19</sup> Among the specific charges of the Committee was to consider the corporate disclosure and reporting requirements for smaller companies, including differing regulatory requirements based on market capitalization, and other measurements of size or market characteristics.<sup>20</sup> In its Final Report, the Advisory Committee made several recommendations relating to scaling securities regulation for smaller companies and labeled them as priority items.<sup>21</sup>

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<sup>19</sup> See SEC Advisory Committee on Smaller Public Companies, Final Report (2006) (“Advisory Committee Final Report”), available at <http://www.sec.gov/info/smallbus/acspc.shtml>.

<sup>20</sup> Advisory Committee Final Report (p. 1).

<sup>21</sup> Advisory Committee Final Report Recommendations II.P.1 (pp.14-22), IV.P.1 (pp. 60-64), and IV.P.2 (pp.65-68).



In 2006, 3,395 reporting companies elected to take advantage of our current scaled disclosure and reporting requirements for small business issuers by filing their annual reports on Form 10-KSB.<sup>22</sup> We estimate that a total of 4,976 companies will be eligible to use our scaled disclosure requirements under today's amendments, a difference of 1,581 additional companies.<sup>23</sup> The 1,581 companies would represent about 13% of the total 11,898 reporting companies that filed annual reports with us in 2006.

The amendments that we are adopting address the need to revisit and adjust the Commission's small company policies to reflect changes in our securities markets as well as changes to the regulatory landscape since 1992, when the Commission first adopted an integrated scaled disclosure system for small business in Regulation S-B.<sup>24</sup> The Commission adopted Regulation S-B and its associated Forms SB-1 and SB-2 based upon the success of Form S-18, which was a simplified registration form for smaller companies under the Securities Act that preceded Forms SB-1 and SB-2.<sup>25</sup> Regulation S-B was designed to reduce compliance costs and improve the ability of start-ups and other small businesses to obtain financing through the public capital markets.

The amendments we are adopting will result in the substantive changes highlighted below. The new provisions:

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<sup>22</sup> As stated in the Proposing Release, these statistics are based on 2006 data from the Commission's EDGAR (Electronic Data Gathering, Analysis and Retrieval) filing system.

<sup>23</sup> As we noted in the Proposing Release, these statistics are based on Thomson Financial (Datastream). The data includes available information on 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 depositary receipts, and direct foreign listings.

<sup>24</sup> See Release No. 33-6949 (July 30, 1992) [57 FR 36442].

<sup>25</sup> The Commission adopted Forms SB-1 and SB-2 after 10 years of issuers using Form S-18, an experimental form the Commission created to benefit small issuers in raising capital. Release No. 33-6924, p. 40 (Mar. 20, 1992) [57 FR 9768].

- Establish a category of “smaller reporting companies” eligible to use our scaled disclosure requirements. The primary determinant for eligibility will be that the company have less than \$75 million in public float. When a company is unable to calculate public float, however, such as if it has no common equity outstanding or no market price for its outstanding common equity exists at the time of the determination, the standard will be less than \$50 million in revenue in the last fiscal year;
- Move 12 non-financial scaled disclosure item requirements from Regulation S-B into Regulation S-K.<sup>26</sup> These scaled requirements will be available only for smaller reporting companies. The remaining 24 item requirements of Regulation S-B<sup>27</sup> are substantially the same as their corresponding Regulation

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<sup>26</sup> The 12 scaled item requirements are: (1) Description of Business (Item 101); (2) Market Price of and Dividends on Registrant’s Common Equity and Related Stockholder Matters (Item 201); (3) Selected Financial Data (Item 301); (4) Supplementary Financial Information (Item 302); (5) Management’s Discussion and Analysis of Financial Condition and Results of Operations (Item 303); (6) Quantitative and Qualitative Disclosures about Market Risk (Item 305); (7) Executive Compensation (Item 402); (8) Transactions with Related Persons, Promoters and Certain Control Persons (Item 404); (9) Corporate Governance (Item 407); (10) Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges (Item 503); (11) Use of Proceeds (Item 504); and (12) Exhibits (Item 601).

<sup>27</sup> We did not propose changes to the following items of Regulation S-K because we believe our analysis showed that the disclosure standards in these items currently are substantially the same as the Regulation S-B requirements: (1) Description of Property (Item 102); (2) Legal Proceedings (Item 103); (3) Description of Registrant’s Securities (Item 202); (4) Changes In and Disagreements with Accountants on Accounting and Financial Disclosure (Item 304); (5) Disclosure Controls and Procedures (Item 307); (6) Internal Control Over Financial Reporting (Item 308); (7) Internal Control Over Financial Reporting (Item 308T); (8) Directors, Executive Officers, Promoters and Control Persons (Item 401); (9) Security Ownership of Certain Beneficial Owners and Management (Item 403); (10) Compliance with Section 16(a) of the Exchange Act (Item 405); (11) Code of Ethics (Item 406); (12) Forepart of Registration Statement and Outside Front Cover Page of Prospectus (Item 501); (13) Inside Front and Outside Back Cover Pages of Prospectus (Item 502); (14) Determination of Offering Price (Item 505); (15) Dilution (Item 506); (16) Selling Security Holders (Item 507); (17) Plan of Distribution (Item 508); (18) Interest of Named Experts and Counsel (Item 509); (19) Disclosure of Commission Position on Indemnification for Securities Act Liabilities (Item 510); (20) Other Expenses of Issuance and Distribution (Item 511); (21) Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities (Item 701); (22) Indemnification of Directors and Officers (Item 702); and (23) Purchases of Equity Securities by the Issuer and Affiliated Purchasers (Item 703). In addition, although we proposed to amend Undertakings (Item 512), we are not adopting this

S-K item requirements. We therefore are not amending them except in one minor instance explained below;<sup>28</sup>

- Move the scaled financial statement requirements in Item 310 of Regulation S-B into new Article 8 of Regulation S-X, and amend these requirements to provide a scaled disclosure option for smaller reporting companies, requiring two years of balance sheet data instead of one year, and make other minor adjustments after considering comments we received;<sup>29</sup>
- Permit smaller reporting companies to elect to comply with scaled financial and non-financial disclosure on an item-by-item or “a la carte” basis. As adopted, eligible companies may elect to follow scaled financial statement requirements or to provide the larger company financial statement presentation on a quarterly basis, rather than require companies to elect the full fiscal year’s financial presentation in the first quarterly report of the fiscal year, as was proposed;
- Eliminate our current “SB” forms but allow a phase-out period for small business issuers transitioning to smaller reporting company status;
- Combine elements relating to the accelerated filer definition with qualifying standards for the smaller reporting company determination and transition

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change because we believe it is clear which undertakings may and may not apply to a smaller reporting company.

<sup>28</sup> See the discussion of Description of Property (Item 102) below. In addition, we are making technical changes to numerous item requirements to remove references to Regulation S-B and its associated “SB” forms.

<sup>29</sup> The amendments also rescind Regulation S-B, since all of its substantive requirements will now be contained in Regulation S-K or new Article 8 of Regulation S-X.

provisions to promote uniformity and consistency with current regulations and, therefore, simplify regulation;

- Permit all foreign companies to qualify as “smaller reporting companies” if they otherwise qualify and choose to file on domestic company forms and provide financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles (“U.S. GAAP”); and
- Eliminate the transitional small business issuer format.

## **II. Description of Proposed Amendments**

We proposed an eligibility standard for our scaled disclosure requirements for “smaller reporting companies” to replace the “small business issuer” definition found in Item 10 of Regulation S-B.<sup>30</sup> Under the proposals, the new definition of “smaller reporting company” would have established eligibility for companies with less than \$75 million in public common equity float. We provided an alternative revenue test for those companies unable to calculate public common equity float, basing eligibility on whether the company had annual revenues of less than \$50 million in its last fiscal year. In contrast, our previous eligibility requirements for “small business issuer” status required that companies have both less than \$25 million in public common equity float and less than \$25 million in annual revenues.

Under the proposals, which we are adopting in modified form, each company would determine its eligibility based on whether the company is: (1) a reporting company already filing periodic and annual reports,<sup>31</sup> (2) a non-reporting company filing

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<sup>30</sup> 17 CFR 228.10.

<sup>31</sup> A reporting company is required to file reports under Section 13(a) and 15(d) of the Exchange Act. 15 U.S.C. 78m and 15 U.S.C. 78o.

a registration statement under either the Securities Act or Exchange Act; or (3) a reporting or non-reporting company that had no public float, such as if it had no public common equity outstanding or no market price for its common equity existed. A reporting company determining its eligibility as a smaller reporting company would calculate its public float as of the last business day of its most recently completed second fiscal quarter. Non-reporting companies filing a registration statement would calculate their public float as of a date within 30 days of the date of the filing of the registration statement.

Under the proposals, investment companies and asset-backed issuers would be excluded from eligibility for smaller reporting company status, as was the case under the definition of “small business issuer” in Regulation S-B.<sup>32</sup> As proposed, foreign companies could qualify as smaller reporting companies and provide scaled disclosure if they elected to use domestic company forms and provide financial statements prepared in accordance with U.S. GAAP. Removing the exclusion of foreign companies would make scaled treatment available to additional smaller companies.<sup>33</sup>

We proposed that smaller reporting companies be required to exit the scaled disclosure system the fiscal year after their public float rose above \$75 million as of the last business day of their second fiscal quarter.<sup>34</sup> Smaller reporting companies attempting to establish eligibility to enter the scaled disclosure system again would be required to determine that their public float fell below \$50 million as of the last business day of their

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<sup>32</sup> Item 10(a)(1)(iii) of Regulation S-B, 17 CFR 228.10(a)(1)(iii).

<sup>33</sup> Item 10(a)(1)(ii) of Regulation S-B only permits U.S. or Canadian issuers to qualify as “small business issuers.”

<sup>34</sup> The entering and exiting rules in the smaller reporting company system are modeled after the method of determining accelerated filer status set forth in Rule 12b-2. 17 CFR 240.12b-2.

second fiscal quarter, and would be able to use scaled disclosure again in the next fiscal year following the determination, starting with the first Form 10-Q of the next fiscal year.

An objective of our proposals was to simplify and improve our disclosure and reporting rules for smaller companies by moving the Regulation S-B disclosure requirements for smaller companies into Regulation S-K, as recommended by the SEC Advisory Committee on Smaller Public Companies. As a result of our rulemaking, we identified 13 item requirements in Regulation S-B that provided scaled disclosure for smaller companies.<sup>35</sup> We reasoned that consolidation of the Regulation S-K and S-B disclosure requirements would provide a more unified set of rules that would be easier to use. To accomplish this, we proposed to move item requirements in Regulation S-B containing substantive scaled non-financial disclosure requirements into Regulation S-K by adding a new paragraph to the items of Regulation S-K that would contain separate disclosure standards for smaller reporting companies. We did not propose any major substantive changes to the items we were moving from Regulation S-B into Regulation S-K, but sought comment from the public on substantive changes they would recommend.

One of the item requirements in Regulation S-B providing scaled disclosure requirements did not have a similar disclosure item requirement in Regulation S-K. Consequently, our specific proposals included adding a new Item 310 in Regulation S-K for financial statements. Item 310 of Regulation S-K would have set forth the alternative requirements on form and content of financial statements for smaller companies that formerly appeared in Item 310 of Regulation S-B.

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<sup>35</sup> See note 26 above.

The proposals also allowed a smaller reporting company to choose, on an item-by-item basis or “a la carte” basis, to comply with either the scaled disclosure and financial reporting requirements made available in Regulation S-K for smaller reporting companies or the requirements for other companies in Regulation S-K, when the requirements for other companies were more rigorous.

The proposal, like the amendments we are adopting, would rescind all of our forms designated with the letters “SB.” Smaller reporting companies would be eligible to file on Form S-1, rather than on Form SB-1 or SB-2 as before, to offer securities to the public. This would provide a smaller reporting company the ability to incorporate by reference its previously filed Exchange Act reports if the company meets the requirements set forth under General Instruction VII of Form S-1.<sup>36</sup>

Finally, the proposals, like the amendments we are adopting, would eliminate the “transitional small business issuer format” associated with Form SB-1 and annual reports on Form 10-KSB.<sup>37</sup> A small business issuer using the transitional format followed disclosure based on Model A or B found in Regulation A. These two disclosure models were intended to ease transition from non-reporting to reporting status for small business issuers preparing disclosure on initial registration statements and annual reports. In our

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<sup>36</sup> General Instruction VII of Form S-1 sets forth the eligibility criteria to qualify for incorporation by reference. The registrant must be required to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 and must have filed all reports and materials during the preceding 12 months. The company must have filed an annual report for its most recently completed fiscal year. Section D of the instruction disqualifies companies that, in the past three years, were any of the following:

- (a) A blank check company as defined in Rule 419(a)(2);
- (b) A shell company, other than a business combination related shell company, each as defined in Rule 405; or
- (c) A registrant for any offering of penny stock as defined in Rule 3a51-1 under the Exchange Act.

<sup>37</sup> See Proposing Release No. 33-8819, pp. 40-41 (July 5, 2007) [72 FR 39680].

Proposing Release we noted, however, that the number of companies registering on Form SB-1 and following the disclosure format within Form 10-KSB had significantly declined over time.<sup>38</sup>

We received 21 comment letters on the proposals,<sup>39</sup> including six from public accounting firms. We also received comment letters from professional and trade associations, a law firm, an associate professor of finance, two small business owners, and the Small Business Administration's Office of Advocacy. In general, the comment letters strongly supported our efforts to simplify our scaled disclosure requirements for smaller reporting companies and expand eligibility for them.

### **III. Discussion of Amendments We Are Adopting**

After considering the public comments, we are adopting the amendments substantially as we proposed them, with the modifications discussed below.

#### **A. Moving Scaled Disclosure Item Requirements from Regulation S-B into Regulation S-K**

Many of the comment letters supported moving our scaled disclosure requirements from Regulation S-B into Regulation S-K.<sup>40</sup> In general, the comments in these letters viewed moving the requirements as having a positive impact by reducing complexity and promoting more streamlined regulation. One letter noted that combining the two disclosure systems would allow smaller reporting companies to more easily evaluate the extent of the differences between the requirements for smaller reporting companies and

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<sup>38</sup> For example, during the past five years, the Commission has received only 56 Form SB-1 registration statements. For years 2000 through 2005, two small business issuers out of 56 filed a Form 10-KSB using the transitional disclosure format.

<sup>39</sup> The public comments we received are available for inspection in our Public Reference Room at 100 F Street, NE, Washington, DC 20549 in File No. S7-15-07, or may be viewed at <http://www.sec.gov/comments/s7-15-07/s71507.shtml>.

<sup>40</sup> See, e.g., Letter from the American Bar Association, Section of Business Law (ABA).



larger companies and consider which requirement better meets the needs of their investors.<sup>41</sup>

A few comment letters opposed moving the scaled disclosure requirements into Regulation S-K, indicating that having all of the smaller company rules in one place was convenient for smaller companies.<sup>42</sup> These comment letters expressed concern that the migration into Regulation S-K would increase legal and accounting costs for smaller companies and make the rules more complex for smaller companies to understand. A few comment letters suggested providing the scaled smaller reporting company disclosure requirements in a separate section of Regulation S-K.<sup>43</sup>

We are adopting our proposal to move our Regulation S-B scaled disclosure requirements into Regulation S-K. After considering the comments, we believe combining the two disclosure systems and setting out the smaller reporting company scaled item requirements in separate paragraphs within Regulation S-K is appropriate. We believe our amendments eliminate redundancies and provide a more streamlined disclosure system for smaller reporting companies. In response to the concern that moving the item requirements will create complexity for smaller companies, we are including an index of scaled disclosure requirements in the definition of smaller reporting company at the beginning of Regulation S-K<sup>44</sup> to highlight items of the Regulation that contain the scaled disclosure requirements specific to smaller reporting companies.

