

resident investment advisers who are subject to the provisions of such rule.

Authority, Effective Date

The Commission hereby amends Rules 30-4, 30-5 and 30-6 of the rules of the Commission relating to general organization [17 CFR 200.30-4, 30-5 and 30-6] by adding new paragraph (a)(6) to Rule 30-4; by adding new paragraphs (e)(3), (4), (5) and (6) to Rule 30-5; and by redesignating paragraphs (d) and (e) of Rule 30-6 as paragraphs (e) and (f), respectively, and by adding a new paragraph (d) thereto, pursuant to the authority contained in the Act of August 30, 1962, Pub. L. No. 87-592, 76 Stat. 394 [15 U.S.C. 78d-1, 78d-2] and Section 211(a) of the Advisers Act [15 U.S.C. 80b-11(a)].

The Commission finds, in accordance with sections 553(b)(A) and 553(d) of the Administrative Procedure Act [5 U.S.C. 553(b)(A), 553(d)], that the foregoing action relates solely to agency organization, procedure, or practice; that Section 553(b) of such act [5 U.S.C. 553(b)] makes unnecessary the notice and public procedures required by section 553 of such act [5 U.S.C. 553]; and that, in view of the foregoing, good cause exists for dispensing with the normal 30-day delay in effectiveness. Accordingly, the amendments to Rules 30-4, 30-5 and 30-6 are effective immediately.

Commission Action

Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By adding new paragraph (a)(6) to § 200.30-4 as follows:

§ 200.30-4 Delegation of Authority to Director of Division of Enforcement.

* * * * *

(a) * * *
 (6) pursuant to Rule 204-2(j)(3)(ii) (§ 275.204-2(j)(3)(ii) of this chapter) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in any such demand.

2. By adding new paragraphs (e) (3), (4), (5) and (6) to § 200.30-5 as follows:

§ 200.30-5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(e) * * *
 (3) To issue notices, pursuant to Rule 0-5(a) (§ 275.0-5(a) of this chapter), with respect to applications for orders under the following sections of the Act and the rules and regulations promulgated thereunder, where, upon examination, the matter does not appear to him to present issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors requires that a hearing be held:

(i) Section 202(a)(11)(F), 15 U.S.C. 80b-2(a)(11)(F).

(ii) Section 206A, 15 U.S.C. 80b-6a.

(4) To authorize the issuance of orders where a notice, pursuant to Rule 0-5(a) (§ 275.0-5(a) of this chapter), has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the matter involved presents no issue that he believes has not been previously settled by the Commission and it does not appear to him to be necessary in the public interest or the interest of investors that a hearing be held (section 211(c) of the Act, 15 U.S.C. 80b-11(c)).

(5) To permit the withdrawal of applications pursuant to the Act (15 U.S.C. 80b-1, et seq.).

(6) Pursuant to Rule 204-2(j)(3)(ii) (§ 275.204-2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in any such demand.

3. By redesignating paragraphs (d) and (e) of § 200.30-6 as paragraphs (e) and (f) respectively and by adding a new paragraph (d) thereto as follows:

§ 200.30-6 Delegation of authority to Regional Administrators.

* * * * *

(d) With respect to the Investment Advisers Act of 1940, 15 U.S.C. 80b-1, et seq.: Pursuant to Rule 204-2(j)(3)(ii) (§ 275.204-2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books

and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in any such demand.

By the Commission.
 George A. Fitzsimmons,
Secretary.

December 19, 1979.
 [FR Doc 79-39620 Filed 12-27-79; 8:45 am]
 BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 34-16443]

Securities Position Listing Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a previously proposed rule requiring clearing agencies to provide securities position listings to issuers whose securities the clearing agency holds in its name or that of its nominee. A securities position listing is a list of the participants in a clearing agency on whose behalf the clearing agency holds the issuer's securities and of their positions in the issuer's securities as of a specified date.

EFFECTIVE DATE: January 28, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry R. Marlatt, Attorney, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2792.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of Rule 17Ad-3, requiring clearing agencies to furnish a securities position listing to an issuer at the issuer's request. The rule, which becomes effective 30 days after publication in the Federal Register, was proposed in securities Exchange Act Release No. 14493, February 22, 1978; 43 FR 8269, March 1, 1978. In accordance with Section 17A(d)(3)(A)(i) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78q-1(d)(3)(A)(i), the Commission has consulted and requested the views of the Board of Governors of the Federal Reserve System at least fifteen days prior to this announcement.

