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17 CFR Parts 229, 240 and 249

Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 240 and 249

[Release No. 33–8089; 34–45741; File No. S7–08–02]

RIN 3235–AI33

Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: We are proposing to accelerate the filing of quarterly reports and annual reports under the Securities Exchange Act of 1934 by domestic reporting companies that have a public float of at least $75 million, that have been subject to the Exchange Act reporting requirements for at least 12 calendar months, and that previously have filed at least one annual report. We propose to shorten the filing deadlines for these companies from 45 to 30 calendar days after period end for quarterly reports and from 90 to 60 calendar days after fiscal year end for annual reports. We also are proposing to require companies subject to the accelerated filing deadlines to disclose in their annual reports where investors can obtain access to company filings, including whether the company provides access to its reports on Forms 10–K, 10–Q and 8–K on its Internet website, free of charge, as soon as reasonably practicable, and in any event on the same day as, those reports are electronically filed with or furnished to the Commission.

DATES: Comments should be received on or before May 23, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–08–02. This file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website *(http://www.sec.gov).*[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Minton, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Item 101[2] of Regulation S–K[3] under the Securities Act of 1933 (''Securities Act''),[4] Forms 10–Q[5] and 10–K[6] under the Securities Exchange Act of 1934 (''Exchange Act'')[7] and Exchange Act Rules 12b–2,[8] 13a–10[9] and 15d–10.[10]

I. Introduction

The U.S. system of federal securities regulation is based on full and fair disclosure. Congress, in enacting the federal securities laws, embraced full disclosure as the best way to permit the financial markets to allocate capital. For this system to function most effectively, the markets must have access to information that is clear, accurate, and timely.

The Exchange Act requires companies to make information publicly available to investors on an ongoing basis to aid in their investment and voting decisions.[11] Moreover, seasoned issuers (that is, those that have been subject to the reporting requirements for a certain period of time) incorporate information from their Exchange Act reports into their registration statements under the Securities Act. Investors purchasing securities in public offerings therefore also rely on Exchange Act disclosure.

Generally, the rules adopted by the Commission under the Exchange Act require disclosure at quarterly and annual intervals, with specified significant events reported on a more current basis.[12] Specifically, domestic issuers subject to the Exchange Act must, among other obligations, file the following reports:[13]

- Annual reports on Form 10–K (or Form 10–KSB in the case of small business issuers[14]);[15]
- Quarterly reports on Form 10–Q (or Form 10–QSB in the case of small business issuers) for the first three quarters of its fiscal year;[16] and

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] 17 CFR 229.101.

[3] 17 CFR 229.10 *et seq.*

[4] 15 U.S.C. 77a *et seq.*

[5] 17 CFR 249.308a.

[6] 17 CFR 249.310.

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR 240.12b–2.

[9] 17 CFR 240.13a–10.

[10] 17 CFR 240.15d–10.

[11] The following types of companies are subject to the obligation to provide information to the secondary markets through reports filed with the Commission:

A company that has registered a class of equity or debt securities under Section 12(b) of the Exchange Act [15 U.S.C. 78*l*(b)] so that the securities can be listed and traded on a national securities exchange;

A company that has registered a class of equity securities under Section 12(g)(1) of the Exchange Act [15 U.S.C. 78*l*(g)(1)] and Exchange Act Rule 12g–1 [17 CFR 240.12g–1] because it had total assets of more than $10 million and the class of equity securities is held by more than 500 record holders as of the last day of the company's fiscal year (and cannot rely on an exemption from such registration);

A company that has voluntarily registered a class of equity securities under Section 12(g) of the Exchange Act;

Under Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)], a company that filed registration statement under the Securities Act that became effective and has not met the thresholds for suspension of the reporting requirement; and

Under Exchange Act Rules 12g–3 and 15d–5 [17 CFR 240.12g–3 and 240.15d–5], a company that has succeeded to the obligation of another reporting company.

