

SECURITIES AND EXCHANGE COMMISSION

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

[Release Nos. 33-9013, 34-59536, 39-2463, IC-28642]

**ATTACHING AUTHENTICATING DOCUMENTS TO ONLINE FORM ID
APPLICATIONS**

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rule and form amendments that allow applicants for EDGAR access codes using Form ID to submit their authenticating documents by attaching them to their online Form ID applications in Portable Document Format (PDF) as an alternative to submitting the documents by fax.

EFFECTIVE DATE: March 16, 2009.

FOR FURTHER INFORMATION CONTACT: Corey Jennings, Special Counsel, at (202) 551-3258, for information on legal issues, or Cecile Peters, Chief, Information Technology Office, (202) 551-3600, for information on technical issues, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20459-3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments that will revise Rules 10¹ and 101² under Regulation S-T³ and Form ID.⁴

¹ 17 CFR 232.10.

² 17 CFR 232.101.

³ 17 CFR 232.10 et seq.

⁴ 17 CFR 239.63, 249.446, 269.7 and 274.402.

I. BACKGROUND

Form ID is used to apply for access codes to file information electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval or "EDGAR" system. EDGAR access codes include a CIK (Central Index Key) number, which serves as a permanent, public filer identification number, as well as confidential security codes.

Applicants submitting Form ID applications must submit them online. They also must fax to the Commission a notarized document containing the same information as contained in the Form ID application. The additional document is called an "authenticating document." Commission staff matches applicants' online submissions with their faxed authenticating documents before approving the Form ID application and allowing applicants to generate their EDGAR access codes.⁵

Today, we adopt amendments that allow Form ID applicants to submit their authenticating documents as PDF attachments to their online Form ID applications. This provides an alternative method to submitting the authenticating documents by fax. The use of a PDF attachment may provide a simpler and easier method for some applicants to submit their authenticating documents. Filers can use a fillable PDF version of Form ID available on the Commission's website to create and print the document. For Form ID applications with the authenticating documents attached, Commission staff will no longer have to match faxed authenticating documents manually with online submissions. This alternative method should enhance the processing efficiency of these Form ID

⁵ We approved this process in Release No. 33-8410 (Apr. 21, 2004) [69 FR 22704 (Apr. 26, 2004)], available at <http://www.sec.gov/rules/final/33-8410.htm>.

applications. The amendments do not impose any new burdens or requirements on Form ID applicants or others.

The effective date of the new rules, March 16, 2009, coincides with the effective date of our new rules requiring that Form D filings be made online, through the Internet, using the EDGAR system.⁶ At the time we adopted the new Form D rules, we estimated they would result in an increase of approximately 20,000, or 40%, in the number of Form ID applications that we receive annually.⁷ Although many Form ID applicants will be applying for EDGAR access codes to make filings other than Form D filings, the increased efficiency in use of Commission staff resources will benefit all applicants. We expect adoption of the Form ID amendments should assist the staff in better managing the expected increase in Form ID applications resulting from the Form D amendments.

At the time we adopted the Form D amendments, we acknowledged concern over the burdens of the Form ID authentication process, particularly in the context of mandating Form D online filing.⁸ We stated that we planned to consider ways to simplify the Form ID authentication process before Form D online filing became mandatory on March 16, 2009.⁹ The Form ID amendments we adopt today address concerns over the burdens of the Form ID authentication process. They make the process simpler and easier for some applicants. We are hopeful that the increased Commission staff

⁶ We adopted the rules requiring online filing of Form D information in Release No. 33-8891 (Feb. 6, 2008) [73 FR 10592 (Feb. 27, 2008)], available at <http://www.sec.gov/rules/final/2008/33-8891.pdf>.

⁷ See *id.* at 70 [73 FR 10610]. We expect an increase because Form D filings previously were made only in paper format, and no Form ID filings were required because filers do not need EDGAR access codes to make paper filings.

⁸ *Id.* at 58 [73 FR 10607].

⁹ *Id.* at 59-60 [73 FR 10607-10608].

efficiency in processing Form ID applications with attached authenticating documents will allow Form ID applicants to get their EDGAR access codes more quickly. However, we continue to study ways to further streamline the process.