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<sup>41</sup> See Letter from PricewaterhouseCoopers LLP.

<sup>42</sup> See, e.g., Letters from the Chamber of Commerce and New York State Society of Certified Public Accountants (NYSSCPA).

<sup>43</sup> See, e.g., Letter from KPMG.

<sup>44</sup> See new Item 10(f) of Regulation S-K (Index of Scaled Disclosure Available to Smaller Reporting Companies).

Regulation S-B has 12 non-financial item requirements that provide scaled disclosure options to smaller reporting companies. Under this rulemaking, these 12 item requirements are being moved to separate paragraphs within Regulation S-K. In some cases, smaller reporting companies are not required to provide disclosures required of larger companies. For example, while larger companies are required to provide disclosure under Item 305 on quantitative and qualitative disclosures about market risk, smaller companies are not currently required to do so under the same item requirement in Regulation S-B. In cases like this, we include a paragraph in the relevant item of Regulation S-K indicating that smaller reporting companies are not required to respond to the item.

In addition to the Regulation S-B and S-K differences, the forms themselves may contain different disclosure requirements for smaller reporting companies. Currently, Forms 10-SB, 10-KSB and 10-QSB do not require risk factor disclosure from small business issuers. The amendments carry this difference in disclosure requirements over to Forms 10, 10-K and 10-Q by adding instructions indicating that smaller reporting companies are not required to provide risk factor disclosure in these Exchange Act forms.

**B. Moving Smaller Reporting Company Financial Statement Requirements from Item 310 of Regulation S-B into New Article 8 of Regulation S-X; Additional Regulation S-X Changes**

Several comment letters recommended moving the rules on form and content of financial statements for smaller reporting companies now in Item 310 of Regulation S-B into Regulation S-X, rather than into a new Item 310 of Regulation S-K, as proposed. Several comment letters also agreed with the Advisory Committee recommendation to require smaller reporting companies to provide two years of comparative audited balance

sheet data in annual financial statements under these rules, rather than one year, as is currently required under Regulation S-B.<sup>45</sup> The comment letters are persuasive that we should adopt these recommendations as part of our rule amendments. Accordingly, we are moving the financial statement rules for smaller reporting companies into a new Article 8 of Regulation S-X<sup>46</sup> and will require two years of comparative audited balance sheet data of smaller reporting companies. Comparative balance sheets will provide a much more meaningful presentation for investors without a significant additional burden on smaller reporting companies, since the earlier year data should be readily available for the purposes of preparing the other financial statements.<sup>47</sup> We also are making technical and language changes to the rules on form and content of financial statements for smaller public companies to facilitate their placement in Article 8 of Regulation S-X rather than in Regulation S-B or Regulation S-K.

We also are adopting technical amendments to Rule 3-05(b)(2)(iv) of Regulation S-X that were tied conceptually to the small business issuer threshold in Regulation S-B that we are replacing with the definition of smaller reporting company in Regulation S-K. Rule 3-05 of Regulation S-X requires the inclusion of financial statements of businesses acquired or to be acquired, so-called “target companies,” in registration statements and Form 8-K reports. The number of years of audited financial statements to be included for a target company is determined using the conditions specified in the definition of significant subsidiary in Rule 1-02(w) of Regulation S-X. If the net revenues reported by

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<sup>45</sup> We had specifically asked for comments on this recommendation in the Proposing Release. See Proposing Release Release No. 33-8819, p. 26 [72 FR 39676].

<sup>46</sup> To be codified at 17 CFR 210.8-01 – .8-08.

<sup>47</sup> Although the earlier year data would be readily available, auditors must undertake appropriate audit procedures related to the prior fiscal year.

the target company for the latest fiscal year are less than \$25 million and three years of financial statements would otherwise be required, the earliest of the three fiscal years may be omitted pursuant to Rule 3-05(b)(2)(iv) of Regulation S-X.

Several comment letters noted that in light of the \$50 million in revenues threshold proposed for determining a company's qualification as a smaller reporting company if a company is unable to calculate public float, the Commission should consider revising this rule to raise to \$50 million the \$25 million threshold currently used to limit to two the periods required for audited financial statements of an acquired business.<sup>48</sup> The \$25 million threshold was based on the \$25 million in revenues standard in Regulation S-B that we are rescinding.<sup>49</sup> We are amending this standard to increase the threshold to \$50 million in revenues, as suggested by the commenters.

## **C. Adopting Scaled Disclosure Item Requirements in Regulation S-K**

### **1. Overview**

The following is a list of item requirements we are amending in Regulation S-K to include the substance of the scaled standards for smaller reporting companies now in the same item number of Regulation S-B. The adopted amendments are substantially as described in the Proposing Release, but with the changes discussed below:

Item 101 (Description of Business). We are adding a new paragraph (h) to this item to set forth the alternative disclosure standards for smaller companies that appeared in Item 101 of Regulation S-B. Generally, the different requirements for smaller

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<sup>48</sup> See, e.g., Letter from Center for Audit Quality (CAQ).

<sup>49</sup> In 1996, the Commission adopted revisions to rules that streamlined requirements with respect to financial statements of significant business acquisitions in filings made under the Securities Act and the Exchange Act. The \$25 million threshold limit was intended to be consistent with criteria for small business issuers. Release No. 33-7355, p. 36 (Oct. 10, 1996).

reporting companies under Item 101 involve providing a less detailed description of the company's business. For example, the Regulation S-K standard for Item 101 requires financial information about segments, which the standard for smaller reporting companies does not require.<sup>50</sup> In addition, smaller reporting companies will be required to provide and 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.

We also are implementing additional minor revisions that replace the reference to Canadian issuers. Since we are making the smaller reporting company standards available to foreign issuers generally, we are requiring that these issuers provide disclosure on enforceability of civil liability against foreign persons. Previously, Item 101 of Regulation S-B had required this disclosure from Canadian issuers only because those were the only foreign issuers eligible for Regulation S-B disclosure standards. The item requirement applicable to smaller reporting companies also will no longer refer to the foreign private issuer requirement to disclose whether the report will include a reconciliation of financial information with U.S. generally accepted accounting principles, because smaller reporting companies must provide financial statements prepared in accordance with U.S. GAAP.

Item 201 (Market Price of and Dividends on Registrant's Common Equity and Related Stockholder Matters). We are revising Instruction 6 to paragraph (e) of this Regulation S-K item requirement to reflect that smaller reporting companies (instead of "small business issuers") are not required to provide a performance graph.

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<sup>50</sup> Application of U.S. GAAP (FAS 131) may, however, require segment information in the notes to the financial statements. 17 CFR 229.101(b).

Item 301 (Selected Financial Data); Item 302 (Supplementary Financial Information). We are adding a new paragraph (c) to each item requirement, providing that smaller reporting companies are not required to present the information required by these item requirements.

Item 303 (Management’s Discussion and Analysis of Financial Condition and Results of Operations). As provided in new paragraph (d), this item sets forth the scaled requirements.<sup>51</sup> For example, under this item requirement, smaller reporting companies will:

- Provide 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 that are required to provide three years of financial statements; and
- Not be required to provide tabular disclosure of contractual obligations.

Item 305 (Quantitative and Qualitative Disclosures about Market Risk). New paragraph (e) in this item specifies that smaller reporting companies are not required to disclose Item 305 information.

Item 402 (Executive Compensation). New paragraphs (l) through (r) set forth the alternative standards for smaller reporting companies for disclosure of compensation of executives and directors that were in Item 402 of Regulation S-B.<sup>52</sup> Smaller reporting companies will:

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<sup>51</sup> As discussed below, we are also adding references to two Industry Guides to this item.

<sup>52</sup> As proposed, the scaled disclosure for this item would have been in new paragraph (l), but in order to clarify the requirements, the adopted Item restates the requirements for smaller reporting companies in several paragraphs.

- Provide executive compensation disclosure for only three named executive officers (specifically including the principal executive officer but not the principal financial officer), rather than the five required of larger companies;
- Provide the Summary Compensation Table disclosure for only two years, rather than the three years required of larger companies;
- Not be required to provide a Compensation Discussion and Analysis;
- Provide only three of the seven tables<sup>53</sup> required of larger companies;
- Provide alternative narrative disclosures; and
- Not be required to include footnote disclosure of the grant date fair value of equity awards in the Director Compensation Table.

Item 404 (Transactions with Related Persons, Promoters and Certain Control Persons). We are making changes to the introductory text of paragraph (c)(1), and adding paragraph (d) before the instructions to this item to change the calculation of total assets for smaller reporting companies from 1% 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. We believe this standard is more consistent with the two years of financial statements required of smaller reporting companies. Under new Item 404(d) of Regulation S-K, smaller reporting companies will.<sup>54</sup>

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<sup>53</sup> These are the Summary Compensation Table, the Outstanding Equity Awards at Fiscal Year End Table, and the Director Compensation Table.

<sup>54</sup> See Section III.C.2, clarifying that to the extent the smaller reporting company scaled disclosure requirement is more rigorous than the same larger company item requirement, smaller reporting companies will be required to comply with the more rigorous smaller reporting company requirement.

- Not be required to disclose policies and procedures for reviewing related person transactions, which is required of larger companies;
- Be required to provide disclosure regarding a transaction where the amount exceeds the lesser of 1% of a smaller company's total assets or \$120,000;
- Be required to provide additional specific information about underwriting discounts and commissions, and corporate parents; and
- Be required to provide disclosure regarding promoters and certain control persons.

Item 407 (Corporate Governance). New paragraph (g) to Item 407 of Regulation S-K specifies that smaller reporting companies are:

- Not required to provide Compensation Committee Interlock and Insider Participation disclosure or a Compensation Committee Report; and
- Not required to provide an Audit Committee [Financial Expert]\* Report until the first annual report after their initial registration statement is filed with the Commission and becomes effective.

Item 503 (Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges). New paragraph (e) to this item specifies that smaller reporting companies need not 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. In addition, we have added instructions to the risk factor disclosure requirements set forth in Exchange Act Forms 10, 10-K and 10-Q to indicate that smaller

\*Note: The bracketed language was inadvertently omitted from this release when initially published on December 19, 2007.



reporting companies are not required to provide Item 503 risk factor disclosure in these filings.<sup>55</sup>

Item 504 (Use of Proceeds). We are revising Instruction 6 to this item to clarify that new Article 8 of Regulation S-X, rather than the other articles of Regulation S-X, will govern whether financial statements of businesses proposed to be acquired must be included in the filings of smaller reporting companies.

Item 601 (Exhibits). New paragraph (c) reflects that smaller reporting companies need not provide Exhibit 12 (Statements re Computation of Ratios).

Other Regulation S-K Items. We identified 24 item requirements in Regulation S-B that were substantially similar or identical to the same numbered item requirements in Regulation S-K. In these cases, we determined it was appropriate to require that smaller reporting companies follow the same item requirements as larger companies. In the Proposing Release, we identified Item 512 (Undertakings) as a scaled item requirement for smaller reporting companies; however, we now believe no change is needed because it is clear which undertakings may apply to a smaller reporting company's filings. We are, therefore, not including a new paragraph (m) in Regulation S-K, as proposed.

In addition, as described below, we are amending Item 102 (Description of Property) of Regulation S-K to include references to the Industry Guides<sup>56</sup> noted below

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<sup>55</sup> See Section III.A above. The Securities Offering Reform final rule amendments stated that the risk factor disclosure requirement did not apply to small business issuers filing on Form 10-KSB or Form 10-SB. The amendments we are adopting carry this difference in disclosure requirements over to the Forms 10, 10-K and 10-Q for smaller reporting companies. See Securities Offering Reform Release 33-8591 (July 19, 2005) [70 FR 44722, 44786-87].

<sup>56</sup> The Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff. The Industry Guides are

and highlighting the requirements of Item 401 (Directors, executive officers, promoters and control persons). To further maintain consistency with references to other industry guides in the disclosure item requirements, we also are adding instructions to Item 303 directing companies' attention to:

- Industry Guide 3 – Statistical disclosure by bank holding companies; and
- Industry Guide 6 – Disclosure concerning unpaid claims and claim adjustment expenses of property-casualty insurance underwriters.

The Regulation S-B item requirement on the Description of Property in Item 102 included detailed instructions specific to small business issuers engaged in: (1) significant mining operations; (2) oil and gas producing activities; and (3) real estate activities. Under Item 102 of Regulation S-B, mining companies are directed to the information called for in Industry Guide 7; oil and gas producing issuers are directed to the information called for in Industry Guide 2; and real estate companies are directed to the information called for in Industry Guide 5. Regulation S-K, however, does not include any references to these industry guides. Several commenters suggested that we revise Item 102 of Regulation S-K to include references to industry guides.<sup>57</sup> We agree, and are amending Item 102 of Regulation S-K to include references to the following industry guides:

- Industry Guide 2 – Disclosure of oil and gas operations;
- Industry Guide 4 – Prospectus relating to interests in oil and gas programs;

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not rules, regulations, or statements of the Commission. The Commission has neither approved nor disapproved these interpretations. See Release 33-6384 (Mar. 16, 1982).

<sup>57</sup> See, e.g., Letters from KPMG and Grant Thornton.

- Industry Guide 5 – Preparation of registration statements relating to interests in real estate limited partnerships; and
- Industry Guide 7 – Description of property by issuers engaged or to be engaged in significant mining operations.

Item 401 of Regulation S-K (Directors, executive officers, promoters and control persons), differs from Regulation S-B in one respect. Under Regulation S-B, the disclosure pertaining to Federal bankruptcy laws or state insolvency laws related only to “any bankruptcy petition filed by or against any business of which such person was a general partner or executive officer either at the time of the bankruptcy or within two years prior to that time.”<sup>58</sup> Under Regulation S-K, disclosure must be provided pertaining to any petitions filed under the Federal bankruptcy laws or any state insolvency laws filed by or against a director or officer of the company.<sup>59</sup> We believe it is appropriate to require disclosure about a personal bankruptcy petition filed by or against a director or officer of a smaller reporting company given that, in light of the generally smaller level of operations of smaller reporting companies, it may be material to an evaluation of the ability or integrity of any director or person to be nominated to become a director or executive officer of the smaller reporting company. Accordingly, smaller reporting companies now will be required to comply with the slightly different disclosure requirement of the Regulation S-K item.

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<sup>58</sup> See Item 401(d)(1) of Regulation S-B. 17 CFR 228.401(d)(1). Under Regulation S-B, issuers provide legal proceedings disclosure about promoters and control persons for the past five years. Regulation S-K requires disclosure on legal proceedings for control persons and promoters for registrants that have not been subject to the reporting requirements for Section 13(a) or 15(d) of the Exchange Act for the twelve months immediately before the filing of the registration statement, report or statement. 17 CFR 229.401(f) and (g).