[12] See, for example, Exchange Act Rules 13a–1, 13a–11, 13a–13, 15d–1, 15d–11 and 15d–13 [17 CFR 240.13a–1, 13a–11, 13a–13, 15d–1, 15d–11 and 15d–13].

[13] Reporting companies that are foreign private issuers, as defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)], are subject to different requirements for periodic reports. They are not required to file quarterly reports. They file annual reports on Form 20–F [17 CFR 249.220f]. Instead of current reporting on Form 8–K, foreign issuers provide reports on Form 6–K [17 CFR 249.306]. Certain Canadian issuers may file different reports under the Multijurisdictional Disclosure System. Foreign government issuers, as defined in Exchange Act Rule 3b–4(c), also are subject to different reporting requirements. They file annual reports on Form 18–K [17 CFR 249.318]. Foreign private issuers may elect to file the forms used by domestic reporting companies and then are subject to the same deadlines.

[14] The term ''small business issuer'' is defined in Exchange Act Rule 12b–2 as a U.S. or Canadian issuer with less than $25 million in revenues and public float that is not an investment company.

[15] Form 10–K (and Form 10–KSB [17 CFR 249.310b]) provides a comprehensive overview of the reporting company on an annual basis. The form consists of four parts (Form 10–KSB has three parts, but the categories of required information are similar). Part I requires disclosure regarding the company's business, its properties, legal proceedings, and matters submitted to a security holder vote. Part II requires disclosure regarding the market for the company's common equity, sales of unregistered securities, the use of proceeds from recent sales of securities, specified financial statements and information, management's discussion and analysis of financial condition and results of operations, and quantitative and qualitative disclosure about market risk. Part III requires disclosure regarding the company's directors and executive officers, executive compensation, security ownership and certain relationships, and related party transactions. Part IV requires disclosure of exhibits, financial statement schedules, and a list of current reports filed on Form 8–K.

[16] Form 10–Q (and Form 10–QSB [17 CFR 249.308b]) consists of two parts. Part I requires disclosure of specified financial statements, management's discussion and analysis of financial condition and results of operations, and quantitative and qualitative disclosure about market

• Current reports on Form 8–K for a number of specified events.[17]

A domestic reporting company must file a quarterly report no later than 45 calendar days after the end of each of its first three fiscal quarters, and an annual report no later than 90 calendar days after the end of its fiscal year. In addition, a company may be required to file transition reports on Form 10–K or 10–KSB or Form 10–Q or 10–QSB when it changes its fiscal year.[18]

Over 30 years have passed since we last changed these deadlines. In the interim, advances in communications and information technology have made it easier for companies to process and disseminate information swiftly. Many large seasoned reporting companies capture and evaluate information and announce their quarterly and annual financial results well before they file their formal reports with the Commission. These earnings announcements are generally less complete in their disclosure than quarterly or annual reports and can emphasize information that is less prominent in quarterly or annual reports.[19] Investors also process, evaluate and react to information on a much shorter timeframe. The delayed filing of reports, however, means investors often make decisions without access to the more extensive disclosure in the company's Exchange Act reports.

Investors also need ready access to corporate information to make their investment and voting decisions. An effective and economical method for companies to make information available about themselves is through their Internet websites. We therefore strongly encourage companies to provide investors with website access to their Exchange Act reports. We believe company disclosure should be more readily available to investors on a timely basis in a variety of locations to facilitate investor access to that information. We believe it is important for companies to make investors aware of the different sources that provide access to company information.

As a step in modernizing the periodic reporting system and improving the usefulness of quarterly and annual reports to investors, we are proposing to shorten the filing due dates for these reports for many companies. We also are proposing to require a company subject to these accelerated filing deadlines to disclose in its annual report on Form 10–K where investors can obtain timely access to company filings, including whether the company provides access to its reports on Forms 10–K, 10–Q and 8–K on its Internet website, free of charge, as soon as reasonably practicable, and in any event on the same day as, these reports are electronically filed with or furnished to the Commission.[20] If the company does not provide website access in this manner, it also must disclose why it does not do so and where else investors can access these filings electronically immediately upon filing. The company also would be required to disclose its website address, if it has one.