II. DISCUSSION OF THE AMENDMENTS

A. Optional Attachment of Authenticating Document to Online Form ID Application

We are adopting minor revisions to Regulation S-T¹⁰ to allow applicants for EDGAR access codes using Form ID to attach their required authenticating document electronically as a PDF document to their online Form ID application.¹¹ The authenticating document is a paper version of the online Form ID submission that has been notarized. It contains the same information, but is manually signed and witnessed by a notary public. Rule 10 of Regulation S-T currently requires that an applicant fax its authenticating document to the Commission within two days before or after submitting its online Form ID application.¹² The amendments revise subparagraph (b) of Rule 10 by

¹⁰ Regulation S-T is the general regulation governing electronic filing of information with the Commission. In addition to complying with Regulation S-T, filers must submit electronic filings in accordance with the instructions in the Commission's EDGAR Filer Manual. We also are amending the EDGAR Filer Manual to reflect a Form ID filer's ability to attach a PDF copy of its authenticating document to its online Form ID application.

¹¹ Filers that previously have been assigned a CIK number are not eligible to use Form ID. This category includes filers that previously have made paper filings with the Commission, such as Form D filings since 1986 that have been assigned CIK numbers by the Commission staff. These filers need to obtain confidential security codes to file using the EDGAR system, even though they already have a CIK number. Prior paper filers that have a CIK number but need security access codes may obtain the codes by using the "Convert Paper Only Filer to Electronic Filer" function on the EDGAR Filer Management website at <https://www.filermanagement.edgarfiling.sec.gov> and submit their authenticating documents by fax. For details, see EDGAR Filer Manual—Volume I, available at <http://www.sec.gov/info/edgar/edmanuals.htm>.

¹² To assist Form ID applicants in preparing their authenticating documents, the Commission maintains a fillable PDF version of Form ID for them to use on its website at <http://www.sec.gov/about/forms/formid.pdf>. Using this or another version of Form ID that they may have available, applicants can choose to prepare the authenticating document, including having it notarized, before they go online to make their online Form ID submission. Upon the effectiveness of today's amendments, applicants will be able to choose to continue faxing their authenticating document or electronically attach a PDF version of the document at the time of the actual submission. If they do not

supplementing the faxing requirement with the option of electronically attaching a PDF version of the authenticating document to an applicant's online Form ID application.¹³ The amendments also revise subparagraph (a)(1)(ix) of Rule 101 of Regulation S-T¹⁴ to reflect that the authenticating document required by Rule 10(b) of Regulation S-T may be filed either by fax or electronically as an uploaded PDF attachment to an applicant's online Form ID application.¹⁵

B. Form ID

We are adopting minor revisions to the General Instructions to Form ID to clarify that applicants may also fulfill the authenticating document requirement of Rule 10 of Regulation S-T by electronically attaching a PDF version of the document to their online Form ID application. Currently, the instructions to Form ID follow Rule 10 of Regulation S-T, which provides that an applicant may only fax its authenticating document to the Commission within two days before or after submitting its electronic

have the authenticating document prepared before they make their online Form ID submission, they may print out the information they submit on the EDGAR website, have the printout notarized, and fax the notarized document as their authenticating document. This latter alternative avoids the necessity of entering the information twice, once on the pre-prepared authenticating document and again during the online submission itself. As noted above, however, faxing the document increases staff processing steps and likely will result in less timely assignment of EDGAR access codes.

¹³ When we adopted the current rules, we stated that we did not believe that electronically attaching a PDF copy of the authenticating document would provide a level of assurance materially greater than having no authenticating document and that it would not provide a level of assurance as high as the fax requirement coupled with our planned human intervention and verification procedures. We also stated that it was not possible to upload a PDF attachment to an online Form ID application in our online system at that time. Release No. 33-8410, at n.31 (Apr. 21, 2004) [69 FR 22704, 27706 n.31 (Apr. 26, 2004)]. Improvements to the EDGAR system and advancements in PDF technology now make it possible to upload a PDF attachment to an online Form ID application. We have used PDF technology internally to upload and disseminate comment letters onto the EDGAR system. The procedures we will use to process authenticating documents attached as PDF files will be identical to our existing human intervention verification procedures. These factors have led us to conclude that attaching a PDF copy of the authenticating document provides assurance comparable to that provided by a faxed document.