The rule as proposed would have required registered clearing agencies to transmit securities position listings to issuers at least annually, or more frequently at an issuer's request. Annual

resident investment advisers who are subject to the provisions of such rule.

Authority, Effective Date

The Commission hereby amends Rules 30-4, 30-5 and 30-6 of the rules of the Commission relating to general organization [17 CFR 200.30-4, 30-5 and 30-6] by adding new paragraph (a)(6) to Rule 30-4; by adding new paragraphs (e)(3), (4), (5) and (6) to Rule 30-5; and by redesignating paragraphs (d) and (e) of Rule 30-6 as paragraphs (e) and (f), respectively, and by adding a new paragraph (d) thereto, pursuant to the authority contained in the Act of August 30, 1962, Pub. L. No. 87-592, 76 Stat. 394 [15 U.S.C. 78d-1, 78d-2] and Section 211(a) of the Advisers Act [15 U.S.C. 80b-11(a)].

The Commission finds, in accordance with sections 553(b)(A) and 553(d) of the Administrative Procedure Act [5 U.S.C. 553(b)(A), 553(d)], that the foregoing action relates solely to agency organization, procedure, or practice; that Section 553(b) of such act [5 U.S.C. 553(b)] makes unnecessary the notice and public procedures required by section 553 of such act [5 U.S.C. 553]; and that, in view of the foregoing, good cause exists for dispensing with the normal 30-day delay in effectiveness. Accordingly, the amendments to Rules 30-4, 30-5 and 30-6 are effective immediately.

Commission Action

Part 200 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By adding new paragraph (a)(6) to § 200.30-4 as follows:

§ 200.30-4 Delegation of Authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(6) pursuant to Rule 204-2(j)(3)(ii) (§ 275.204-2(j)(3)(ii) of this chapter) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in any such demand.

2. By adding new paragraphs (e) (3), (4), (5) and (6) to § 200.30-5 as follows:

§ 200.30-5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(e) * * *

(3) To issue notices, pursuant to Rule 0-5(a) (§ 275.0-5(a) of this chapter), with respect to applications for orders under the following sections of the Act and the rules and regulations promulgated thereunder, where, upon examination, the matter does not appear to him to present issues not previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors requires that a hearing be held:

(i) Section 202(a)(11)(F), 15 U.S.C. 80b-2(a)(11)(F).

(ii) Section 206A, 15 U.S.C. 80b-6a.

(4) To authorize the issuance of orders where a notice, pursuant to Rule 0-5(a) (§ 275.0-5(a) of this chapter), has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the matter involved presents no issue that he believes has not been previously settled by the Commission and it does not appear to him to be necessary in the public interest or the interest of investors that a hearing be held (section 211(c) of the Act, 15 U.S.C. 80b-11(c)).

(5) To permit the withdrawal of applications pursuant to the Act (15 U.S.C. 80b-1, et seq.).

(6) Pursuant to Rule 204-2(j)(3)(ii) (§ 275.204-2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in any such demand.

3. By redesignating paragraphs (d) and (e) of § 200.30-6 as paragraphs (e) and (f) respectively and by adding a new paragraph (d) thereto as follows:

§ 200.30-6 Delegation of authority to Regional Administrators.

* * * * *

(d) With respect to the Investment Advisers Act of 1940, 15 U.S.C. 80b-1, et seq.: Pursuant to Rule 204-2(j)(3)(ii) (§ 275.204-2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books

and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in any such demand.

By the Commission,
George A. Fitzsimmons,
Secretary.

December 19, 1979.

[FR Doc. 79-39620 Filed 12-27-79; 8:45 am]

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17 CFR Part 240

[Release No. 34-16443]

Securities Position Listing Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a previously proposed rule requiring clearing agencies to provide securities position listings to issuers whose securities the clearing agency holds in its name or that of its nominee. A securities position listing is a list of the participants in a clearing agency on whose behalf the clearing agency holds the issuer's securities and of their positions in the issuer's securities as of a specified date.