<sup>59</sup> See Item 401(f)(1) of Regulation S-K. 17 CFR 229.401(f)(1).

## 2. Electing Scaled Disclosure Standards on “A La Carte” Basis

Commenters generally supported the proposal to allow smaller reporting companies to choose compliance with either the smaller reporting company scaled disclosure requirements or the larger company disclosure requirements in Regulation S-K on an item-by-item or “a la carte” basis.<sup>60</sup> One comment letter expressed the view that the smaller reporting company disclosure requirements would serve as a baseline that would allow companies to provide any additional disclosure they deemed important to investors.<sup>61</sup> Another set of comments noted that the “a la carte” approach is already sanctioned by disclosure rules generally.<sup>62</sup> This letter explained that line-item disclosure requirements generally permit providing more disclosure than is required by the line items. Additionally, issuers are required to disclose all material facts that are necessary to make the statements included in the document not misleading, which may require disclosures in excess of line item requirements.<sup>63</sup>

Some accounting firms commenting on the a la carte approach requested that we address what one commenter referred to as the “lock-in” aspect of the proposal. In the Proposing Release, we explained that 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 item requirements, at its election, in any one filing. We proposed to require, however, that a smaller reporting company provide its financial statements on the basis of

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<sup>60</sup> See, e.g., Letter from Independent Community Bankers of America (ICBA).

<sup>61</sup> See Letter from Deloitte & Touche LLP (Deloitte).

<sup>62</sup> See Letter from ABA.

<sup>63</sup> The ABA cited the following in support of this statement: Sections 11 and 12(a)(2) of the Securities Act and Rule 408 under the Securities Act, and Rules 10b-5 and 12b-20 under the Exchange Act.

the scaled financial statement requirements or the larger company financial statement requirements for a single fiscal year, and not be permitted to switch back and forth from one to another in different filings within a single fiscal year.

One accounting firm noted that it was unclear how the a la carte approach would work if issuers were required to elect in the first quarterly report whether they would follow the scaled financial statement requirements or the larger company Regulation S-X requirements in that same fiscal year's annual report on Form 10-K.<sup>64</sup> According to this letter, making a determination in this manner would require a smaller reporting company that wants to preserve the option of following the smaller reporting company requirements in its annual report on Form 10-K to adhere to the smaller reporting company rules and not provide any additional information in the first quarterly report on Form 10-Q. Another accounting firm expressed the concern that a smaller reporting company might elect to provide more than the minimum disclosures only in periods when the additional disclosures tended to be favorable.<sup>65</sup> These comment letters agreed that the a la carte approach would work if the Commission clarified that although the smaller reporting company disclosure and financial statement requirements would appear to establish the minimum disclosure requirements, Rule 12b-20 under the Exchange Act<sup>66</sup> would require that a smaller reporting company provide any additional information beyond those minimum disclosure requirements, in order to avoid a misleading presentation.<sup>67</sup> The accounting firms suggested that we encourage smaller reporting

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<sup>64</sup> See Letter from BDO Seidman, LLP (BDO).

<sup>65</sup> See Letter from Ernst & Young LLP (E&Y).

<sup>66</sup> 17 CFR 240.12b-20.

<sup>67</sup> See Letters from E&Y and CAQ.

companies to provide consistent disclosures in succeeding periods in order to respond to investor expectations and allow period-to-period comparisons.

The proposals would have required companies to make the determination whether to report financial statement disclosure on a scaled basis in the first quarter due after the fiscal year covering the determination date. After reviewing the suggestions in several comment letters, however, we believe it is appropriate to permit smaller reporting companies to choose to comply with both the non-financial and financial item requirements on an item-by-item basis when these disclosures are provided consistently and when they are consistent with the legal requirements under the federal securities laws, including Securities Act Rule 408 and Exchange Act Rule 12b-20. Additionally, we stress the importance of providing disclosure that permits investors to make period-to-period comparisons, whether quarterly or annually.

We continue to expect that our staff will evaluate item-by-item compliance by smaller reporting companies with only the Regulation S-K requirements applicable to smaller reporting companies, and not with the requirements applicable to larger companies. This will be the case even if the company whose filing is being reviewed chooses to comply with the larger company requirements. Finally, as we noted in the Proposing Release, the a la carte approach will have no effect on the legal requirements and liabilities that apply to all disclosures made by issuers.<sup>68</sup>

We are further clarifying that to the extent the smaller reporting company scaled item requirement is more rigorous than the same larger company item requirement, smaller reporting companies will be required to comply with the more rigorous, smaller

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<sup>68</sup> Release No. 33-8819, n. 76 p. 33 [72 FR 39678].

reporting company item requirement. Also, we do not believe it is appropriate for a smaller reporting company to comply with a larger reporting company Regulation S-K item requirement if that requirement sets a higher threshold obviating the need for the smaller reporting company to provide disclosure. For example, unlike the larger company requirement under Item 404 of Regulation S-K, smaller reporting companies are required to disclose additional specific information about underwriting discounts and commissions and corporate parents.<sup>69</sup> In this case, a smaller reporting company would be required to provide the additional Item 404 disclosure.

Currently, the smaller reporting company requirements under Item 404 of Regulation S-K<sup>70</sup> present the only instance where the scaled requirements could be more rigorous than the larger company standard. This is because a smaller reporting company is required to provide disclosure on a related person transaction since the beginning of the company's last fiscal year if the amount involved in the transaction exceeds the lesser of \$120,000 or 1% of the average of the company's total assets at year end for the last two completed fiscal years. In contrast, a larger company reporting under the same Item 404 Regulation S-K requirement is required to provide disclosure on a related person transaction since the beginning of the last fiscal year if the transaction exceeds \$120,000.<sup>71</sup> A smaller reporting company's related person transaction may more easily exceed 1% of the average of the smaller reporting company's total assets than \$120,000, as required for larger companies under the same item requirement. We believe this may

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<sup>69</sup> See Instructions to Item 404(d) of Regulation S-K, 17 CFR 229.404(d).

<sup>70</sup> New Regulation S-K Item 404(d)(1) related person disclosure requirement for smaller reporting companies.

<sup>71</sup> 17 CFR 229.404(a).

be the case because 1% of a smaller company's total assets might be appreciably lower than \$120,000.

**D. Eliminating “SB” Forms Associated with Regulation S-B**

While some comment letters appeared to support the elimination of the forms designated with the letters “SB” associated with Regulation S-B,<sup>72</sup> along with moving the smaller reporting company requirements from Regulation S-B into Regulation S-K, others questioned whether this approach would reduce compliance burdens and lower costs for smaller companies.<sup>73</sup> Some of the letters questioning the elimination of the SB forms recommended a two-year phase-in period to help smaller companies adjust to the transition. Some letters expressed a general perception that eliminating the SB forms would lead to increased costs for smaller reporting companies because Forms 10, 10-K, 10-Q and S-1, which would be used by smaller companies if the SB forms were eliminated, appeared to have more item disclosure requirements.<sup>74</sup> One commenter stated, however, that eliminating the “SB” forms would provide both time and cost savings to smaller reporting companies that will be eligible to incorporate information from their previously filed Exchange Act periodic reports into a Form S-1 registration statement.<sup>75</sup> None of the comment letters explained how using Forms 10, 10-K, 10-Q, and S-1 would increase costs for smaller reporting companies. One letter noted, however, that a smaller company probably would take longer to go through Form 10-K

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<sup>72</sup> See, e.g., Letter from ABA.

<sup>73</sup> See, e.g., Letter from Office of Advocacy of the U.S. Small Business Administration (SBA Advocacy Office).

<sup>74</sup> See, e.g., Letter from the International Association of Small Business Broker Dealers and Advisors (“IASBDA”).

<sup>75</sup> See Letter from ABA.



and Form 10-Q to figure out exactly what applied to the company and what did not apply in terms of required disclosures.<sup>76</sup> In contrast, another comment letter noted that the elimination of “SB” forms would allow smaller reporting companies to incorporate information from their previously filed Exchange Act reports into a Form S-1 registration statement, which would result in time and cost savings to the smaller reporting company.<sup>77</sup>

Some of the comment letters apparently misperceived that the SB forms are simpler and shorter than forms larger companies use. This is not the case. The SB forms themselves are not necessarily simpler to use than the forms that larger companies use. The scaling and increased simplicity for smaller companies generally occurs in the item requirements of Regulation S-B, rather than the associated SB forms, and we are moving the item requirements into Regulation S-K with very few changes.<sup>78</sup>

Nevertheless, after considering the comments, we have decided not to eliminate the Exchange Act reporting SB forms immediately, but to phase them out to ease the transition for smaller companies. We considered commenters’ concerns regarding current small business issuers moving to the Forms 10-K and 10-Q, and concluded that our transition schedule will provide an adequate period for these companies to continue to file reports on these forms, if they so desire.<sup>79</sup> Further, to help current small business issuers make the transition, the Division of Corporation Finance’s Office of Small

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<sup>76</sup> See Letter from James J. Angel, Ph.D., CFA (“Prof. James Angel”).

<sup>77</sup> See Letter from ABA.

<sup>78</sup> Moreover, the SB forms are not necessarily substantially shorter than the comparable forms for larger companies. Form 10-SB is actually longer, at 4 ½ pages, than Form 10, which is less than 4 full pages long; Form 10-KSB is 11 pages long, while Form 10-K is 12; Form SB-2 is 5 pages long, while Form S-1 is just over 6 pages, not including instructions on summary prospectuses.

<sup>79</sup> See Section IV below on compliance dates.

Business Policy plans to provide an informational brochure to assist their transition to the new smaller reporting company form requirements.

**E. Qualifying Standards for Treatment as “Smaller Reporting Company”**

Many of the comment letters in favor of our proposed definition of “smaller reporting company” agreed that combining the categories of non-accelerated filers with small business issuers for purposes of the definition provided a convenient and simple approach because it tracks the accelerated filer definition and reduces regulatory complexity.<sup>80</sup> In the Proposing Release, we reasoned that requiring only a public float test for most companies to qualify would provide additional simplicity, consistency and certainty. Eliminating a revenue test also would broaden the category of eligible companies. Our decision to focus on a company’s non-affiliate common equity market capitalization or “public float” was also consistent with the Commission’s current regulatory standards for purposes of Form 10-K, Form S-3, and the accelerated filer definition. Setting the public float ceiling at \$75 million for smaller reporting companies further aligns the smaller reporting company definition with the non-accelerated filer definition.

The Advisory Committee recommended that we require companies to determine eligibility based on total equity market capitalization rather than public float. Although the Advisory Committee acknowledged that the Commission has historically and consistently used public float as a measurement in analogous regulatory contexts, it stated that equity market capitalization would better measure total financial exposure to

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<sup>80</sup> See, e.g., Letters from PricewaterhouseCoopers and E&Y.

investors.<sup>81</sup> The Advisory Committee recommended extending the Commission’s non-financial scaled disclosure requirements, covering disclosure and reporting, to companies in the lowest 1% of market capitalization. Some of the comment letters we received on the Proposing Release agreed with the Advisory Committee equity market capitalization preference, stating that it was simpler and more widely understood than the calculation of public float. The majority of comment letters supported our proposals to require a public float standard only, agreeing we should require a revenue test only if a company is unable to calculate public float.

Several comment letters opposed increasing the public float ceiling to a level higher than \$75 million.<sup>82</sup> One comment letter explained that because smaller companies typically do not have a large analyst following, financial information provided by the company takes on greater importance in communicating results to investors.<sup>83</sup> Another letter noted that to balance protecting investors and promoting capital formation by small businesses, “reduced” disclosures should be limited to those public companies with relatively limited and less complex operations.<sup>84</sup> Most comment letters, however, supported a higher public float ceiling than \$75 million.<sup>85</sup> Some of these comment letters argued that many companies with a public float greater than \$75 million are still quite small. Several commenters suggested that the Commission provide scaled regulation to

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<sup>81</sup> Advisory Committee Final Report 19.

<sup>82</sup> See Letters from PricewaterhouseCoopers and E & Y.

<sup>83</sup> See Letter from PricewaterhouseCoopers.

<sup>84</sup> See Letter from E&Y.

<sup>85</sup> See, e.g., Letters from SBA Advocacy Office and ABA.

companies with up to \$787 million in equity market capitalization, as they seemed to believe the Advisory Committee had recommended.<sup>86</sup>

We are adopting, as proposed, a definition for “smaller reporting companies” that requires companies to have a public float of less than \$75 million. We believe this standard is appropriately scaled in that it reduces costs to smaller companies caused by unnecessary information requirements, consistent with investor protection.

As adopted, the definition will make eligibility for smaller reporting company status contingent solely on public float for most companies. Alternatively, for companies that are unable to calculate public float, we are, as proposed, providing a revenue test. If a company has no common equity outstanding or no market price for its outstanding common equity exists at the time of its eligibility determination, the company would qualify as a smaller reporting company if it had less than \$50 million in revenues in the last fiscal year. This is a departure from the dual eligibility test under the Regulation S-B system, which required separate calculations under public float and annual revenues. By eliminating the revenue test for most companies, the new definition of smaller reporting company simplifies and streamlines the definition while expanding the number of companies eligible to qualify.

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<sup>86</sup> The Advisory Committee recommended extending the Commission’s scaled disclosure regime to the lowest 6% of total U.S. equity market capitalization, which would have included companies with less than \$787 million in market capitalization as of March 31 and June 10, 2005. But the Advisory Committee only identified the rules on form and content of financial statements in Item 310 of Regulation S-B as appropriate for application to that category of companies. The Advisory Committee recommended extending the Commission’s other scaled disclosure rules, covering disclosure and reporting, to companies in the lowest 1% of market capitalization, which, as explained in the Proposing Release at page 16 [72 FR 39673], is essentially the same group and proposal contained in the Proposing Release—reporting companies with less than \$75 million in public equity float—which we are adopting with few changes today. As calculated from data obtained from Thomson Financial (Datastream), the overlap between reporting companies with \$128 million in market capitalization and reporting companies with \$75 million in public float is approximately 98%.

As adopted, Item 10(f) of Regulation S-K will set forth the definition for “smaller reporting company.” We are further streamlining the definition and clarifying technical inconsistencies in the Proposing Release. We are also modifying the proposed introduction of Item 10, which indicated that smaller reporting companies would be permitted to choose to comply with either the requirements applicable to smaller reporting companies or the requirements applicable to other companies. Companies may make a choice on most of the scaled disclosure item requirements, unless the requirements for smaller reporting companies specify that smaller reporting companies must comply with the smaller reporting company requirements.<sup>87</sup> If the item requirement does not require specific compliance, then the smaller reporting company will be permitted to choose scaled or standard disclosure requirements.

#### **1. Eligibility and Exclusions**

Currently, under Item 10 of Regulation S-B, small business issuer eligibility is limited to U.S. and Canadian issuers. This has been the case since 1992, when we adopted Regulation S-B and its associated forms and maintained eligibility for small business issuer status for Canadian companies because these companies had been able to use the Form SB-2 precursor, Form S-18. As adopted, we are expanding eligibility for smaller reporting company status to non-U.S. companies using domestic company forms. Foreign companies will qualify as smaller reporting companies if they are eligible to file on a form that permits disclosure based on the standards for smaller reporting companies, such as Forms S-1, S-3, S-4, 10-Q, and 10-K. Companies filing on forms available only

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<sup>87</sup> See the discussion of Item 404 at the end of Part III.C.2.

to “foreign private issuers,” such as Forms F-1, F-3, F-4, and 20-F, will be ineligible for the smaller reporting company scaled disclosure requirements.

