

# **SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 200 and 232**

**[Release No. 34-55502]**

## **Technical Amendment to Regulation S-T**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is amending Regulation S-T to make a correction with respect to mandated electronic submissions and to include persons or entities that submit filings for review by the Division of Market Regulation as persons or entities that are subject to the electronic filing requirements of Regulation S-T. The amendment will clarify that a filing submitted on an electronic filing system other than the Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system is not a mandated submission under Regulation S-T and will clarify that filers who submit forms on EDGAR for review by the Division of Market Regulation are subject to the requirements of Regulation S-T. The Commission is also amending the Rules of Organization and Program Management to delegate authority to the Director of the Division of Market Regulation to adjust the filing date of an electronic submission and to grant or deny a continuing hardship exemption from electronic filing under Regulation S-T. The amendment will conserve Commission resources and will allow the Commission to make such adjustments and to grant or deny such exemptions in a timely manner.

**EFFECTIVE DATE:** April 27, 2007 .

**FOR FURTHER INFORMATION CONTACT:** Jerry Carpenter, Assistant Director, or Catherine Moore, Special Counsel, (202) 551-5710, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE, Washington, DC, 20549-6628.

**SUPPLEMENTARY INFORMATION:**

**I. BACKGROUND**

On October 4, 2004, the Securities and Exchange Commission (“Commission”) adopted an amendment to Rule 19b-4<sup>1</sup> to require that Form 19b-4<sup>2</sup> be filed electronically on the Commission’s Electronic Form 19b-4 Filing System (“EFFS”).<sup>3</sup> At the same time, the Commission amended Rule 101(a) of Regulation S-T<sup>4</sup> to mandate that Form 19b-4 be submitted to the Commission in electronic format and amended Rule 101(c)(9) of Regulation S-T to except Form 19b-4 from the requirement that filings submitted to the Division of Market Regulation be submitted in paper format. However, Regulation S-T only applies to electronic filings that are submitted on EDGAR, and Form 19b-4 is not submitted through EDGAR. As a result, Rules 101(a) and 101(c)(9) of Regulation S-T should not have been amended with respect to Form 19b-4. The Commission is making a technical amendment to remove the reference to Form 19b-4 in Rule 101(a) and to revise Rule 101(c)(9) to clarify that forms submitted for review by the Division of Market Regulation electronically, whether on EDGAR or on another electronic filing system such as EFFS, do not have to be submitted in paper format.

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<sup>1</sup> 17 CFR 240.19b-4.

<sup>2</sup> 17 CFR 249.819.

<sup>3</sup> Securities Exchange Act Release No. 50486, 69 FR 60287 (October 8, 2004) [File No. S7-18-04].

<sup>4</sup> 17 CFR 232 et seq.

Additionally, the Commission is making a technical amendment to Rule 100 of Regulation S-T to include persons or entities that submit filings for review by the Division of Market Regulation as persons and entities that are subject to the electronic filing requirements of Regulation S-T. Because the EDGAR system was initially designed for the electronic submission of documents that are subject to review by the Divisions of Corporation Finance and Investment Management, Rule 100 currently only applies to registrants whose filings are submitted for review by those divisions and to such registrant's joint or third party filers. To reflect the fact that the Commission has recently added Forms 25, TA-1, TA-2, and TA-W, which are submitted for review by the Division of Market Regulation, to the list of mandated electronic filings in Section 101(a) of Regulation S-T, the Commission is amending Rule 100 to include the filers of any other forms that are submitted through EDGAR for review by the Division of Market Regulation as persons or entities that are subject to the electronic filing requirements of Regulation S-T.

The Commission is amending Rule 30-3 of the Rules of Organization and Program Management<sup>5</sup> to add new paragraphs (j) and (k) to delegate to the Director of the Division of Market Regulation authority to grant or deny a request submitted under Regulation S-T to adjust the filing date of an electronic filing and to grant or deny, as appropriate, a continuing hardship exemption to an electronic filer under Rule 202 of Regulation S-T. The delegation of authority to the Director of the Division of Market Regulation is designed to conserve Commission resources by permitting staff to adjust the filing date of an electronic filing and to grant or to deny exemptions where appropriate and in a timely manner. Nevertheless, the staff may submit matters to the Commission for consideration, as it deems appropriate. The Directors of the

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<sup>5</sup> 17 CFR 200.30-3, Delegation of authority to the Director of Division of Market Regulation.