II. Proposed Changes

A. Acceleration of Quarterly and Annual Report Due Dates

1. Reasons for Proposal

While the specific disclosure required in quarterly reports and annual reports has evolved over the past 30 years, and the integrated disclosure system has placed added emphasis on Exchange Act reporting, the basic structure and timeframes that were established in 1970 remain in place today. Since that time, annual reports for domestic companies have been due 90 calendar days after a reporting company's fiscal year end.[21] Transition reports filed on Form 10–K or 10–KSB also have a 90-day deadline. Since 1946, quarterly periodic reports have been due within 45 calendar days after the end of a quarter, although from 1955 to 1970, companies filed semi-annual reports instead of quarterly reports.[22] Transition reports filed on Form 10–Q or 10–QSB also have a 45-day deadline.

The ''Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission'' in 1977 led to the establishment of the current integrated disclosure system.[23] The system involves significant reliance on Exchange Act reports to satisfy the disclosure requirements for registration statements filed under the Securities Act. The Advisory Committee did not recommend changing, and the Commission did not change, the periodic report filing dates when it established the integrated disclosure system.

We believe that periodic reports contain valuable information for investors. Commentators have long remarked, however, that because the due dates for periodic reports are so lengthy, the information included in the reports often is stale by the time the reports are filed.[24] While quarterly and annual reports at present generally reflect historical information, it is important that a lengthy delay before that information becomes available does not make the information less valuable to investors. Significant technological advances over the last three decades have both increased the market's demand for more timely corporate disclosure and the ability of companies to capture, process and disseminate this information.[25] Computers, sophisticated financial software, electronic mail, teleconferencing, videoconferencing and other technologies available today have replaced the paper and pencil, typewriter, adding machines, carbon paper, mail system, travel and face-to-face meetings relied on in 1970.

In our 1998 release proposing reform of the Securities Act registration process,[26] we noted that hundreds of public companies issue press releases to announce quarterly and annual results

risk. Part II requires disclosure regarding legal proceedings, changes in securities, sales of unregistered securities, the use of proceeds from recent sales of securities, defaults on senior securities, exhibits, and a list of current reports filed on Form 8–K.

[17] 17 CFR 249.308. These events currently include change in control of the registrant, the acquisition or disposition of a significant amount of assets, the bankruptcy or receivership of the registrant, changes in the registrant's certifying accountant, the resignation of a member of the registrant's board of directors, and any other event that the registrant deems of significance to security holders.

[18] See Exchange Act Rules 13a–10 and 15d–10.

[19] See Release No. 33–8039 (Dec. 4, 2001) [66 FR 63731].

[20] Even if a company chooses not to make its reports available on its website, investors still would be able to access information about the company through our EDGAR system. A company's posting of its reports on its website would not be a substitute for filing documents with the Commission.

[21] See General Instruction A of Forms 10–K and 10–KSB and Release No. 34–9000 (Oct. 21, 1970) [35 FR 16919]. Before 1970, the due date for filing annual reports was 120 days after a company's fiscal year end.

[22] See General Instruction A.1 of Forms 10–Q and 10–QSB; Release No. 34–3803 (Mar. 28, 1946) [11 FR 10988]; and Release No. 34–9004 (Oct. 28, 1970) [35 FR 17537].

[23] See Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission (Nov. 3, 1977).

[24] As far back as 1969, former SEC Chairman Manuel Cohen said: ''because companies need not file the [quarterly] report until 45 days after the end of the quarter, the information is often stale.'' See J. Robert Brown, *Corporate Communications and the Federal Securities Laws*, 53 Geo. Wash. L. Rev. 741 (1985).