EFFECTIVE DATE: January 28, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry R. Marlatt, Attorney, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2792.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of Rule 17Ad-8, requiring clearing agencies to furnish a securities position listing to an issuer at the issuer's request. The rule, which becomes effective 30 days after publication in the *Federal Register*, was proposed in securities Exchange Act Release No. 14493, February 22, 1978; 43 FR 8269, March 1, 1978. In accordance with Section 17A(d)(3)(A)(i) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78q-1(d)(3)(A)(i), the Commission has consulted and requested the views of the Board of Governors of the Federal Reserve System at least fifteen days prior to this announcement.

The rule as proposed would have required registered clearing agencies to transmit securities position listings to issuers at least annually, or more frequently at an issuer's request. Annual

and quarterly listings would have been provided without charge, but more frequent listings would have been subject to a reasonable charge based on the clearing agency's cost of preparation.

Under the proposed rule, clearing agencies also would have been required to furnish a securities position listing to non-issuers (i) who certified their entitlement under Federal law or applicable state law to inspect, obtain, or otherwise gain access to an issuer's list of security holders of record or securities position listing or (ii) who attested that the issuer had consented to the clearing agency providing the list to them. Non-issuers would have been required to notify issuers of their request, and issuers would have had an opportunity to contest claims of entitlement. All listings provided to non-issuers would have been subject to a reasonable charge.

The impetus for the proposed rule was the recommendation in the Final Report of the Street Name Study that "each depository be required to transmit periodically to each issuer whose securities the depository holds of record a list of the persons on whose behalf the depository holds the securities."¹ That recommendation was intended to formalize an existing depository practice which permits issuers to initiate the issuer-security owner communication process directly with depository participants rather than with depositories. The proposed rule went beyond the Street Name Study recommendation, however, by extending the requirement to all clearing agencies. The reason for the extension was that, although depositories hold the great majority of securities held by clearing agencies, clearing corporations also may hold securities in their name or that of their nominee.

The proposal also went beyond the recommendation in the Street Name Study by providing that certain non-issuers would have been able to obtain securities position listings directly from clearing agencies without the need for issuer cooperation. The reason for extending this authority to certain non-issuers was that depositories sometimes have refused to provide securities position listings to persons other than issuers. In addition, issuers often have argued that under state law they are obligated to reveal only their

shareholders of record list, a list which discloses depositories as the owner of record but not the identities of depository participants on whose behalf the depository is holding securities. As a result, non-issuers that are entitled to inspect, obtain or otherwise gain access to an issuer's shareholders of record list often are required to begin the communication process with depositories rather than with depository participants—a requirement that adds an additional step to the security owner communications process.

The Commission received nineteen comment letters on the proposed Rule.² The commenters generally endorsed that part of the proposed rule which would require clearing agencies to provide securities position listings to issuers. Numerous criticisms were raised regarding the providing of securities position listings to non-issuers, however.

After reviewing the comment letters and reassessing the need for the proposed rule, the Commission has decided to (i) adopt, with certain changes, that portion of proposed Rule 17Ad-8 which would require clearing agencies to provide securities position listings to issuers, but (ii) withdraw that portion of the proposed Rule which would have provided non-issuers with access to securities position listings. The following discussion focuses on the four sections of the proposed Rule 17Ad-8 and consists of (i) a description of each proposed section, (ii) a summary of the comments received on the section, and (iii) the Commission's action on the adoption amendment, or withdrawal of the section.

A. Proposed Section 17Ad-8(a)— Definition of Securities Position Listing

This section of the proposed rule defines the term "securities position

² Eight letters were received from corporations: American Standard, Inc. ("American Standard"), Caterpillar Tractor Co. ("Caterpillar"), Dresser Industries, Inc. ("Dresser"), Glosser Bros. ("Glosser Bros."), Joy Manufacturing Co. ("Joy Mfg."), Litton Industries ("Litton"), Pacific Gas and Electric Company ("PG&E"), and A. O. Smith Corporation ("Smith Corp.").

Four letters were received from associations: American Bar Association ("ABA"), American Bankers Association ("Am. Bankers Assoc."), American Society of Corporate Secretaries, Inc. ("ASCS"), and Western Stock Transfer Association, Inc. ("WSTA").

Four letters were received from clearing agencies: Bradford Securities Processing Services Inc. ("BSPS"), Depository Trust Company ("DTC"), National Securities Clearing Corporation ("NSCC"), and Pacific Securities Depository Trust Company ("PSDTC").

Two letters were received from individuals: Joseph M. Jankite ("Jankite"), and Charles P. Stetson, Jr. ("Stetson").