¹⁴ 17 CFR 232.101(a)(1).

Form ID application. We are also adopting revisions to the General Instructions to Form ID to update the Commission contact information on the current form.

III. PAPERWORK REDUCTION ACT

The amendments do not impose any new “collection of information” within the meaning of the Paperwork Reduction Act of 1995, nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements for Form ID filers.

Compliance with the adopted amendments will be optional. The Commission previously obtained a control number from the Office of Management and Budget (“OMB”) for this collection of information.¹⁶

IV. COST-BENEFIT ANALYSIS

We expect that the adopted amendments will neither significantly benefit Form ID applicants, nor will they impose additional costs on them, since electronically attaching a PDF copy of their notarized authenticating document to their electronic Form ID application will be optional only. We expect that there will be some benefit to investors, applicants and the Commission because the optional method of transmitting the authenticating document required of Form ID applicants may be easier for some applicants. To the extent filers attach the authenticating document as a PDF file rather than sending a faxed document, the Commission staff will be able to avoid sorting through faxes and matching them to online Form ID applications. If many filers choose this option, we can improve the speed and accuracy of the process that leads to receipt of EDGAR access codes.

¹⁵ Rule 101(a)(1)(ix) currently provides that the authenticating document required by Rule 10(b) of Regulation S-T must be submitted by fax transmission. 17 CFR 232.101(a)(1)(ix).

¹⁶ OMB Control No. 3235-0328

Form ID applicants that choose to transmit their authenticating documents as PDF attachments will need access to the technology that allows them to scan their notarized document and electronically attach it to their online Form ID application. Since this method is optional and a scanning feature is now quite widely available on many computer printers, and because the existing process requires access to fax transmission facilities, we do not feel applicants that choose the optional PDF attachment method will incur greater costs. Indeed, we assume filers will choose the option that is least costly.

V. EFFECT ON EFFICIENCY, COMPETITION AND CAPITAL FORMATION

Section 23(a)(2) of the Securities Exchange Act¹⁷ requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The amendments we adopt today merely provide an optional method that allows an applicant to electronically attach a PDF copy of a notarized Form ID authenticating document to its online Form ID application. The method will be voluntary and not required. We believe the amendments will not impose a burden on competition.

Section 2(b) of the Securities Act¹⁸ and Section 3(f) of the Exchange Act¹⁹ require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the

¹⁷ 15 U.S.C. 78w(a)(2).

¹⁸ 15 U.S.C. 77b(b).

¹⁹ 15 U.S.C. 78c(f).

protection of investors, whether the action will promote efficiency, competition, and capital formation. We believe the amendments will have a negligible impact on efficiency, competition or capital formation.

VI. CERTAIN FINDINGS

Under the Administrative Procedure Act (“APA”), notice of proposed rulemaking is not required when an agency, for good cause, finds “that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”²⁰ The changes we are adopting today do not impose new burdens and merely provide an optional method for applicants to fulfill the authentication requirements of the Form ID submission process. They do not change the basic content of the form. In making these changes, we also have updated certain contact information for Commission staff in the instructions to Form ID. We therefore believe that publication for public comment is unnecessary. Accordingly, we find that publishing a proposed rulemaking notice of these amendments is likewise unnecessary.²¹

The APA generally requires that an agency publish an adopted rule in the Federal Register 30 days before it becomes effective.²² This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.²³ The Commission finds good cause to make the changes to the Form ID application process

²⁰ See 5 U.S.C. 553(b)(3)(B).

²¹ For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or a report to Congress under the Small Business Regulatory Fairness Act. See 5 U.S.C. 601(2) (for purposes of a Regulatory Flexibility Act analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking) and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

²² 5 U.S.C. 553(d).

effective on March 16, 2009. The changes to the Form ID application process are optional and therefore do not impose any new burdens on applicants. They are related to changes being made to our EDGAR system in expectation of March 16, 2009, when mandatory electronic filing of Form D information becomes effective and when we expect to begin experiencing a substantial increase in the number of new Form ID applications per year. We see no reason to delay the effectiveness of the amendments for 30 days after these rule changes are published in the Federal Register. We believe Form ID applicants, investors and the Commission should be able to enjoy the limited benefits of these changes as soon as practicable and find there is good cause for the amendments to take effect on March 16, 2009.