Several commenters objected to the proposal requiring that Canadian and other foreign private issuers provide financial statements prepared according to U.S. GAAP if they want to use the scaled rules available to smaller reporting companies, which they may use only if they file on a form available to U.S. domestic companies. Generally, these comment letters stated that the proposals would eliminate an accommodation already enjoyed by Canadian companies filing on Form SB-2. Currently, Canadian companies are permitted to provide Canadian GAAP financial statements that are reconciled to U.S. GAAP on domestic forms. Some of the comment letters urged that we consider allowing all foreign private issuers to provide their own country’s GAAP with U.S. GAAP reconciliation.

To the extent that a foreign company qualifies as a smaller reporting company, it may make filings with us on forms available to domestic U.S. companies if it presents financial statements pursuant to U.S. GAAP. We continue to believe that because we are extending eligibility for scaled disclosure on domestic forms to all foreign issuers, it is important to require that this significantly larger group of foreign filers provide financial data in accordance with U.S. GAAP on domestic forms at this time. Other than in limited situations, foreign filers using domestic forms are required to prepare their financial statements in accordance with U.S. GAAP. Unlike our filing forms that are specifically designed for foreign private issuers that permit the use of financial statements prepared in accordance with bases of accounting other than U.S. GAAP so long as U.S. GAAP reconciling information is presented, the disclosure and other requirements under our

domestic filing forms do not contemplate the use of accounting principles other than U.S. GAAP. We believe eligible foreign registrants that choose to avail themselves of the option to provide scaled disclosure should comply fully with the scaled disclosure and financial statement presentation requirements applicable to domestic issuers.<sup>88</sup> Finally, the regulatory scheme for foreign private issuers on the “F” forms is specifically tailored to address their special circumstances, and we believe the scheme provides the accommodations most useful to these companies.

We will continue to exclude investment companies, including business development companies, and asset-backed issuers from eligibility for scaled treatment under our rules for smaller reporting companies. We requested comment on these exclusions and received none.

## **2. Determination Dates**

The smaller reporting company determination dates we are adopting today are based on three categories of companies: reporting companies with a public float, non-reporting companies filing a registration statement, probably an initial registration statement, under either the Securities Act or the Exchange Act, and reporting or non-reporting companies without a public float.<sup>89</sup> We are amending the definition of smaller reporting company to remove the reference to an issuer having “no significant public common equity outstanding,” based on a commenter’s belief that it was confusing. Instead, the definition will indicate that in the case of an issuer whose public float as

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<sup>88</sup> We have published a concept release on whether U.S. companies should be permitted to use International Financial Reporting Standards as published by the International Accounting Standards Board in their filings with the Commission. If we proceed with proposed rules in this area, we may consider the impact of any proposal on filers that use scaled disclosure. See Release No. 33-8831 (Aug. 7, 2007) [72 FR 45600].

<sup>89</sup> See new Item 10(f) of Regulation S-K.

calculated under the definition was zero, most likely because the issuer had no public common equity outstanding or no market price for its common equity existed, the issuer must have had annual revenues of less than \$50 million in its last fiscal year.

In the case of a reporting company, we are requiring the same public float calculation currently used to determine accelerated filer status, \$75 million in public float 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.

**a. Reporting Companies**

To determine smaller reporting company eligibility, reporting companies will follow the accelerated filer determination date in Rule 12b-2 under the Exchange Act — the last business day of a company’s second fiscal quarter.<sup>90</sup> We believe this approach simplifies regulation and promotes consistency and uniformity with current Commission rules. The public float of a reporting company will 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. We are adopting, as proposed, a rule providing that if a reporting company determines it qualifies as a larger reporting company rather than a smaller reporting company on the last day of its second fiscal quarter, it will be required to comply with the larger company disclosure standards when it files its first quarterly

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<sup>90</sup> New Item 10(f)(2)(i) of Regulation S-K explains how the determination dates work for companies already filing reports under the Exchange Act.



report in the fiscal year following the fiscal year of the determination date. We are permitting larger reporting companies, however, to opt for the scaled disclosure requirements beginning with the Form 10-Q covering the second fiscal quarter corresponding to the measurement date establishing eligibility as a smaller reporting company.<sup>91</sup>

**b. Non-Reporting Companies Filing an Initial Registration Statement**

Companies determining eligibility in connection with the filing of their initial registration statement with the Commission will have to choose a date within 30 days of filing to determine eligibility.<sup>92</sup> Under Regulation S-B, we had required companies to choose a public float calculation during a 60-day window before the filing. We believe requiring a 30-day window will lead to more accuracy and less uncertainty for filers, Commission staff, and investors.

The calculation methodology we are adopting for non-reporting companies varies slightly from the Regulation S-B standard we are rescinding. The Regulation S-K standards will require computing public float based on three components:

- Estimated offering price per share at the time of filing the registration statement;
- Number of shares of common stock outstanding that are held by non-affiliates before the offering; and

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<sup>91</sup> See Section III.E.2.d below, explaining how a company enters and exits the smaller reporting company disclosure status.

<sup>92</sup> See new Item 10(f)(1)(ii) of Regulation S-K

- Number of shares of common stock to be sold at the estimated offering price.

As adopted, the rule will require that non-reporting companies base the calculation on the estimated number of registered shares for offering to the public. For example, as we illustrated in the Proposing Release, a company that registers 7,000,000 shares in its initial public offering will be required to add that number to the total number of shares held by non-affiliates before the offering. If a company has 25,000,000 shares of common stock outstanding held by non-affiliates before the offering, it would add the 7,000,000 and 25,000,000 shares of common stock. The result would mean that the 32,000,000 shares of common stock outstanding would be multiplied by the estimated offering price per share in the initial public offering.

One commenter raised questions regarding the proposed method of calculation.<sup>93</sup> This commenter noted that the estimated public offering price and the number of shares being offered tends to change during the time between the initial filing of the registration statement and the final prospectus. The uncertainty raised by the final estimated public offering price and number of shares being offered caused the commenter to question whether an issuer would be required to switch midway through the process from using smaller reporting company disclosure standards to using more extensive regular disclosure standards. Conversely, this commenter noted that if the price range and/or the number of shares being offered decreased, the issuer will have satisfied a more extensive disclosure standard than it turns out it was required to satisfy.

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<sup>93</sup> See Letter from ABA.

We considered these comments, and believe it is appropriate to provide initial public offering registrants the option to recalculate their public float at the time the company completes the initial public offering. Our intention in providing this flexibility is to permit (but not require) these issuers to recalculate their eligibility based on the results of the initial public offering for purposes of filing the next periodic report. For example, if an issuer files an initial public offering registration statement under the Securities Act based on the larger company Regulation S-K item requirements but then determines after the close of the initial public offering that its public float is below \$75 million, then this issuer would be a smaller reporting company and would be eligible to provide scaled disclosure in the first periodic report due after the initial public offering registration statement was declared effective.<sup>94</sup>

To address the commenter's concern that a smaller reporting company would be required to transition its disclosure to the larger company requirements if its public float rose above \$75 million during the pre-effective stage of the filing, we are clarifying that this would not be the case if the issuer made a bona fide eligibility determination at the time it filed the initial public offering registration statement. The issuer will continue to be a smaller reporting company until its next annual determination date – the end of its second fiscal quarter.

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

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<sup>94</sup> See new Item 10(f)(2)(ii) of Regulation S-K.

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 would be based on its revenue, as proposed.<sup>95</sup>

**c. Alternative Revenue Test for Reporting and Non-Reporting Companies**

As we stated in the Proposing Release, situations may arise in which a reporting company would be unable to calculate public float because it has no public common equity outstanding or no market price for its common equity exists. As adopted, the definition provides a third eligibility category to qualify for smaller reporting company status – companies unable to calculate a public float. To qualify as smaller reporting companies, this group of companies will be required to have annual revenues of less than \$50 million during the last fiscal year before filing the registration statement.<sup>96</sup>

**d. Entering and Exiting Smaller Reporting Company Status**

The rules we are adopting on entering and exiting smaller reporting company status in Item 10 of Regulation S-K are less restrictive than the Regulation S-B requirements of Item 10. Item 10 of Regulation S-B currently requires issuers to calculate eligibility based on public float and revenue levels for two consecutive fiscal years. The Regulation S-B system had a significantly longer transition period to enter or exit the smaller company disclosure system.

We are adopting transition rules for entering and exiting smaller reporting company status that track the accelerated filer definition. The Proposing Release suggested that the

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<sup>95</sup> See new Item 10(f)(1)(iii) of Regulation S-K.

<sup>96</sup> Id.

accelerated filer transition rules were the same as the smaller reporting company transition requirements to move back and forth from larger company disclosure standards to smaller reporting company standards. One comment letter requested clarification, pointing out that accelerated filers are required to change to their new status when determining the due date of the annual report covering the year of the status change, but, as proposed, the smaller reporting company determination would not take effect until the first fiscal quarter of the next fiscal year.

As adopted, the rules provide that a larger reporting company that determines it is a smaller reporting company as of the last business day of its most recently completed second fiscal quarter is permitted to transition to the scaled disclosure requirements in the Form 10-Q quarterly report corresponding to the determination date's second fiscal quarter rather than, as proposed, the following fiscal year's first quarterly report. A smaller reporting company required to transition to the larger reporting system after its determination date calculation will not be required to satisfy the larger reporting company disclosure requirements until the first quarter after the determination date fiscal year.<sup>97</sup>

To illustrate, a larger reporting company with a fiscal year end of December 31, 2008 that qualified as a smaller reporting company on the last business day of its most recently completed second fiscal quarter in 2008 would be able to provide scaled disclosure beginning with the Form 10-Q for the same second fiscal quarter in which the company determined its eligibility, which would be due in August 2008. Conversely, a smaller reporting company with a fiscal year end of December 31, 2008 that is required to transition out of the scaled disclosure system into the larger company disclosure

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<sup>97</sup> See new Item 10(f)(2)(i) of Regulation S-K.

system will be required to do so beginning with the Form 10-Q for the first fiscal quarter of 2009, which would be due in May 2009.

As adopted, once an issuer fails to qualify for smaller company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with the definition, was less than \$50 million as of the last business day of its second fiscal quarter. 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, it will qualify to use the scaled disclosure item requirements until it exceeds \$50 million in annual revenue. Once such an issuer fails to qualify as a smaller reporting company because its revenues exceed \$50 million, that issuer will not become eligible for smaller reporting company status until it has annual revenues of less than \$40 million in its last fiscal year.<sup>98</sup>

## **F. Miscellaneous<sup>99</sup>**

### **1. Indexing for Inflation**

Many comment letters favored the inflation adjustments to the public float levels and revenue ceilings in the definition of smaller reporting company, but noted that the accelerated filer definition also should be indexed in order to keep these two categories aligned. We are not adopting the indexing proposal, but will consider whether these suggestions should be the subject of a future rulemaking project to collectively index several thresholds in current Commission rules.

### **2. Eliminating Transitional Small Business Issuer Format**

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<sup>98</sup> See new Item 10(f)(2)(iii) of Regulation S-K. 17 CFR 229.10(f)(2).

<sup>99</sup> In addition to the matters discussed in this release, we are amending a number of rules to eliminate references to Regulation S-B and the SB forms and to make other technical changes, such as providing the Commission's current mailing address.

We are eliminating the transitional small business issuer format, as proposed. No commenters objected to this proposal.

### **3. Checking the “Smaller Reporting Company” Box**

A company that qualifies as a smaller reporting company based on the appropriate eligibility test under the definition will be required to check the “smaller reporting company” box on the registration statement or periodic report filed, whether or not it chooses to rely on the scaled disclosure standards of the amended Regulation S-K requirements. Several comment letters supported this proposal.<sup>100</sup>

## **IV. Compliance Dates**

Transition for Current Small Business Issuers. We are providing current small business issuers the option to file their next annual report for a fiscal year ending on or after December 15, 2007 on either Form 10-KSB or Form 10-K. A small business issuer may continue to file its periodic reports using Regulation S-B and the “SB” forms until its next annual report is filed. After a small business issuer files that next annual report, subsequent periodic reports must be filed on a form that does not have the “SB” designation. This will provide an optional transition period for companies that were small business issuers as of the effective date.

As a result of this transition period, Regulation S-B, Form 10-QSB, and Form 10-KSB need to be maintained while eligible small business issuers may continue to use them. Accordingly, while most of the amendments are effective on February 4, 2008, Form 10-QSB will not be removed until October 31, 2008 and Regulation S-B and Form 10-KSB will not be removed until March 15, 2009.

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<sup>100</sup> See, e.g., Letters from CAQ and ABA.

We are making numerous changes to rules and forms to implement these rule amendments, including replacing references to small business issuers with references to smaller reporting companies. During the optional transition period, small business issuers have the same reporting obligations as they had before these rule amendments, except to the extent that they voluntarily move to the new smaller reporting company system before being required to do so.

The “SB” Securities Act and Exchange Act registration statement forms, SB-1, SB-2, and 10-SB, will be rescinded on the effective date. Companies filing a registration statement after this date will be required to file on the appropriate form without an “SB” designation. If a registration statement was filed on an “SB” form before the effective date, and the company seeks to amend it after the effective date, the company must file the amendment on a correct form without an “SB” designation, but may continue to use the disclosure format and content based on the “SB” form until six months after the effective date.<sup>101</sup>

General Transition Provisions. Companies that qualify as smaller reporting companies after the effective date, whether or not they currently are small business issuers, will have the option to comply with the scaled disclosure item requirements for smaller reporting companies in their registration statements and periodic reports filed after the effective date. To determine their status after the effective date, reporting companies will refer to their most recent second fiscal quarter to calculate public float. In these cases, reporting companies have already calculated public float for purposes of

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<sup>101</sup> For example, a company that filed on Form SB-2 before the effective date would be required to file any pre- or post- effective amendments on Form S-1, but would be able to maintain the item requirement format of its Form SB-2 for up to six months after the effective date.



determining accelerated filer status and, therefore, no additional computation is necessary. Current small business issuers will be deemed to qualify as smaller reporting companies and need not make this calculation. Companies that recently became reporting companies before the effective date, but have not yet had a completed second fiscal quarter, will base eligibility on the public float calculated after the initial public offering. In all cases, companies that qualify for smaller reporting company status will continue to have this status until they make their annual determination at the end of the second fiscal quarter.

## **V. Paperwork Reduction Act**

### **A. Background**

The amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>102</sup> As discussed in the Proposing Release, we submitted a request for approval of the “collection of information” requirements contained in the proposed amendments to the Office of Management and Budget in accordance with the PRA.<sup>103</sup> Some of the revisions that we are making to the original proposal affect these collections of information, but the revisions do not affect the burden estimates that we submitted to the OMB in connection with the Proposing Release. The titles of the collections of information are:<sup>104</sup>

(1) “Regulation S-B” (OMB Control No. 3235-0417);

(2) “Regulation S-K” (OMB Control No. 3235-0071);

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<sup>102</sup> 44 U.S.C. 3501 *et seq.*

<sup>103</sup> 44 U.S.C. 3507(d); 5 CFR 1320.11.

<sup>104</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 Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulations S-K and S-B.