One letter was received from an investment banker: A. F. Castellano ("Castellano").

listing." No comments were received on the definition, and the Commission has adopted the section as proposed.

B. Proposed Section 17Ad-8(b)— Requirement That Clearing Agencies Transmit Securities Position Listings to Issuers

As discussed, this section of the proposed rule would have required clearing agencies to transmit securities position listings to issuers annually, or more frequently at the issuers' request. Annual and quarterly listings would have been provided without charge, but more frequent listings would have been subject to a reasonable charge.

Some commenters specifically supported the prevailing depository practice of providing securities position listings to issuers, and no commenter criticized the practice. There was a difference of opinion, however, concerning the need to formalize the practice in a Commission rule and on the need to extend the practice to clearing corporations. More specifically, four commenters endorsed the section as proposed, while one depository indicated that it was not aware of occurrences which suggested a need for the proposed rule. A clearing corporation argued that the rule should be limited to depositories and should not be applied to clearing corporation functions, such as delivery and receipt services and the provision of financing for securities transactions, although in providing those services a clearing corporation may hold some customer securities in a segregated account or in nominee name pending delivery.

In addition to those general comments, there were two specific concerns raised by the commenters. A corporation suggested that a depository should be required to transmit securities position listings to issuers within fifteen days of the request and that a regular annual listing be transmitted within thirty days of the close of the corporate year.

A number of commenters also were concerned about the provision which would have required clearing agencies to transmit annual and quarterly securities position listing to issuers free of charge. One commenter argued, for example, that "the cost will be passed on to all participants in a depository, even those who do not have a position in a particular stock." A clearing corporation said that, if the proposed rule were to apply to all clearing agencies, not only to depositories, then a clearing agency should be compensated for each listing it is required to provide. A depository wrote that it "believes the current practice of requiring issuers to

¹ SEC, *Final Report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other than the Name of the Beneficial Owner of Such Securities*, pursuant to Section 12(m) of the Securities Exchange Act of 1934 (Committee Print 1976) (the "Street Name Study"), 55.

bear such costs other than at the time of a shareholders meeting represents a more reasonable approach. . . ." Another depository expressed a similar view. A second clearing corporation felt that requiring clearing agencies to provide an annual and quarterly listing to issuers free of charge was an unnecessary burden in view of the modest cost now imposed on issuers to receive a securities position listing.

Finally, a corporation expressed concern about the ability of corporations with small capitalization to communicate directly to their shareholders with frequency and without delay. It argued that the proposed rule does nothing to alleviate "the hiding of beneficial ownership via usage of nominee names," but "actually gives tacit approval to the continuance."

The Commission believes that section (b) of the proposed rule, with the amendments discussed below, should be adopted for two reasons. First, unlike depositories, clearing corporations customarily do not provide securities position listings to issuers. As a result, although the great majority of securities held by registered clearing agencies are held by depositories, issuers still are required to initiate the communication process with clearing corporations rather than with the clearing agencies' participants, a step that the Commission believes should be eliminated.

Second, this requirement is a necessary complement to Securities Exchange Act Rule 14d-5 (17 CFR 240.14d-5) which the Commission recently adopted.³ Rule 14d-5 gives bidders a Federal right to disseminate tender offer materials by means of mailings pursuant to the stockholder lists of the subject company and securities position listings of clearing agencies. At the election of the subject company, the dissemination may be conducted either by the bidder, using lists furnished by the subject company, or by the subject company itself, in which case the bidder would not be furnished copies of the lists. Because the operation of Rule 14d-5 is dependent on issuers receiving securities position listings from clearing agencies, the Commission believes requiring clearing agencies to furnish issuers with those listings is a necessary complement to the implementation of Rule 14d-5.