[25] See, for example, Report to the Congress: The Impact of Recent Technological Advances on the Securities Markets, (Sept. 1997). That report, like all Commission reports issued after 1996, is available on our Internet website (http://www.sec.gov).

[26] See Release No. 33–7606A (Nov. 13, 1998). In that release, we solicited comment on whether we should shorten the due dates of annual and quarterly reports. Comments received on that release are available through our Public Reference Room under File No. S7–30–98.

well before they file their reports with us.[27] While these press releases do not contain all of the information included in quarterly and annual reports, it appears that companies and their auditors have developed efficiencies over the years that allow them to generate financial data quickly.[28] Companies are responsible for the information in these announcements. We understand as a general matter that the audit work is essentially completed and other steps have been taken to ensure their accuracy.

These earnings announcements also reflect the importance of the financial information and investors' demand for it at the earliest possible time. While we applaud companies' practices of issuing press releases to keep investors promptly informed of important corporate developments, the amount of information and the manner of its presentation in press releases varies from company to company. Investors often must wait for the periodic reports to receive financial statements and the accompanying notes prepared in accordance with generally accepted accounting principles, management's discussion and analysis, and other vitally important financial disclosures. Shortening the due date of quarterly and annual reports would provide more timely disclosure to investors and the market.

In establishing the appropriate timeframes for filing periodic reports, however, we must balance the market's need for information with the time companies need to prepare that information without undue burden. We recognize that it may be necessary for a new public company to develop experience with the preparation and filing of periodic reports. Similarly, smaller issuers may not have the resources or infrastructure to prepare their reports on a shorter timeframe without undue burden or expense.

In our 1998 release, we requested comment as to whether we should shorten the due dates for quarterly and annual reports.[29] We received a significant number of comments in response to that request. Several commenters supported or did not object to the acceleration of quarterly and annual report due dates, with some arguing that accelerated due dates are necessary in today's fast-paced marketplaces to ensure the efficient allocation of capital and the timely flow of information to the market.[30]

A larger number of commenters, however, thought that a shortening of due dates would be overly burdensome,[31] particularly for small companies.[32] Several of the commenters that argued against shortening deadlines also were concerned that the benefits derived from technological advances over the past 30 years have been offset by additional and more complex reporting requirements. They were concerned that accelerated due dates would result in less accurate filings.[33]

Some of the commenters who objected to an acceleration of filing deadlines and several other commenters offered alternative suggestions that might help mitigate the impact of such a change if the Commission was committed to an acceleration proposal. One suggestion was a more gradual acceleration of due dates, where large or seasoned issuers would be the first group subject to shortened filing dates or the filing deadline would be shortened in incremental steps (for example, initially to 40 days for quarterly reports and 75 days for annual reports).[34] Another commenter suggested that companies should file their reports by the earlier of the current due dates or a specified date after the company's first release of earnings.[35] Some commenters requested that we propose changes in a separate release specifically addressing filing deadlines, which we are doing today.[36]

On February 13, 2002, we announced our intention to propose shortened filing deadlines as part of a series of initial steps to modernize and improve the corporate disclosure system.[37] We recently hosted roundtable discussions in New York, Washington, DC, and Chicago at which investor relations professionals, corporate executives, academics, and experienced legal counsel discussed financial disclosure and auditor oversight.[38] Several of the participants at these roundtables

[27] Our Office of Economic Analysis has determined that, over the past 10 years, registrants on average issued their year-end earnings announcements approximately 43 days after fiscal year end. In addition, registrants on average issued their quarterly earnings announcements approximately 27 days after period end.

[28] See, for example, Tad Leahy, ''The Reality of Real-Time reporting,'' Business Finance, March 2000, at 93.

[29] See note 26 above.

[30] See, for example, the Letters in File No. S7–30–98 of American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''); Association of Investment Management and Research; Michael J. Connell; Council of Institutional Investors (''CII''); Ford Motor Company; Ford Motor Credit Company; Institutional Shareholder Services (''ISS''); Investment Company Institute (''ICI''); North American Securities Administrators Association, Inc. (''NASAA''); Pennsylvania Securities Commission; Service Employees International Union Master Trust (''SEIU''); and Teachers Insurance and Annuity Association-College Retirement Equities Fund (''TIAA–CREF'').