- (3) “Regulation C” (OMB Control No. 3235-0074);
- (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).

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 OMB control number.

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. The information collections related to annual, periodic, and current reports and registration statements will be mandatory for larger reporting companies; some of the requirements, however, will be voluntary for smaller reporting companies. There is no mandatory retention period for the information disclosed, and the information disclosed will be made publicly available on the Commission's EDGAR filing system or in the Commission's public reference room in the case of a Form 1-A or Form SE filing.

For purposes of the Paperwork Reduction Act, as adopted, the burden changes are insignificant for companies that currently meet the small business issuer definition. We did not receive any comment letters providing data or other information concerning legal or accounting costs that would cause us to change our view.

We adopted existing Regulation S-B to provide an integrated disclosure system for small business issuers and Regulation S-K to provide an integrated disclosure system for larger reporting companies. Forms SB-1, SB-2, S-1, S-3, S-4, S-8, and S-11 are registration statements that are prepared by eligible issuers to provide investors with the information they need to make informed investment decisions in registered offerings. Form 1-A is the form required when a non-reporting company seeks to use the Regulation A exemption from the Securities Act. Regulation A is a conditional small issues exemption available to eligible issuers. Forms 10, 10-SB, 10-K, 10-KSB, 8-K, 8-A, 10-Q, 10-QSB, and 11-K are forms that set forth disclosure requirements for companies filing reports with the Commission pursuant to the Exchange Act. Finally, Form SE is a notice to the Commission by an EDGAR electronic filer that it is filing paper format exhibits.

Consistent with the information that we previously submitted to the OMB 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 will be 7,857,948 and that the total increase in cost will be \$1,114,044,563. 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 7,853,542.5 burden hours and a total decrease in cost of \$1,108,787,363. The net difference between the increase and decrease is an increase of 4,405.5 burden hours and a cost of \$5,257,200.<sup>105</sup> The net increase of 4,405.5 burden hours and costs of \$5,257,200 is outweighed by the possible decrease of 356,290 burden hours and costs of \$47,479,000 for the 1,581 newly eligible smaller reporting companies.

The table below sets forth our current hourly and cost burden estimates for Forms 10-K, 10-Q, 10, S-1, and S-11 after these amendments.<sup>106</sup>

<b>Form</b>	<b>Burden Hours</b>	<b>Annual Costs</b>
10-K	23,430,170	\$3,124,022,763
10-Q	4,583,290	\$513,829,600
10	11,725	\$14,070,000
S-1	167,912	\$201,493,800
S-11	37,069	\$44,484,000

<sup>105</sup> As explained in the Proposing Release, the net difference arises primarily from the increased burden on real estate companies that previously could use Form SB-2, but under these amendments would now be required to use Form S-11, the form tailored to issuers in the real estate industry.

<sup>106</sup> Collection affected by the rulemaking, but not included in the table, were either rescinded or their estimated burden was not changed.

## **B. Summary of Comment Letters and Revisions to the Proposals**

We requested comment on the Paperwork Reduction Act analysis contained in the Proposing Release. One commenter<sup>107</sup> stated that the substitution of the Regulation S-K disclosure framework would only be beneficial to small issuers if there were no increase in legal and accounting costs. The commenter noted that the Commission does not guarantee that moving the current Regulation S-B disclosure requirements into Regulation S-K will be more cost effective. The commenter also disagreed with the Commission's average costs estimates, stating that costs vary between New York City and smaller communities throughout the country. Several other commenters<sup>108</sup> raised similar concerns that costs may increase as a result of these proposals. None of these commenters, however, provided any data or other information to show that legal and accounting costs will increase.

Our estimates of the average number of hours each entity spends completing the affected forms, allocation of burden between outside counsel and internal personnel, and the average hourly rate for outside securities counsel were obtained by contacting a number of law firms and other persons regularly involved in completing the forms and reflect regional variances.

Commenters who raise a concern about the transition from Regulation S-B and the "SB" forms to Regulation S-K and the "SK" forms wanted us to consider a phase-in period. The amendments, as adopted, will allow a former "SB" filer a choice to file its

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<sup>107</sup> See Letter from the IASBDA.

<sup>108</sup> See Letters from SBA Office of Advocacy, Center for Capital Markets (U.S. Chamber of Commerce), and Prof. James Angel.

first annual report on Form 10-K or Form 10-KSB during the transition period, but thereafter it will no longer be able to use the “SB” forms. For example, after the effective date of these amendments, an eligible calendar year company will be able to choose to file its first annual report on Form 10-K or Form 10-KSB. An eligible non-calendar company may file its quarterly reports on Form 10-Q or Form 10-QSB until its next annual report due after the effective date of the amendments. That next annual report may be filed on Form 10-K or Form 10-KSB, but thereafter the company may no longer use the “SB” forms.

We also received comment letters<sup>109</sup> expressing concern that legal and accounting costs will increase as a result of the proposals. We do not believe that legal or accounting costs should increase since, small business issuers generally will be providing the same disclosure as currently filed. In the case of a newly eligible smaller reporting company that previously filed under Regulation S-K using “SK” forms, the disclosure burden will decrease if the company elects to use the scaled disclosure available to smaller reporting companies. Otherwise the issuer may also file roughly the same information as it does currently. The Commission is providing an index to the scaled disclosure requirements in new Item 10(f) of Regulation S-K and plans to publish a brochure to assist smaller reporting companies in transitioning to the new scaled disclosure requirements.

In response to these comments, we decided to revise four items that were part of the original proposal.

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<sup>109</sup> See Letters from IASBDA, SBA Office of Advocacy, Center for Capital Markets (U.S. Chamber of Commerce), and Prof. James Angel.

First, we are persuaded by the letters of the public accounting firms<sup>110</sup> that Item 310 should be placed in a separate section within Regulation S-X, instead of creating a new Item 310 within Regulation S-K. We agree that having all financial information requirements within one Regulation seems logical and appropriate.

Second, several commenters<sup>111</sup> cite the Advisory Committee's recommendation to require two years of balance sheets to go along with audited statements of income, cash flows, and changes in stockholders' equity for each of the latest two fiscal years, as required by Regulation S-X. We have been convinced by the comment letters and the Advisory Committee's report that two years of balance sheets will provide investors with valuable comparative information with minimal additional costs.

A third revision will allow a smaller reporting company to provide its financial statements on an "a la carte" basis like the other non-financial statement disclosure items. This revision differs from the Proposing Release, where the Commission proposed to require a smaller reporting company to provide its financial statements on the basis of 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. A commenter<sup>112</sup> pointed out that this inflexibility within the "a la carte" system and requiring a smaller reporting company to "lock in" to one approach or the other when it files its first Form 10-Q for a year seems contrary to the proposed "a la carte" approach. As we proposed, if a smaller reporting company wanted to preserve the

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<sup>110</sup> See Letters from Grant Thornton, BDO, KPMG, PricewaterhouseCoopers LLP, and CAQ.

<sup>111</sup> See Letters from Grant Thornton, BDO, PricewaterhouseCoopers, and CAQ.

<sup>112</sup> See Letter from BDO.

option of following the smaller reporting company rules in its filings, it perhaps could not provide the additional information required of larger companies in its first quarterly report or risk losing the ability to use the scaled disclosure requirements for the year. As adopted, we will allow “a la carte” disclosure for financial statements so that smaller reporting companies can provide additional information over and above the financial disclosure required by Article 8 of Regulation S-X.

The fourth revision requested by commenters<sup>113</sup> is to amend Rule 3-05 of Regulation S-X. Rule 3-05 provides the requirements for Financial Statements of Businesses Acquired or to be Acquired, and paragraph (b)(2)(iv) allows issuers to omit the financial statements for the earliest of three fiscal years required if the net revenues of the business to be acquired are less than \$25 million. We agree with the commenters that the \$25 million ceiling was related to the small business issuer definition, and since we are creating a new definition of smaller reporting company to replace the small business issuer definition that contains a \$50 million revenue ceiling, it is appropriate to raise the Rule 3-05 ceiling to \$50 million.

For purposes of the Paperwork Reduction Act, as adopted, the burden changes are insignificant for companies that currently meet the small business issuer definition. We did not receive any comment letters providing data or other information concerning legal or accounting costs that would cause us to change our view.

## **VI. Cost-Benefit Analysis**

### **A. Background**

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<sup>113</sup> See Letters from Grant Thornton, KPMG, and CAQ.



We have adopted amendments to eliminate our “SB” forms and move the Regulation S-B item requirements into amended Regulations S-K and S-X. The amendments will amend all relevant rules and forms under the Securities Act, the Exchange Act, and the Trust Indenture Act to replace the existing references to “small business issuer” to reference to “smaller reporting company.” The new “smaller reporting company” definition will replace the current “small business issuer” eligibility standards to allow a greater number of public companies to provide disclosure based on the scaled disclosure requirements. The new definition for smaller reporting company will include companies with a public float of less than \$75 million and will therefore be a significant increase from the \$25 million levels for public float and revenue under the current “small business issuer” definition. For companies without a public float, we are requiring an alternative ceiling of below \$50 million in revenue in the previous year.

**B. Summary of Rules**

As noted above, the amendments will eliminate the separate disclosure framework of Regulation S-B by moving those requirements into Regulation S-K and the financial disclosure into Regulation S-X. The new definition for “smaller reporting company” will expand the number of filers that will qualify to provide disclosure under the scaled item requirements of the current Regulation S-B framework. Smaller reporting companies and non-accelerated filers will both be subject to Regulation S-K, but smaller reporting companies will have the option to provide disclosure on an item-by-item basis according to the scaled item requirements of amended Regulation S-K. The newly adopted amendments will allow eligible smaller reporting companies to do the following:

- 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 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 operations found in Item 303 by requiring only two years of analysis if the company is presenting only two years of financial statements, instead of three years currently required of larger companies;
- Provide audited balance sheets, audited statements of income, cash flows and changes in stockholders' equity for each of the last two fiscal years in new Article 8 of Regulation S-X 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 other parts of Regulation S-X;
- 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;
- Not provide a Compensation Discussion and Analysis required of larger reporting companies;

- Provide only three of the seven tables (Summary Compensation, Outstanding Equity Awards, and Director Compensation) required of larger reporting companies; and
- Not provide disclosure regarding the company’s policies and procedures for approving related person transactions. Smaller reporting companies will be required, however, to provide disclosure regarding a transaction where the amount exceeds the lesser of 1% of a smaller company’s total assets or \$120,000. They also will be required to provide additional specific information about underwriting discounts and commissions and corporate parents. Additionally, smaller reporting companies will be required to provide disclosure regarding promoters and certain control persons.

### **C. Benefits**

As discussed above, the amendments adopted today will 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 will enable a larger category of public companies to have more flexibility in tailoring disclosure standards to fit the need of investors and the realities of their company. We believe investors will benefit from the scaled disclosure amendments to Regulation S-K because the amendments 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 reduce costs and thereby benefit shareholders. The increased public float standards in the definition of smaller reporting company will allow

more companies the flexibility to choose between scaled item requirements such as financial statement information and executive compensation disclosure. By doing so, these newly eligible companies can appropriately determine the information needs of their investors in light of the costs of providing that information. Thus, moving the scaled disclosure requirements of Regulation S-B into Regulations S-K and S-X will provide regulatory flexibility that gives companies the ability to allocate resources to increased disclosure only in instances where they believe doing so would provide a benefit to shareholders.

Eliminating the “SB” forms will mitigate any perceived notion that smaller companies are currently reporting under a completely different and inferior disclosure framework. If current Regulation S-B filers are inappropriately penalized by the market for this perceived notion, as some commenters have suggested, then integrating Regulation S-B and Regulation S-K should benefit shareholders by decreasing the company’s cost of capital. To the extent that these amendments, eliminate the perceived notion of an inferior disclosure framework, we believe that these amendments will increase the benefits and in some instances, reduce the costs of being a public company and 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 amended, an integrated disclosure system for all companies filing forms using Regulation S-K will promote efficiency because practitioners and investors will refer to one disclosure framework. Filers and their practitioners will have one consolidated regulation to find all relevant disclosure item requirements, which will reduce complexity

and improve regulatory efficiencies. Although some commenters<sup>114</sup> were concerned that finding the scaled disclosure provisions in Regulation S-K would be inefficient, the index of scaled disclosure in new Item 10(f) should mitigate this concern. For some smaller reporting companies, legal and accounting costs may decrease.

As discussed earlier in this release, we estimate that approximately 1,581 new companies will have an opportunity to use the restructured scaled disclosure requirements for smaller reporting companies and may experience significant burden and cost savings if they use them.<sup>115</sup> We assume that approximately 50% of the 1,581 companies (or 790 companies) will use the scaled disclosure requirements. For purposes of the Paperwork Reduction Act, we estimate that these 790 smaller reporting companies may save 356,290 internal burden hours and costs in the amount of \$47,479,000 by using the scaled disclosure requirements.<sup>116</sup>

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 will result in some

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<sup>114</sup> See e.g. Letters from Grant Thornton and BDO.

<sup>115</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>116</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).

cost savings and efficiencies in preparing registration statements for smaller reporting companies.

#### **D. Costs**

In our view, the elimination of the “SB” forms and moving the Regulation S-B disclosure standards into Regulation S-K and financial disclosure into Regulation S-X will not significantly increase the costs of complying with the Commission’s rules.

The disclosure requirements will not change except in minor ways for current small business issuers that previously filed under Regulation S-B, so we do not anticipate any increase in costs due to the change in disclosure requirements.<sup>117</sup>

Four commenters<sup>118</sup> stated that these proposals may have unintended consequences, such as extra legal and accounting costs. One of these commenters<sup>119</sup> expressed concern that moving the disclosure requirements of Regulation S-B into Regulation S-K would only benefit small issuers if the legal and accounting costs do not increase. The commenter did not provide any data or information to support its position that costs could increase. The amount of disclosure a former small business issuer will provide on the “SK” forms should not increase unless the issuer chooses to provide additional disclosure above the required disclosure. We have added a heading entitled “Smaller Reporting Companies” to Items where scaled disclosure is available for smaller reporting companies. This will alleviate the concern that small issuers need guidance in

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<sup>117</sup> For current “SB” filers, we estimate the net difference of reporting under Regulation S-K will be an increase of 4,405.5 burden hours and a cost of \$5,257,200 for purposes of the Paperwork Reduction Act.

<sup>118</sup> See Letters from IASBDA, SBA Office of Advocacy, Center for Capital Markets (U.S. Chamber of Commerce), and Prof. James Angel.

<sup>119</sup> See Letter from IASBDA.

determining what disclosure requirements apply to them.<sup>120</sup> Thus, we do not believe that there should be any significant additional out-of-pocket costs associated with compliance.

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. In addition, the amount of disclosure reviewed by the Commission's staff may change for these companies. The staff will now evaluate compliance with Regulation S-K on the scaled disclosure requirements available to smaller reporting companies even if the company previously chose to comply with the larger company Regulation S-K disclosure requirements. If the amount of disclosure and corresponding SEC review under the prior reporting standard was valued by investors, using scaled disclosure may increase a company's cost of capital. Because the differences in smaller and larger company disclosure standards are small, however, we believe that any such costs will be minimal.