With regard to the comment that clearing agencies should be required to provide securities position listings to issuers within specific time periods, the Commission is unaware of any instance in which a depository has not furnished

a securities position listing to an issuer in a timely manner. In addition, because the number of issues held by clearing agencies vary greatly and because the degree to which clearing agencies are automated also varies, the Commission does not favor imposing specific time requirements on clearing agencies. At the same time, the Commission believes it would be beneficial to include a "promptly" standard in section (b) of the proposed rule. Such a standard would help ensure that securities position listings are provided to issuers in a timely manner.⁴

As for the proposal that annual and quarterly securities position listings be provided to issuers free of charge, the Commission agrees with those commenters who argued that clearing agencies should be able to charge a reasonable fee for providing securities position listings to issuers. DTC, for example, currently charges issuers \$60 per year for quarterly securities position listings. If DTC were required to provide those quarterly listings free of charge, it could represent a potential loss of income to DTC of approximately \$750,000, a loss in income which is not insignificant and which would have to be absorbed by DTC's participants.⁵ At the same time, the Commission does not believe that clearing agencies should be authorized to charge issuers for unwanted securities position listings. As a result, the Commission has amended section (b) to provide that clearing agencies are authorized only to charge for securities position listings requested by issuers and has eliminated the requirement that securities position listings be sent to issuers annually. Clearing agencies, of course, still would be able to send securities position listings to issuers free of charge if they so desired.

The Commission recognizes that issuers normally are not represented on clearing agencies' boards of directors and therefore have no input into determining the amount charged for securities position listings. At the same time, there is no indication that depositories have charged unreasonable fees for securities position listings, and such fees would have to be filed with

⁴ As discussed, Securities Exchange Act Rule 14d-5 requires issuers to undertake certain actions regarding the dissemination of tender offer materials within specified time periods. Some of those actions require the use of a securities position listing by the issuer. In responding to requests for securities position listings arising from the operation of Rule 14d-5, a clearing agency should be mindful of the obligations that rule places on issuers.

⁵ There currently are over 13,000 issues eligible for deposit into DTC, and DTC charges issuers \$60 per annum for quarterly securities position listings.

the Commission pursuant to Rule 19b-4 under the Act.

Finally, with regard to the comment that the proposed rule would not assist corporations of small capitalization in communicating directly to their shareowners, Rule 17Ad-8 is not designed to reveal an issuer's beneficial security owners or to permit issuers to communicate directly with their beneficial security owners.

C. Proposed Sections 17Ad-8 (c) and (d)—Transmission of Securities Position Listings to Non-Issuers

Section (c) of the proposed rule would have required clearing agencies to furnish a securities position listing to non-issuers (i) who certified their entitlement under Federal law or applicable state law to inspect, obtain, or otherwise gain access to an issuer's shareholders of record list or securities position listing, or (ii) who attested that the issuer had consented to their receiving the listing. Non-issuers would have been required to notify issuers of their request, and issuers would have had an opportunity to contest claims of entitlement. All listings provided to non-issuers would have been subject to a reasonable charge.

Section (d) of the proposed rule, in turn, would have made it unlawful for any person (i) knowingly or willfully to certify falsely their entitlement to an issuer's securities position listing or (ii) to violate willfully any provision of the proposed rule.

Two commenters supported proposed Rule 17Ad-8 in its entirety. Another commenter endorsed the concept of providing securities position listings to non-issuers whenever the issuer was required to provide a non-issuer with its shareholders of record list. One commenter also thought the concept was a useful one. The latter two commenters, however, had a number of concerns about the specific provisions of sections (c) and (d) of the proposed rule. Every other person who commented on sections (c) and (d) either objected to the concept of clearing agencies providing securities position listings to non-issuers or were concerned about specific provisions of those two sections. One commenter, for example, indicated that it was not aware of significant opposition by issuers to providing securities position listings to those entitled under State law to the shareholders of record list. A depository argued that the proposal would not achieve its primary purpose of facilitating issuer-shareowner communications because non-consenting issuers always would intervene to block the release of a

³ Securities Exchange Act Release No. 16394, November 29, 1979; 44 FR 70326, December 6, 1979.

securities position listing to a non-issuer. That depository also argued that it was not aware of any court that had denied access to a securities position listing when a non-issuer was entitled to an issuer's shareholders of record list and, thus, that existing State law already may provide for access to securities position listings by qualified non-issuers. A clearing corporation saw no apparent benefit from these sections of the proposed rule since broker-dealers are only required to cooperate with issuers under Securities Exchange Act Rule 14b-1 (17 CFR 240.14b-1). That clearing corporation also argued that securities position listings should be given only to issuers and that any dispute over access to the list should be resolved directly between the issuer and non-issuer. Finally, a number of other commenters opposed the concept of providing securities position listings to non-issuers.