[31] See, for example, the Letters in File No. S7–30–98 of American Bar Association (''ABA''); American Corporate Counsel Association (''ACCA''); Agway, Inc.; Association of the Bar of the City of New York (''NYCBA''); Association of Publicly Traded Companies; Baldwin & Lyons, Inc.; BostonFed Bancorp, Inc.; Business Roundtable; Cabot Corporation; Charles Schwab & Co., Inc.; Chevron Corporation; Citigroup Inc.; Cleary, Gottlieb, Steen & Hamilton (''Cleary''); Diamond Home Services, Inc.; Duke Energy Corporation; Emerson Electric Co.; Financial Executives Institute (''FEI''); Financial Institutions Accounting Committee (''FIAC''); FirstEnergy Corp.; Fried, Frank, Harris, Shriver & Jacobson (''Fried Frank''); General Motors Corporation (''GM''); Goldman, Sachs & Co.; Grubb & Ellis Company; Home Federal Savings; Jacobs Engineering Group Inc. (''Jacobs''); John Hancock Mutual Life Insurance Company; J.P. Morgan & Co.; KPMG LLP; Mellon Bank Corporation; National Association of Real Estate Investment Trusts (''NAREIT''); New York State Society of Certified Public Accountants (''NYSSCPA''); PennFed Financial Services, Inc.; PPG Industries, Inc.; PricewaterhouseCoopers LLP; R.R. Donnelley & Sons Company (''Donnelley''); Schering-Plough Corporation; Southern Company; Sullivan & Cromwell (''S&C''); Toyota Motor Credit Corporation; USX Corporation; and Wells Fargo & Company.

[32] See, for example, the Letters in File No. S7–30–98 of CCF Holding Company; The CIT Group, Inc.; Equality Bancorp, Inc.; Ernst & Young LLP; First National Bank of West Chester; First Northern Capital Corp.; FirstBank Northwest; Frankfort First Bancorp, Inc.; Green Street Financial Corp.; Home Building Bancorp, Inc.; Malizia, Spidi, Sloane & Fisch, P.C. (''Malizia''); New York State Bar Association; Provident Bancorp; Security of Pennsylvania Financial Corp.; Seven Silicon Valley law firms and Prof. Joseph A. Grundfest; Tri-County Bancorp, Inc.; Weinbaum & Yalamanchi; Wells Financial Corp.; Westerfed Financial Corp.; West Essex Bank; and WVS Financial Corporation.

[33] See, for example, the Letters in File No. S7–30–98 of Agway, Inc.; Business Roundtable; Chevron Corporation; Citigroup Inc.; Cleary; FEI; FIAC; FirstEnergy Corp.; GM; Jacobs; Malizia; Mellon Bank Corporation; NAREIT; NYSSCPA; PPG Industries, Inc.; S&C; and Toyota Motor Credit Corporation.

[34] See, for example, the Letters in File No. S7–30–98 of the ABA, ACCA; American Institute of Certified Public Accountants; Baldwin & Lyons, Inc.; Michael J. Connell; Ernst & Young LLP; Fried Frank; Shering-Plough Corporation; Southern Company; and Weinbaum & Yalamanchi.

[35] See the ABA Letter in File No. S7–30–98.

[36] See the Michael J. Connell and Donnelley Letters in File No. S7–30–98.

[37] In our Press Release No. 2002–22 (Feb. 13, 2002), we stated that in addition to the proposed amendments discussed in this release, we intend to propose rules to (1) expand the list of significant events requiring disclosure on Form 8–K; (2) require disclosure on a current basis of certain transactions involving securities of a company entered into with any of its executive officers and directors; and (3) require disclosure regarding critical accounting policies. In a companion release being issued today, we propose to amend Form 8–K to require disclosure on a current basis of certain transactions involving securities of a company entered into with any of its executive officers and directors. See Release No. 34–45742 (Apr. 12, 2002).