Investors may face additional costs in determining whether a newly eligible smaller reporting company has changed the amount of disclosure it provides to investors or whether the company continues to provide the maximum required disclosure. Allowing smaller reporting companies to choose financial statement items on an "a la carte" basis in a quarterly report may create additional costs for investors to determine whether the company has changed the type of disclosure from quarter to quarter. Since smaller reporting companies will be required to check a box indicating they qualify as such, however, investors will be alerted that these issuers are eligible to use the scaled disclosure requirements.

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<sup>120</sup> See Letter from Prof. James Angel.

Another possible cost is requiring Canadian issuers, who seek to use the new scaled disclosure requirements, to provide their financial statements using U.S. GAAP rather than home country GAAP reconciled to U.S. GAAP. Based upon the Form 10-KSB filings received from Canadian issuers on the Commission's EDGAR filing system we estimate that under 50 Canadian issuers will be affected by this change. This change could increase audit costs for these companies if they chose to continue to file on the domestic forms which will now require financial statements in accordance with U.S. GAAP. Other cost increases could include staff training, administrative costs, and minor transition costs.

## **VII. 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 will have on competition.<sup>121</sup> Section 23(a)(2) also prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate to carry out the purposes of the Exchange Act.

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

We expect that the amendments adopted today will result in regulatory

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<sup>121</sup> 15 U.S.C. 78w(a)(2).



simplification and efficiency by removing the duplicative sections of Regulation S-B and consolidating the scaled item requirements of Regulation S-B, such as executive compensation, into amended Regulation S-K. As adopted, the financial statement requirements for small business issuers previously found in Item 310 will be in a separate section of Regulation S-X. As amended, Regulations S-K and S-X will consolidate these requirements into a simplified framework 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 will no longer need to refer to two disclosure frameworks. Practitioners and companies will benefit from the ease of reference that a single disclosure framework will provide.

It is expected that the amendments will promote capital formation for smaller reporting companies and improve their ability to compete with larger companies for capital. For example, we believe capital formation will be improved by providing flexibility to more smaller reporting companies to tailor their disclosure to their investors' needs. In addition, the costs to raise capital may be reduced to the extent compliance costs, but not benefits, are reduced as a result of the scaled disclosure requirements. If smaller reporting companies allocate the capital they raise and save as a result of our scaled disclosure requirements to business development in an effective manner, these companies will be more competitive. More companies will 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 will provide tailored disclosure that may better meet

the needs of their investors.

### **VIII. Final Regulatory Flexibility Act Analysis**

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.<sup>122</sup> It relates to amendments to the rules and forms under the Securities Act and Exchange Act, which include a new definition of “smaller reporting company” under Regulation S-K. The new definition will 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 adopted, a smaller reporting company is 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; 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, 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.

The amendments also will 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, except for Item 310 (Financial statements) which move into Regulation S-X. The revisions to Regulations S-K and S-X include revising item requirements to offer smaller reporting companies optional disclosure alternatives that are designed to provide flexibility, cost efficiencies and regulatory simplification.

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

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<sup>122</sup> 5 U.S.C. 604.

**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, including the disclosure and reporting requirements applicable to smaller companies, and to make recommendations for changes to improve regulatory conditions for smaller companies.

After receiving public input, the Advisory Committee made three recommendations in the disclosure area, which included making the scaled disclosure accommodations available to small business issuers available to all microcap companies, incorporating Regulation S-B into Regulation S-K, and incorporating Item 310 of Regulation S-B into Regulation S-K or Regulation S-X 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.

Although the Advisory Committee did not recommend that we use a public float threshold, the \$75 million public float threshold adopted 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 consistency 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 Regulations S-K and S-X**

The overall goal of the rule amendments is to integrate the scaled disclosure requirements of Regulation S-B into Regulation S-K and make these scaled disclosure requirements available to more companies as smaller reporting companies. We believe the amendments will:

- 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 the same financial statement information previously found in Item 310 of Regulation S-B into Regulation S-X.

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

The initial Regulatory Flexibility Act analysis appeared in the Proposing Release. We requested comment on any aspect of the Initial Regulatory Flexibility Act analysis, especially empirical data on the impact on small businesses.

In the Proposing Release we stated that the proposed elimination of Regulation S-B and the “SB” forms will not increase significantly the costs of complying with the Commission’s rules. While we still believe this is the case, we received four comment letters<sup>123</sup> expressing concern that the proposals could increase legal and accounting costs. One of these commenters<sup>124</sup> stated that “this type of one-size-fits-all regulation may have unintended consequences such as extra legal and accounting costs.” Another commenter<sup>125</sup> stated that the proposals would not increase costs and that the backwards incorporation by reference on Form S-1 would save burden hours and costs.

As stated above, in response to the commenters’ concerns about the transition from Regulation S-B and the “SB” forms to Regulation S-K and the “SK” forms, we have added a transition provision for companies that are current “SB” filers. These companies will have the choice of filing their next annual report due after the effective date on either a Form 10-KSB or a Form 10-K. Similarly, they may file any quarterly reports for periods before the next annual report due on either Form 10-QSB or Form 10-Q. Reports filed after the next annual report due may no longer be on the “SB” forms.

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

The amendments will 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 amendments also will affect small entities that file, or have filed, a registration statement that has not yet become effective under the Securities

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<sup>123</sup> See Letters from IASBDA, SBA Office of Advocacy, Center for Capital Markets (U.S. Chamber of Commerce), and Prof. James Angel.

<sup>124</sup> See Letter from the SBA Office of Advocacy.

<sup>125</sup> See Letter from ABA.

Act and that has not been withdrawn. Securities Act Rule 157<sup>126</sup> and Exchange Act Rule 0-10(a)<sup>127</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 amendments will affect some small entities. We estimate that there are approximately 1,100 issuers that may be considered small entities.<sup>128</sup> Further, we estimate that virtually all of the 1,100 small entities would be below \$75 million in public equity float and will qualify for the scaled disclosure requirements.

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

As adopted, moving Regulation S-B requirements into Regulations S-K and S-X and rescinding all of the “SB” forms will shift the location of disclosure requirements and will require smaller reporting companies to adapt to new formats in preparing their disclosure for Form S-1. The amendments to Regulation S-K include a new definition for smaller reporting company, which broadens the category of filers preparing disclosure to comply with the scaled item requirements of amended Regulation S-K. Companies with public floats between \$25 and \$75 million will 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. As adopted today, the scope and presentation of information disclosed based on the item requirements of amended Regulations S-K and S-X will

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<sup>126</sup> 17 CFR 230.157.

<sup>127</sup> 17 CFR 240.0-10(a).

<sup>128</sup> The estimated number of reporting small entities is based on 2007 data including the Commission’s internal computerized filing system and Thomson Financials Worldscope database. This represents an update from the number of reporting small entities estimated in prior rulemakings.

differ in a number of significant ways from the current Regulation S-K disclosure framework. Amended Regulation S-K will allow smaller reporting companies to:

- 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 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 operations 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 audited balance sheets, audited statements of income, cash flows and changes in stockholders' equity for each of the last two fiscal years in new Article 8 of Regulation S-X 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 other parts of Regulation S-X;
- 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;

- Not provide a Compensation Discussion and Analysis required of larger reporting companies;
- Provide only three of the seven tables (Summary Compensation, Outstanding Equity Awards, and Director Compensation) required of larger reporting companies; and

Not provide disclosure regarding the company's policies and procedures for approving related person transactions. Smaller reporting companies will be required, however, to provide disclosure regarding a transaction where the amount exceeds the lesser of 1% of a smaller company's total assets or \$120,000. They also will be required to provide additional specific information about underwriting discounts and commissions and corporate parents. Additionally, smaller reporting companies will be required to provide disclosure regarding promoters and certain control persons. The amendments to Regulation S-K will not generally increase the disclosure requirements for former small business issuers, and could decrease the disclosure required for issuers with public float levels between \$25 million and \$75 million.

Amended Item 404 of Regulation S-K is the only example where it is possible that the disclosure required for smaller reporting companies will be more extensive than for standard Regulation S-K filers. In addition to a longer time period for required disclosure, as discussed above, Item 404 contains a provision that requires 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 generally have lower materiality thresholds. We believe these differences are important for the protection of investors. This disclosure issue will only affect smaller reporting companies that have related person transactions.

**E. Agency Action to Minimize Effect on Small Entities**

The Regulatory Flexibility Act directs us to consider significant alternatives that will 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 adopted, our amendments are intended to maintain current disclosure standards for small entities while further expanding the scope of eligibility for companies that elect to comply with the scaled disclosure item requirements currently set forth in Regulation S-B. These changes do not exempt smaller entities from coverage of the disclosure requirements; rather, they provide a greater number of smaller reporting companies the choice to provide scaled disclosure within Regulations S-K and S-X.

As adopted, the new definition for smaller reporting company will 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 believe that the \$75 million threshold will appropriately result in reduced costs to smaller companies caused by unnecessary information requirements, consistent with investor protection. This is also consistent with our current regulatory system.

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 is preferable, given its ease of reference and consistency with current rules under the Securities Act and the Exchange Act. We also seriously considered the comment letters submitted by the public. Some of the letters urged the Commission to use market capitalization instead of public float as a metric to determine eligibility as a smaller reporting company, but again, use of a float test provides more regulatory consistency.

As adopted, we will consolidate, clarify, and simplify our disclosure requirements by moving Regulation S-B into Regulations S-K and S-X. These amendments include a new definition of smaller reporting company, which greatly expands the number of small entities that will 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 we were not convinced by commenters that the Commission should not eliminate Regulation S-B and the “SB” forms. We still believe a single disclosure framework will be more

cost effective and more efficient. The elimination of the “SB” forms will result in regulatory simplification for smaller entities by requiring all registrants to rely on one set of forms, such as Forms S-1, S-3, 10-K and 10-Q. These forms will include scaled item requirements for smaller reporting companies under the amendments adopted today for Regulations S-K and S-X.

Finally, we considered the use of performance rather than design standards but concluded that, although we allow some tailoring, investors need a basic level of consistency, uniformity and comparability among issuers in order to make appropriate investment decisions.

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

The rule amendments described in this release are being adopted 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.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is 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), paragraph (c) introductory text 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 § 210.3-05 by revising paragraph (b)(2)(iv) to read as follows:

**§ 210.3-05 Financial statements of businesses acquired or to be acquired.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) If any of the conditions exceed 50 percent, the full financial statements specified in §§ 210.3–01 and 210.3–02 shall be furnished. However, financial statements for the earliest of the three fiscal years required may be omitted if net revenues reported by the acquired business in its most recent fiscal year are less than \$50 million.

\* \* \* \* \*

4. 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) \* \* \*

(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).

\* \* \* \* \*

5. 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 before 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 before the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934.

\* \* \* \* \*

6. 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.

7. 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.

\* \* \* \* \*

8. Section 210.8-01 through 210.8-08 and an undesignated center heading is added before the undesignated heading “Bank Holding Companies” to read as follows:

**Article 8 Financial Statements of Smaller Reporting Companies**

**§ 210.8-01 Preliminary Notes to Article 8.**

**§ 210.8-02 Annual financial statements.**

**§ 210.8-03 Interim financial statements.**

**§ 210.8-04 Financial statements of businesses acquired or to be acquired.**

**§ 210.8-05 Pro forma financial information.**

**§ 210.8-06 Real estate operations acquired or to be acquired.**

**§ 210.8-07 Limited partnerships.**

**§ 210.8-08 Age of financial statements.**

\* \* \* \* \*

**§ 210.8-01 Preliminary Notes to Article 8.**

Sections 210.8-01 to 210.8-08 shall be applicable to financial statements filed for smaller reporting companies. These section are not applicable to financial statements prepared for the purposes of Item 17 or Item 18 of Form 20-F.

Note 1 to § 210.8: Financial statements of a smaller reporting company, as defined by § 229.10(f)(1) of this chapter, 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 § 210.8: Smaller reporting companies electing to prepare their financial statements with the form and content required in this article need not apply the other form and content requirements in Regulation S-X with the exception of the following:

- a. The report and qualifications of the independent accountant shall comply with the requirements of Article 2 of this part;
- b. The description of accounting policies shall comply with Article 4-08(n) of this part; and



c. Smaller reporting companies engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4–10 of this part with respect to such activities.

To the extent that Article 11–01 of this part (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 § 210.8: 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 § 210.3-10, except that the periods presented are those required by § 210.8-02.

Note 4 to § 210.8: 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 § 210.3-16, except that the periods presented are those required by § 210.8-02.

Note 5 to § 210.8: 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 § 210.8: Section 210.4-01(a)(3) shall apply to the preparation of financial statements of smaller reporting companies.

**§ 210.8-02 Annual financial statements.**

Smaller reporting companies shall file an audited balance sheet as of the end of each of the most recent two fiscal years, or as of a date within 135 days if the issuer has existed for a period of 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 the most recent audited balance sheet (or such shorter period as the registrant has been in business).

**§ 210.8-03 Interim financial statements.**

Interim financial statements may be unaudited; however, before filing, interim financial statements included in quarterly reports on Form 10-Q (§ 249.308(a) of this chapter) 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, a balance sheet as of the end of the preceding fiscal year, 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.

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

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

(2) Income statements should include net sales or gross revenue, each cost and expense category presented in the annual financial statements that 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.

(3) 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.

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

(b) Disclosure required and additional instructions as to content.

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

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

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

(4) 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 that 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.

(5) 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 after 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.

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

Instruction 1 to § 210.8-03: Where Article 8 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 § 210.8-03: Interim financial statements must include all adjustments that, 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.

**§ 210.8-04 Financial statements of businesses acquired or to be acquired.**

(a) 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) of this section:

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

(2) 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 section. 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 is deemed to be related if:

(i) They are under common control or management;

(ii) The acquisition of one business is conditioned on the acquisition of each other business; or

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

(3) Annual financial statements required by this rule shall be audited. The form and content of the financial statements shall be in accordance with §§ 210.8-02 and 8-03.

(b) 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 before the date of acquisition to evaluate each of the following conditions:

(1) 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.

(2) 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.

(3) 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 § 210.8-04(b): 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.

(c)(1) If none of the conditions specified in paragraph (b) of this section 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 § 210.8-03. 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 § 210.8-03.

(2) 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.

(3) 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 § 210.8-03.

(4) 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 (b) of this section at the 50 percent level, and either:

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

(ii) 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.

(5) An issuer that omits from its initial registration statement financial statements of a recently consummated business combination pursuant to paragraph (c)(4) of this

section shall furnish those financial statements and any pro forma information specified by § 210.8-05 under cover of Form 8-K (§249.308 of this chapter) no later than 75 days after consummation of the acquisition.

(d) If the smaller reporting company made a significant business acquisition after 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) of this section and the pro forma financial information required by § 210.8-05, 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.

(e) If the business acquired or to be acquired is a foreign business, financial statements of the business meeting the requirements of Item 17 of Form 20-F (§ 249.220f of this chapter) will satisfy this section.

**§ 210.8-05 Pro forma financial information.**

(a) 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.

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

(1) 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

(2) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet required by § 210.8-02 or §210.8-03, 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.

**§ 210.8-06 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 that in the aggregate are significant, or since the date of the latest balance sheet required by § 210.8-02 or § 210.8-03, has acquired or proposes to acquire one or more properties that in the aggregate are significant, the following shall be furnished with respect to such properties:

(a) 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:

- (1) The property is not acquired from a related party;
- (2) 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

(3) 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 (a)(2) of this section that would cause the reported financial information not to be necessarily indicative of future operating results.