In addition to those general comments, there were several concerns raised about specific provisions of sections (c) and (d) of the proposed rule. A number of commenters complained that there were no restrictions on the subsequent use of the list by non-issuers and that the list could be used for improper purposes. Other commenters were concerned that the proposed rule might be contrary to existing State law. One of those commenters argued, for example, that the proposal could be viewed as shifting the burden of proof regarding access to the securities position listing from the non-issuer to the issuer, a change it felt should be made by State legislatures.

Numerous concerns also were raised regarding the certification provision of the proposed rule. More specifically, some commenters felt that securities position listings should not be given to non-issuers on the basis of an unconfirmed certification prepared by the non-issuer, while others felt that the notification process may not give issuers sufficient time to respond to a non-issuer's claim of entitlement. A number of commenters were concerned that it was unclear whether clearing agencies had any responsibility to evaluate the validity of a non-issuer's claimed entitlement to a securities position listing, while other commenters were concerned that the proposal could expose clearing agencies to liability if they furnished a non-issuer with a securities position listing and the non-issuer's claimed entitlement later provided to be invalid.

The two principal areas in which non-issuers have sought access to securities position listings are the tender offer and

proxy areas. After reviewing the comment letters on proposed Rule 17Ad-8 and reassessing the non-issuer access provisions of that proposal, the Commission believes, as discussed below, that the question of non-issuer access to securities position listings in the above two areas is best addressed in the context of the Commission's tender offer and proxy rules rather than in a general provision such as proposed Rule 17Ad-8. Aside from the tender offer and proxy areas, the Commission is unaware of situations in which non-issuers entitled to an issuer's shareholders of record list have unsuccessfully sought access to the issuer's securities position listing. Accordingly, the Commission perceives no need at this time for sections (c) and (d) of proposed Rule 17Ad-8 and has withdrawn those sections.

With regard to the tender offer area, the Commission, as discussed, recently adopted Securities Exchange Act Rule 14d-5, which gives bidders a Federal right to disseminate tender offer materials by means of mailings pursuant to the stockholder lists of the subject company and securities position listings of clearing agencies. At the election of the subject company, the dissemination may be conducted either by the bidder, using lists furnished by the subject company, or by the subject company itself, in which case the bidder would not be furnished copies of the lists. Rule 14d-5 also contains specific provisions concerning the use, handling and disposition of the lists by bidders and otherwise addresses many of the concerns raised about the non-issuer access provisions of proposed Rule 17Ad-8.

As for the proxy area, Securities Exchange Act Rule 14a-7 (17 CFR 240.14a-7) currently provides an election similar to that contained in Rule 14d-5. In brief, Rule 14a-7 gives an issuer the option of mailing security holders' communications or of providing security holders with its shareholders of record list and other information that would enable security holders to mail the communications themselves. The Commission believes that amending Rule 14a-7 to include securities position listings among the information that the issuer may elect to provide security holders may be a better approach for providing non-issuer access to securities position listings in the proxy area. The Commission will review the possible amendment of that rule.

In accordance with the foregoing, the Commission adopts Rule 17Ad-8, as set forth below, effective January 28, 1980.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and, in particular, Sections 2, 17A, and 23(a) thereof [15 U.S.C. 78b, 78q-1, and 78w(a)], the Commission amends Title 17, Chapter II, Part 240 of the Code of Federal Regulations to add § 240.17Ad-8, as set forth below, effective January 28, 1980. The Commission does not perceive that any burden is imposed upon competition by this amendment.

Text of Rule

Section 240.17Ad-8 is added as follows:

§ 240.17Ad-8 Securities position listings.

(a) For purposes of this section, the term "securities position listing" means, with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(b) Upon request, a registered clearing agency shall furnish a securities position listing promptly to each issuer whose securities are held in the name of the clearing agency or its nominee. A registered clearing agency may charge issuers requesting securities position listings a fee designed to recover the reasonable costs of providing the securities position listing to the issuer.

By the Commission.

December 20, 1979.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 79-39621 Filed 12-27-79; 8 45 am]
BILLING CODE 6010-01-M

17 CFR Part 240

[Release Nos. 33-6170; 34-16436]

Quarterly Reporting Requirements; Smaller Life Insurance Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is further deferring, until 1981, the effective date of the quarterly reporting requirements for smaller life insurance companies whose shares are not actively traded. Such additional delay is necessary to allow sufficient time for the Commission to consider, as a result of the testimony gathered at its small business hearings, whether one or more classes of small