VII. STATUTORY BASIS AND TEXT OF RULE AMENDMENTS

We are adopting the amendments to Regulation S-T and Form ID under the authority in Section 19(a)²⁴ of the Securities Act, Sections 3(b),²⁵ 13(a),²⁶ 23(a)²⁷ and 35A²⁸ of the Exchange Act, Section 319²⁹ of the Trust Indenture Act of 1939 and Sections 30³⁰ and 38³¹ of the Investment Company Act of 1940.

TEXT OF RULE AMENDMENTS

²³ Id.

²⁴ 15 U.S.C. 77s(a).

²⁵ 15 U.S.C. 78c(b).

²⁶ 15 U.S.C. 78m(a).

²⁷ 15 U.S.C. 78w(a).

²⁸ 15 U.S.C. 78ll.

²⁹ 15 U.S.C. 77sss.

³⁰ 15 U.S.C. 80a-29.

³¹ 15 U.S.C. 80a-37.

List of Subjects

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

Reporting and recordkeeping requirements, Securities.

TEXT OF THE RULES AND AMENDMENTS

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

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

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 80a–6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

* * * * *

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

§ 232.10 Application of part 232.

* * * * *

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

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

(2) File, by uploading as a Portable Document Format (PDF) attachment to the Form ID filing or by faxing to (202) 504-2474 or (703) 914-4240 within two business days before or after the electronic Form ID filing, a notarized document, manually signed by the applicant over the applicant's typed signature, that includes the information required to be included in the Form ID filing, confirms the authenticity of the Form ID filing and, if filed by fax after the electronic Form D filing, includes the accession number assigned to the electronic Form ID filing.

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

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * * * *

(ix) Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), except that the authenticating document required by Rule 10(b) of Regulation S-T (§ 232.10(b)) may be filed either in electronic format as an uploaded Portable Document Format (PDF) attachment to the Form ID filing or by fax as provided in that rule, and other related correspondence and supplemental information submitted after the Form ID filing shall not be submitted in electronic format.

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PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 269 – FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

PART 274 – FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

17. Revise the two paragraphs appearing immediately after the bullets in the General Instructions of Form ID (referenced in § 239.63, § 249.446, § 269.7 and § 274.402) to read as three paragraphs as follows:

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

Form ID

UNIFORM APPLICATION FOR ACCESS CODES TO FILE ON EDGAR

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General Instructions

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

The applicant must complete the Form ID electronic filing by also submitting to the Commission a copy of a notarized paper “authenticating” document. The authenticating document must include the information required to be included in the Form ID filing, be manually signed by the applicant over the applicant's typed signature, and confirm the authenticity of the Form ID filing. Applicants may fulfill the authenticating document requirement by making a copy of the applicant’s electronic Form ID filing, adding the necessary confirming language, signing it, and having the signature notarized.

If the applicant has prepared the authenticating document before making its electronic Form ID filing, it may submit the document as an uploaded Portable Document

Format (PDF) attachment to the electronic filing. An applicant also may submit the authenticating document by faxing it to the Commission at (202) 504-2474 or (703) 914-4240 within two business days before or after its electronic Form ID filing. If submitted by fax after the electronic Form ID filing, the authenticating document must contain the accession number assigned to the electronic Form ID filing. If the fax is not received timely, the Form ID filing and application for access codes will not be processed, and the applicant will receive an e-mail message at the contact e-mail address included in the Form ID filing informing the applicant of the failure to process and providing further guidance. The message will state why the application was not processed.

For assistance with technical questions about electronic filing, call Filer Support at (202) 551-8900. For assistance with questions about the EDGAR rules, Division of Corporation Finance filers may call the Office of Information Technology at (202) 551-3600; and Division of Investment Management filers may call the IM EDGAR Inquiry Line at (202) 551-6989.

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By the Commission.

Florence E. Harmon
Deputy Secretary

March 9, 2009