(b) 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 that have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(c) If appropriate under the circumstances, a table should be provided that 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 the approximate year of occurrence shall be stated, if significant.

**§ 210.8-07 Limited partnerships.**

(a) Smaller reporting companies that are limited partnerships must provide the balance sheets of the general partners as described in paragraphs (b) through (d) of this section.

(b) 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.

(c) 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.

(d) 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.

**§ 210.8-08 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 the financial statements that 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 before 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 must be prepared and presented in accordance with paragraph (b) of this section.

(a) 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 of 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 before effectiveness or mailing, they must be included in the filing; and

(b) 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:

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

(2) 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

(3) 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.

9. 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 after 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 that 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):

\* \* \* \* \*

10. 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**

11. 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.

\* \* \* \* \*

12. Amend § 229.10 by adding paragraph (f) to read as follows:

**§ 229.10 (Item 10) General.**

\* \* \* \* \*

(f) Smaller reporting companies. The requirements of this part apply to smaller reporting companies. A smaller reporting company may comply with either the requirements applicable to smaller reporting companies or the requirements applicable to other companies for each item, unless the requirements for smaller reporting companies specify that smaller reporting companies must comply with the smaller reporting company requirements. The following items of this part set forth requirements for smaller reporting companies that are different from requirements applicable to other companies:

**Index of Scaled Disclosure Available to Smaller Reporting Companies**

<b>Item 101</b>	Description of business
<b>Item 201</b>	Market price of and dividends on registrant's common equity and related stockholder matters
<b>Item 301</b>	Selected financial data
<b>Item 302</b>	Supplementary financial information
<b>Item 303</b>	Management's discussion and analysis of financial condition and results of operations
<b>Item 305</b>	Quantitative and qualitative disclosures about market risk
<b>Item 402</b>	Executive compensation
<b>Item 404</b>	Transactions with related persons, promoters and certain control persons
<b>Item 407</b>	Corporate governance
<b>Item 503</b>	Prospectus summary, risk factors, and ratio of earnings to fixed charges

<b>Item 504</b>	Use of proceeds
<b>Item 601</b>	Exhibits

(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 or Exchange 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, in the case of a Securities Act registration statement, 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, had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available.

(2) Determination: Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company, using the amounts specified in paragraph (f)(2)(iii) of this Item, as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10-Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10-Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of this Item, the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (f)(2)(i) of this Item. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status



at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) 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 Item, 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 public equity outstanding or no market price for its equity existed, if the issuers had annual revenues of less than \$40 million during its previous fiscal year.

13. Amend § 229.101 by:

a. Revising (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), and (a)(2)(iii)

introductory text; and

b. Adding paragraph (h) before the Instructions to Item 101.

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 before the filing of such registration statement; and

(iii) That (including predecessors) have not received revenue from operations during each of the three fiscal years immediately before the filing of such 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 smaller 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 is 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, on official business days during the hours of 10:00 am to 3:00 pm. 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) Foreign issuers. Provide the information required by Item 101(g) of Regulation S-K (§ 229.101(g)).

\* \* \* \* \*

14. Amend § 229.102 by adding an Instructions 7, 8, and 9 to read as follows:

**§ 229.102 (Item 102) Description of property.**

\* \* \* \* \*

Instructions to Item 102:

\* \* \* \* \*

7. The attention of issuers engaged in significant mining operations is directed to the information called for in Guide 7 (§ 229.801(g) and § 229.802(g)).

8. The attention of issuers engaged in oil and gas producing activities is directed to the information called for in Guides 2 and 4 (§ 229.801(b), § 229.802(b) and § 229.801(d), § 229.802(d)).

9. The attention of issuers engaged in real estate activities is directed to the information called for in Guide 5 (§ 229.801(e) of this chapter).

15. Amend § 229.201 by:

a. Revising paragraph (a)(1)(ii); and

- b. Revising paragraph (a)(2); and
- c. 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) \* \* \*

(1) \* \* \*

(ii) If the principal United States market for such common equity is an exchange, state the high and low sales prices for the equity for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included, or are required to be included by Article 3-01 through 3-04 of Regulation S-X ( § 210.3-01 through 3-04 of this chapter), or Article 8-02 through 8-03 of Regulation S-X ( § 210.8-02 through 8-03 of this chapter) in the case of smaller reporting companies, as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for such equity.

\* \* \* \* \*

(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.

\* \* \* \* \*

16. 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.

\* \* \* \* \*

17. 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.

18. Amend § 229.303 by:

- a. Revising a sentence to Instruction 1 to paragraph 303(a);
- b. Adding Instructions 13 and 14;
- c. Revising a sentence to Instruction 1 to paragraph 303(b); and
- d. Adding paragraph (d) to read as follows:

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

\* \* \* \* \*

Instructions to paragraph 303(a): 1. The registrant's discussion and analysis shall be of the financial statements and other statistical data that the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion shall cover the three-year period covered by the financial statements and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing pursuant to Item 301 of Regulation S-K (§ 229.301) may be necessary. A smaller reporting company's discussion shall cover the two-year period required in Article 8 of Regulation S-X and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's understanding.

\* \* \* \* \*

13. The attention of bank holding companies is directed to the information called for in Guide 3 (§ 229.801(c) and § 229.802(c)).

14. The attention of property-casualty insurance companies is directed to the information called for in Guide 6 (§ 229.801(f)).

\* \* \* \* \*

Instructions to paragraph 303(b): 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to this paragraph (b) and the discussion of the full fiscal year's information shall be prepared pursuant to paragraph (a) of this Item. Such discussions may be combined.

\* \* \* \* \*

(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) of this Item 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.

19. 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.

\* \* \* \* \*



20. 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 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.

\* \* \* \* \*

21. Amend § 229.402 by adding paragraphs (l), (m), (n), (o), (p), (q), and (r) 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 Item 10(f) (§ 229.10(f)(1)), may provide the scaled

disclosure in paragraphs (m) through (r) instead of paragraphs (a) through (k) of this Item.

(m) Smaller reporting companies - General

(1) All compensation covered. This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (m)(2) of this Item, and directors covered by paragraph (r) of this Item, by any person for all services rendered in all capacities to the smaller reporting company and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the smaller reporting company and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(2) Persons covered. Disclosure shall be provided pursuant to this Item for each of the following (the “named executive officers”):

(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 (m)(2)(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.

Instructions to Item 402(m)(2).

1. 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 (n)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (n)(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.

2. Inclusion of executive officer of a subsidiary. It may be appropriate for a smaller reporting company to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7).

3. Exclusion of executive officer due to overseas compensation. It may be appropriate in limited circumstances for a smaller reporting company not to include in the disclosure required by this Item an individual, other than its PEO, who is one of the smaller reporting company's most highly compensated executive officers due to the

payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(3) Information for full fiscal year. 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.

(4) Omission of table or column. A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(5) Definitions. For purposes of this Item:

(i) The term stock means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term option means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term stock appreciation rights (“SARs”) refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the smaller reporting company or a named executive officer. The term equity is used to refer generally to stock and/or options.

(ii) The term plan includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Smaller reporting companies may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the smaller reporting company and that are available generally to all salaried employees.

(iii) The term incentive plan means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the smaller reporting company or an affiliate, the smaller reporting company's stock price, or any other performance measure. An equity incentive plan is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of Financial Accounting Standards Board Statement of Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment, as modified or supplemented ("FAS 123R"). A non-equity incentive plan is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term incentive plan award means an award provided under an incentive plan.

(iv) The terms date of grant or grant date refer to the grant date determined for financial statement reporting purposes pursuant to FAS 123R.

(v) Closing market price is defined as the price at which the smaller reporting company's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(n) Smaller reporting companies - Summary compensation table (1) General.

Provide the information specified in paragraph (n)(2) of this Item, concerning the compensation of the named executive officers for each of the smaller reporting company's last two completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

**Summary Compensation Table**

<b>Name and principal position</b>	<b>Year</b>	<b>Salary (\$)</b>	<b>Bonus (\$)</b>	<b>Stock awards (\$)</b>	<b>Option awards (\$)</b>	<b>Nonequity incentive plan compensation (\$)</b>	<b>Nonqualified deferred compensation earnings (\$)</b>	<b>All other compensation (\$)</b>	<b>Total (\$)</b>
<b>(a)</b>	<b>(b)</b>	<b>(c)</b>	<b>(d)</b>	<b>(e)</b>	<b>(f)</b>	<b>(g)</b>	<b>(h)</b>	<b>(i)</b>	<b>(j)</b>
PEO									
A									
B									

(2) The Table shall include:

- (i) The name and principal position of the named executive officer (column (a));
- (ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(n)(2)(iii) and (iv).

1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8-K (17 CFR 249.308).

2. Smaller reporting companies 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 (o) 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.

(v) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (e));

(vi) For awards of options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (f));

Instruction to Item 402(n)(2)(v) and (vi). For awards reported in columns (e) and (f), disregard the estimate of forfeitures related to service-based vesting conditions. Include a footnote describing all forfeitures during the year, and disclosing all assumptions made in the valuation. Disclose assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(n)(2)(vii).

1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal



year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (h));

Instruction to Item 402(n)(2)(viii). Interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the smaller reporting company's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the smaller reporting company's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the smaller reporting company's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the smaller reporting company's criteria for determining any portion considered to be above-market.

(ix) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c) through (h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than \$10,000;

(B) All “gross-ups” or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(1) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the smaller reporting company and its subsidiaries;

or

(2) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(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; and

Instructions to Item 402(n)(2)(ix).

1. Non-equity incentive plan awards and earnings and earnings on stock or options, except as specified in paragraph (n)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. 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 (q)(1) of this Item.

3. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in the columns as tax reimbursements (paragraph (n)(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.

4. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the smaller reporting company.

5. For purposes of paragraph (n)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(n).

1. Information with respect to the fiscal year prior to the last completed fiscal year will not be required if the smaller reporting company was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the smaller reporting company will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (r) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(o) Smaller reporting companies - Narrative disclosure to summary compensation table. Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the Table required by paragraph (n) of this Item. Examples of such factors may include, in given cases, among other things:

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

(2) 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;

(3) 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 (n) 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;

(4) 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;

(5) 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;

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

(7) 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 (n)(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(o). The disclosure required by paragraph (o)(2) 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.

(p) Smaller reporting companies - Outstanding equity awards at fiscal year-end table. (1) Provide the information specified in paragraph (p)(2) of this Item, concerning

unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the smaller reporting company's last completed fiscal year in the following tabular format:

**Outstanding Equity Awards at Fiscal Year-End**

Name	Option awards					Stock awards			
	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)	Option exercise price (\$)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares of units of stock that have not vested (\$)	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
A									
B									

(2) The Table shall include:

- (i) The name of the named executive officer (column (a));
- (ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(p)(2).

1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.



2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the smaller reporting company's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in column (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, smaller reporting companies must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option

or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(q) Smaller reporting companies - Additional narrative disclosure. Provide a narrative description of the following to the extent material:

(1) 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.

(2) 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 smaller reporting company or a change in the named executive officer's responsibilities following a change in control, with respect to each named executive officer.

(r) Smaller reporting companies - Compensation of directors. (1) Provide the information specified in paragraph (r)(2) of this Item, concerning the compensation of the directors for the smaller reporting company's last completed fiscal year, in the following tabular format:

### Director Compensation

Name	Fees earned or paid in cash (\$)	Stock awards (\$)	Option awards (\$)	Non-equity incentive plan compensation (\$)	Nonqualified deferred compensation earnings (\$)	All other compensation (\$)	Total (\$)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (m) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (n) of this Item and otherwise as required pursuant to paragraphs (o) through (q) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (c));

(iv) For awards of stock options, with or without tandem SARs, the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R (column (d));

Instruction to Item 402(r)(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.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (f));

(vii) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b) through (f), regardless of the amount of the compensation item, must be included in column (g) and must be identified and quantified in a footnote if it is deemed material in accordance with paragraph (o)(7) of this Item. Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than \$10,000;

(B) All “gross-ups” or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FAS 123R;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(1) The resignation, retirement or any other termination of such director; or

(2) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the smaller reporting company and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) 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; and

Instruction to Item 402(r)(2)(vii). Programs in which smaller reporting companies agree to make donations to one or more charitable institutions in a director's name, payable by the smaller reporting company currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (r)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(r)(2). Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) Narrative to director compensation table. Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(r). In addition to the Instruction to paragraph (r)(2)(vii) of this Item, the following apply equally to paragraph (r) of this Item: Instructions 2 and 4 to paragraph (n) of this Item; the Instructions to paragraphs (n)(2)(iii) and (iv) of this Item; the Instruction to paragraphs (n)(2)(v) and (vi) of this Item; the Instructions to paragraph (n)(2)(vii) of this Item; the Instruction to paragraph (n)(2)(viii) of this Item; the Instructions to paragraph (n)(2)(ix) of this Item; and paragraph (o)(7) 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 (r) of this Item that correspond to analogous disclosures provided for in paragraph (n) of this Item to which they refer.

22. Amend § 229.404 by revising the introductory text of paragraph (c)(1) and adding paragraph (d) before the Instructions 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), must provide the following information in order to comply with this Item:

(1) The information required by paragraph (a) of this Item for the period specified there 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;

(2) The information required by paragraph (c) of this Item; and

(3) 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)

1. Include 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) of this Item 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.

2. For smaller reporting companies information shall be given for the period specified in paragraph (a) of this Item and, in addition, for the fiscal year preceding the small reporting company's last fiscal year.

\* \* \* \* \*

23. Amend § 229.407 by revising paragraphs (a)(1)(iii), (d)(4)(i)(B) and adding paragraph (g) before the Instructions to Item 407 to read as follows:



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

(a) \* \* \*

(1) \* \* \*

(iii) If the information called for by paragraph (a) of this Item is being presented in a registration statement on Form S-1 (§ 239.11 of this chapter) under the Securities Act or on a Form 10 (§ 249.210 of this chapter) under the Exchange Act where the registrant has applied for listing with a national securities exchange or in an inter-dealer quotation system that has requirements that a majority of the board of directors be independent, the definition of independence that the registrant uses for determining if a majority of the board of directors is independent, and the definition of independence that the registrant uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the registrant has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

\* \* \* \* \*

(d) \* \* \*

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

(B) The registrant is filing an annual report on Form 10-K (§ 249.310 of this chapter) 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:

(1) 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

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

\* \* \* \* \*

24. 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 registrant that qualifies as a smaller reporting company, as defined by § 229.10(f), need not comply with paragraph (d) of this Item.

\* \* \* \* \*

25. Amend § 229.504 by revising Instruction 6 to Item 504 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), including Rule 8-05 for smaller reporting companies, 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, including Rule 8-04 for smaller reporting companies, 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.

\* \* \* \* \*

26. Amend § 229.512 by revising the introductory text of paragraph (e) to read as follows:

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

\* \* \* \* \*

(e) Incorporated annual and quarterly reports. Include the following if the registration statement specifically incorporates by reference (other than by indirect incorporation by reference through a Form 10-K (§ 249.310 of this chapter) report) in the prospectus all or any part of the annual report to security holders meeting the

requirements of Rule 14a-3 or Rule 14c-3 under the Exchange Act (§ 240.14a-3 or § 240.14c-3 of this chapter):

\* \* \* \* \*

27. Amend § 229.601 by:

a. Revising paragraph (a)(4); the Exhibit Table; and paragraphs (b)(4)(ii), (b)(4)(v), (b)(10)(iii)(C)(6), introductory text (b)(13), (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**

Instructions to the Exhibit Table.