Divisions of Corporation Finance and of Investment Management have previously been delegated such authority.<sup>6</sup>

## **II. CERTAIN FINDINGS**

Under the Administrative Procedure Act (“APA”), notice of proposed rulemaking is not required “(A) [for] interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>7</sup> The Commission is making technical amendments to Regulation S-T to correct Rule 101 and to make a conforming change to Rule 100 with respect to forms submitted for review by the Division of Market Regulation and therefore, notice and public procedure is unnecessary. Specifically, Rule 101(a) is being amended to remove the reference to Form 19b-4 and Rule 101(c) is being amended to clarify that only forms which are not submitted electronically are required to be filed in paper. Additionally, Rule 100 is being amended to add a new paragraph (d) which will define filers whose filings are subject to review by the Division of Market Regulation as persons or entities that are subject to Regulation S-T. The amendment reflects the fact that the Commission currently mandates that Forms 25, TA-1, TA-2, and TA-W be filed electronically on EDGAR and that the filers of these forms should be (and probably believe that they are) subject to the requirements and protections of Regulation S-T. For these reasons, the

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<sup>6</sup> 17 CFR 200.30-1(j) and (k) and 200.30-6(j) and (k).

<sup>7</sup> 5 U.S.C. 553(b).

Commission finds that publishing the changes for comment is unnecessary.<sup>8</sup> The amendment to Rule 30-3 of the Commission’s Rules of Organization and Program Management relates solely to agency organization, procedure, or practice. As such, notice of proposed rulemaking is not required.

### **III. STATUTORY AUTHORITY**

The Commission is adopting amendments § 200.30-3 under the authority set forth in sections 4A(a) and 23(a) of the Securities Exchange Act.<sup>9</sup> The Commission is adopting amendments to Regulation S-T under authority set forth in sections 19(a) of the Securities Act and 23(a) of the Securities Exchange Act.<sup>10</sup> The amendments to § 200.30-3 and to Regulation S-T are adopted under Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

#### List of Subjects

##### 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies),  
Organization and functions (Government agencies).

##### 17 CFR Part 232

Reporting and recordkeeping requirements.

#### Text of Amendment

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<sup>8</sup> For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility analyses, 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).

<sup>9</sup> 15 U.S.C. 78d-1(a) and 78w(a).

<sup>10</sup> 15 U.S.C. 78s(a) and 78w(a).

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

**PART 200--ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS**

Subpart A--Organization and Program Management

1. The authority citation for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 80a-37, 80b-11, and 7202, unless otherwise noted.

\* \* \* \* \*

2. Section 200.30-3 is amended by redesignating paragraph (j) as paragraph (l) and adding new paragraphs (j) and (k) to read as follows:

**§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.**

\* \* \* \* \*

(j) With respect to the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), and Regulation S-T thereunder (part 232 of this chapter), to grant or deny a request submitted pursuant to Rule 13(b) of Regulation S-T (§ 232.13(b) of this chapter) to adjust the filing date of an electronic filing.

(k) With respect to the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C.) 78a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), and Regulation S-T thereunder (part 232 of this chapter) to set the terms of, and grant or deny as appropriate, continuing hardship exemptions, pursuant to Rule 202 of Regulation S-T (§ 232.202 of this chapter), from the electronic submission requirements of Regulation S-T (part 232 of this chapter).

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

3. 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), 78~~1~~, 78m, 78n, 78o(d), 78w(a), 78~~11~~(d), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C 1350.

\* \* \* \* \*

4. Section 232.100 is amended by:

a. Removing the word "and" at the end of paragraph (b);

b. Redesignating paragraph (c) as paragraph (d);

c. Adding new paragraph (c); and

d. Revising the term "registrant" in newly redesignated paragraph (d) to read "person or entity".

The addition reads as follows:

**§ 232.100 Persons and entities subject to mandated electronic filing.**

\* \* \* \* \*

(c) Persons or entities whose filings are subject to review by the Division of Market Regulation; and

\* \* \* \* \*

5. Section 232.101 is amended by:

a. Removing paragraph (a)(1)(x);

b. Redesignating paragraph (a)(1)(xi) and (a)(1)(xii) as paragraphs (a)(1)(x) and (a)(1)(xi); and

c. Revising paragraph (c)(9).

The revision reads as follows:

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

\* \* \* \* \*

(c) \* \* \*

(9) Exchange Act filings submitted to the Division of Market Regulation other than those that are submitted in electronic format as mandated or permitted electronic submissions under paragraph (a) and (b) of this section or that are submitted electronically in a filing system other than EDGAR.

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By the Commission.

Florence E. Harmon  
Deputy Secretary

March 21, 2007