1. The exhibit table indicates those documents that must be filed as exhibits to the respective forms listed.

2. The “X” designation indicates the documents which are required to be filed with each form even if filed previously with another document, Provided, However, that such previously filed documents may be incorporated by reference to satisfy the filing requirements.

3. The number used in the far left column of the table refers to the appropriate subsection in paragraph (b) where a description of the exhibit can be found. Whenever necessary, alphabetical or numerical subparts may be used.

EXHIBIT TABLE													
	Securities Act Forms								Exchange Act Forms				
	<u>S-1</u>	<u>S-3</u>	<u>S-4</u> <sup>1</sup>	<u>S-8</u>	<u>S-11</u>	<u>F-1</u>	<u>F-3</u>	<u>F-4</u> <sup>1</sup>	<u>10</u>	<u>8-K</u> <sup>2</sup>	<u>10-D</u>	<u>10-Q</u>	<u>10-K</u>
(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	X
(ii) Bylaws	X	---	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	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	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	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	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>	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	---	---	---	---	---
(26) Invitation for competitive bids	X	X	X	---	---	X	X	X	---	---	---	---	---
(27) through (30) [Reserved]													
(31) (i) Rule 13a-14(a)/15d-14(a) Certifications (ii) Rule 13a-14/15d-14 Certifications	---	---	---	---	---	---	---	---	---	---	---	X	X
(32) Section 1350 Certifications <sup>6</sup>	---	---	---	---	---	---	---	---	---	---	---	X	X
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers	---	---	---	---	---	---	---	---	---	---	---	---	X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities	---	---	---	---	---	---	---	---	---	---	---	---	X
(35) Servicer compliance statement	---	---	---	---	---	---	---	---	---	---	---	---	X
(36) through (98) [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	N/A
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents									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 Form S-3 or F-3; and (2) the form, the level of which has been elected under

Form 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 §§ 240.13a-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 that are filed and that 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.

\* \* \* \* \*

(10) \* \* \*

(iii) \* \* \*

(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 that are not voting securities on Form S-1.

\* \* \* \* \*

(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 that 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 that acknowledges awareness of the use in a registration statement of a report on unaudited interim financial information that 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 that is referred to therein in lieu of providing disclosure in Form 10-Q or 10-K, that 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.

28. 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, Form 10-K, or Form 10-D under the Exchange Act (§ 249.308, § 249.308(a), § 240.310 or § 249.312) 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.

\* \* \* \* \*

29. 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, on official business days between the hours of 10:00 am and 3:00 pm. 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**

30. 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(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

31. 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.

\* \* \* \* \*

32. 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

\* \* \* \* \*

33. Amend § 230.139 by revising paragraph (a)(1)(i)(A)(2) to read as follows:

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

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(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

\* \* \* \* \*

34. Amend § 230.158 by revising paragraphs (a)(1)(i), (a)(2)(i), and (b) 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) For purposes of the last paragraph of section 11(a) only, the “earning statement” contemplated by paragraph (a) of this section shall be deemed to be “made generally available to its security holders” if the registrant:

(1) Is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and

(2) Has filed its report or reports on Form 10-K and Form 10-KSB, Form 10-Q and Form 10-QSB, 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), (§ 240.14a-3(c) of this chapter) containing such information.

A registrant may use other methods to make an earning statement “generally available to its security holders” for purposes of the last paragraph of section 11(a).

\* \* \* \* \*

35. 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 security holders 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(b) and (c) or 240.14c-3(a) and (b) of this chapter), a statement reaffirming such forward-looking statement after the date the document was filed or the annual report was made publicly available, or a forward-looking statement made before 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 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 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 240.14c-3(a) and (b) of this chapter) and that 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,” Item 5 of Form 20-F (§ 249.220(f) of this chapter), “Operating and Financial Review and Prospects,” 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).

\* \* \* \* \*

36. 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 or Exchange 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, in the case of a Securities Act registration statement, 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, had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available.



(4) Determination: Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company using the amounts specified in paragraph (f)(2)(iii) of Item 10 of Regulation S-K (§ 229.10(f)(1)(i) of this chapter), as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10-Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10-Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of Item 10 of Regulation S-K (§ 229.10(f)(1)(ii) of this chapter), the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (4)(i) of this definition. In the case of a determination based on an

initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) 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 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.

\* \* \* \* \*

37. 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).

\* \* \* \* \*

38. 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)) 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.

\* \* \* \* \*

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

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

\* \* \* \* \*

(f) \* \* \*

(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:

(i) \* \* \*

(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.

\* \* \* \* \*

40. 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.

41. 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; 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.

42. 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 Article 8 of Regulation S-X (§ 210.8 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 Rules 14a-3 or 14c-3 under the Exchange Act (§ 240.14a-3 or § 240.14c-3 of this chapter), 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 (§ 249.310 of this chapter) 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 or her written request, a reasonable time before his or her purchase.

\* \* \* \* \*

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

43. 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.

\* \* \* \* \*

44. 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.)

45. 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.**

46. 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 Rule 8-04 and 8-05 of Regulation S-X 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 that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10-K and that have not been described in a Form 10-Q or Form 8-K 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 that contains financial statements for the registrant’s latest fiscal year for which a Form 10-K was required to have been filed; and

\* \* \* \* \*

47. 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 scaled disclosure provided for smaller reporting companies, if any. Smaller reporting companies may provide the financial information called for by Article 8 of Regulation S-X 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 that 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 that 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 that contains financial statements for the registrant's latest fiscal year for which a Form 10-K was required to be filed; and

\* \* \* \* \*

48. 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 use the disclosure items in Regulation S-K (17 CFR 229.10 et seq.) with specific attention to the scaled disclosure provided for smaller reporting companies, if any.

\* \* \* \* \*

49. 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  Accelerated filer

Non-accelerated filer  Smaller reporting company   
(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 Regulation S-X (§§ 210.12-12, 12-28, and 12-29 of this chapter) may be omitted from the prospectus. A smaller reporting company may provide the information in Article 8 of Regulation S-X (§ 210.8 of this chapter) in lieu of the financial information required by other parts of Regulation S-X, and need not provide the supplementary financial information required in Item 302 of Regulation S-K.

\* \* \* \* \*

50. 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 4(b), 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**

\* \* \* \* \*

#### **A. Information About the Transaction**

\* \* \* \* \*

#### **Item 4. Terms of the Transaction**

\* \* \* \* \*

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the



prospectus, furnish the same information as would be required by Item 1015(b) of Regulation M-A (§ 229.1015(b) of this chapter).

**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 Rule 8-05 of Regulation S-X (§ 210.8-05 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 Section 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 before 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 registrant's latest quarterly report that was delivered to security holders and 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. Smaller reporting companies may provide the information required by Rules 8-04 and 8-05 of Regulation S-X.

(4) Describe any and all material changes in the registrant's affairs that 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 paragraph (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 that 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 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.

\* \* \* \* \*

51. 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 of this chapter), 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. of this chapter) 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.

52. 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

\* \* \* \* \*

53. 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**

54. 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.

\* \* \* \* \*

55. 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.

\* \* \* \* \*

56. Amend § 240.0-12 by revising the second sentence 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) \* \* \* 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 20549-1090. \* \* \*

\* \* \* \* \*

57. 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 security 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 after the date the document was filed or the annual report was made publicly available, or a forward-looking statement made before 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 Section 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 that 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,” Item 5 of Form 20-F (§ 240.220(f) of this chapter), “Operating and Financial Review and Prospects,” 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).

\* \* \* \* \*

58. 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.

\* \* \* \* \*

59. 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

\* \* \* \* \*

60. Amend § 240.12b-2 by:

a. Revising paragraphs (1)(iv) and (2)(iv) in the definition of accelerated filer and large 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) \* \* \*

(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) \* \* \*

(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 or Exchange 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, in the case of a Securities Act registration statement, 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, had annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available.

(4) Determination: Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company using the amounts specified in paragraph (f)(2)(iii) of Item 10 of Regulation S-K (§ 229.10(f)(1)(i) of this chapter), as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10-Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10-Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of Item 10 of Regulation S-K (§ 229.10(f)(1)(ii) of this chapter), the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (4)(i) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the

offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) 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 public equity outstanding or no market price for its equity existed, if the issuers had annual revenues of less than \$40 million during its previous fiscal year.

\* \* \* \* \*

61. 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 that 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.

62. 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 Section 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 therefore 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

\* \* \* \* \*

63. 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.

64. 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 Form 10-Q (§ 249.308a of this chapter) the number of days shall be:

\* \* \* \* \*

65. 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 and Rule 8-03 of Regulation S-X for smaller reporting companies, 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.

66. 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.

\* \* \* \* \*

67. 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

\* \* \* \* \*

68. 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:

\* \* \* \* \*

69. Amend § 240.14a-3 by:

- a. Removing the Note to Small Business Issuers following the introductory text of paragraph (b);
- b. Revising paragraph (b)(1) and Note 1;
- c. Revising the heading “Note 2” to read “Note 2 to Paragraph (b)(i)”;
- d. 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), 210.3-04 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 Article 8 of Regulation S-X (§ 210.8 of this chapter) in lieu of the financial information required by this paragraph 9(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 or her 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 therefore, 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 (§ 240.13a-1 of this chapter) 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 of this chapter) 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.

\* \* \* \* \*

70. 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.

71. 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.

\* \* \* \* \*

72. Amend § 240.14a-101 by:

- a. Revising Notes C. and D.1, and the introductory text of Note E.;
- b. Removing Notes F. and G. to the cover page;
- c. Revising paragraph (e)(1) of Item 9, and revising paragraph (a)(1) of Item 13

The revisions 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 that 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 Rules 8-04 and 8-05 of Regulation S-X (§ 210.8-04 and § 210.8-05 of this chapter) in lieu of the financial information required by Rule 3-05 and Article 11 of Regulation S-X);

\* \* \* \* \*

73. Amend § 240.14c-3 by removing the Note to Small Business Issuers following paragraph (a)(2).

74. 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 acquirees 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) with specific attention to the scaled disclosure requirements for smaller reporting companies, if any. A smaller reporting company may provide the information in Article 8 of Regulation S-X in lieu of any financial statements required by Item 1 of § 240.14c–101.

\* \* \* \* \*

75. 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 before the opening of each such exchange; and

\* \* \* \* \*

76. 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 before 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 after 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:

\* \* \* \* \*

77. 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 after the most recent fiscal year end meeting the requirements of Article 10 of Regulation S-X, or Rule 8-03 of Regulation S-X for smaller reporting companies, for the first fiscal quarter after 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.

78. 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.

\* \* \* \* \*

79. 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:

\* \* \* \* \*

80. 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**

81. 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.

\* \* \* \* \*

82. 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).

83. 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.

\* \* \* \* \*

84. 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;

b. Revising Item 1A; and

c. 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  Accelerated filer

Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

\* \* \* \* \*

**Item 1A. Risk Factors.**

Set forth, under the caption “Risk Factors,” where appropriate, the risk factors described in Item 503(c) of Regulation S-K (§ 229.503(c) of this chapter) applicable to the registrant. Provide any discussion of risk factors in plain English in accordance with Rule 421(d) of the Securities Act of 1933 (§ 230.421(d) of this chapter). Smaller reporting companies are not required to provide the information required by this item.

\* \* \* \* \*

**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 the financial information required by Article 8 of Regulation S-X in lieu of the information required by in other parts of Regulation S-X.

\* \* \* \* \*

85. 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.**

86. Amend Form 20-F (referenced in § 249.220f) by adding instruction (f) to the General Instructions B to read as follows:

**Note- The text of Form 20-F does not and this amendment will not appear in the Code of Federal Regulations.**

#### **FORM 20-F**

\* \* \* \* \*

#### **GENERAL INSTRUCTIONS**

\* \* \* \* \*

#### **B. General Rules and Regulation That Apply to this Form**

\* \* \* \* \*

(f) A foreign private issuer that is a smaller reporting company, as defined in Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2), may not use the scaled disclosure requirements in Regulation S-X and Regulation S-K available to smaller reporting companies for the purposes of preparing this form.

\* \* \* \* \*

87. Amend Form 8-K (referenced in § 249.308) by revising General Instruction B.4.; removing General Instruction 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), (a)(3), (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 in 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 (§ 229.304(a)(1) of this chapter), including compliance with Item 304(a)(3) of Regulation S-K (§ 229.304(a)(3) of this chapter).

(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) 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)) or Rule 8-04(b) of Regulation S-X (17 CFR 210.8-04(b)) for smaller reporting companies.

\* \* \* \* \*

(2) \* \* \*

(3) With regard to the acquisition of one or more real estate properties, the financial statements and any additional information specified by Rules 3-14 (17 CFR 210.3-14) or Rule 8-06 of Regulation S-X ( 17 CFR 210.8-06) for smaller reporting companies.

(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 (§ 210.11 of this chapter) or Rule 8-05 of Regulation S-X (§ 210.8-05 of this chapter) for smaller reporting companies.

\* \* \* \* \*

(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.

\* \* \* \* \*

88. 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;

b. In Part I, revising the text of Item 1; and

c. In Part II, revising the text of Item 1A.

The revisions 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 Article 8-03 of Regulation S-X (§ 210.8-03 of this chapter).



\* \* \* \* \*

## PART II—OTHER INFORMATION

\* \* \* \* \*

### Item 1A. Risk Factors

Set forth any material changes from risk factors as previously disclosed in the registrant's Form 10-K (§ 249.310) in response to Item 1A. to Part 1 of Form 10-K. Smaller reporting companies are not required to provide the information required by this item.

89. By removing and reserving § 249.308b and removing Form 10-QSB.

**Note – The text of Form 10-QSB does not appear in the Code of Federal Regulations.**

90. 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;
- b. Revising Item 1A; and
- c. 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 1A. Risk Factors**

Set forth, under the caption “Risk Factors,” where appropriate, the risk factors described in Item 503(c) of Regulation S-K (§ 229.503(c) of this chapter) applicable to the registrant. Provide any discussion of risk factors in plain English in accordance with Rule 421(d) of the Securities Act of 1933 (§ 230.421(d) of this chapter). Smaller reporting companies are not required to provide the information required by this item.

\* \* \* \* \*

**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 Article 8 of Regulation S-X 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.

\* \* \* \* \*

91. By removing and reserving § 249.310b and removing Form 10-KSB.

**Note – The text of Form 10-KSB does not appear in the Code of Federal Regulations.**

92. Amend Form 11-K (referenced in § 249.311) by removing General Instruction E(b) and redesignating the text of General Instruction E(a) as General Instruction E.

93. Amend Form SE (referenced in § 249.444) by revising General Instruction 3.C to read as follows:

\* \* \* \* \*

**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**

94. 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.

95. 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 security 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 after the date the document was filed or the annual report was made publicly available, or a forward-looking statement made before 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), Item 5 of Form 20-F (§ 249.220f of this chapter), “Operating and Financial Review and Prospects,” 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.

\* \* \* \* \*

96. Amend § 260.4d-9 by revising the introductory text 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:

\* \* \* \* \*

97. 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**

98. 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.

99. 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

December 19, 2007