[38] See SEC Press Release Nos. 2002–28 (Feb. 22, 2002) and 2002–46 (Mar. 27, 2002). The New York roundtable was held on March 4, 2002. The Washington DC roundtable was held on March 6, 2002. The Chicago roundtable was held on April 4, 2002. Archived broadcasts of the roundtables are available to the public on our Internet website at *www.sec.gov*.

indicated that reporting within the proposed shortened deadlines was feasible.[39] Some participants, however, referred to the comment letters on our 1998 Securities Act reform proposals,[40] and were concerned about the ability of companies, and smaller companies in particular, to report in a shorter timeframe.[41] They thought that accelerating deadlines could cause the quality of reports to diminish.[42] One participant was concerned that shortened deadlines may present more problems for quarterly reports than for annual reports.[43]

2. Description of Proposal

After evaluating the discussions at the roundtables, the comments from our 1998 release, and technological and other market developments since the 1998 release, we propose to accelerate the due dates of quarterly and annual reports only for companies:

- With a public float[44] of $75 million or more as of a date within no more than 60 and no less than 30 days before the end of the company's last fiscal year;[45]
- That have been subject to the reporting requirements of Section 13(a)[46] or 15(d) of the Exchange Act for a period of at least 12 calendar months preceding the filing of the report; and
- That have filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act.

For a company meeting these requirements, which we define as an ''accelerated filer,'' we propose to shorten the due date for annual reports on Form 10–K to 60 calendar days after the company's fiscal year end. We propose to shorten the due date for quarterly reports on Form 10–Q to 30 calendar days after the end of each of the first three quarters of the company's fiscal year. We propose similar changes to the transition reports that an accelerated filer must make when it changes its fiscal year. Specifically, we propose to accelerate the due date of transition reports to 60 calendar days for transition reports filed on Form 10–K and 30 calendar days for transition reports filed on Form 10–Q.[47]

Although our proposed changes would not eliminate entirely the information gap between a company's announcement of earnings and the filing of more extensive information in its periodic reports, they would lessen the gap. We seek to minimize this gap while still giving companies enough time to prepare their reports. We are aware that it takes companies time to prepare and verify the more extensive disclosures that must be included in the reports, and we appreciate the importance of allowing sufficient preparation time to ensure accurate presentation of results, as well as to permit the mandated audit or review of financial information by independent auditors and consideration by audit committees and boards of directors. We acknowledge that, while the deadlines for filing quarterly and annual reports have not changed in over 30 years, the disclosure requirements have changed and some companies, particularly those with widespread operations, face additional complexities in today's environment. However, for the reasons discussed above, we anticipate that these changes have not outweighed fully the ability of companies to report in shorter timeframes, particularly with respect to companies that would meet our proposed public float and reporting history requirements. We believe that these companies may be able to disclose information within the shortened timeframes without sacrificing accuracy or completeness, although we request comment on these preliminary beliefs. Accordingly, we propose a 30 day period for quarterly reports and a 60 day period for annual reports. A 30 and 60 day period also represents common and easily measurable periods for investors and companies to calculate filing deadlines. We propose conforming deadlines for transition reports so that they remain similar to the deadlines for periodic reports.[48]

Questions Regarding Accelerating Filing Due Dates

- To what extent would shortening the due dates for quarterly, annual and transition reports improve the flow of information to investors and the markets?
- Should the proposed filing periods be longer or shorter than proposed? What factors should we consider in making these filing periods longer or shorter?
- Should we only accelerate the annual report due date, or only the quarterly report due date?
- Should we require companies to file their reports by the earlier of the existing deadlines or some earlier time after their first release of earnings information for that period? What timeframe would be appropriate? For example, would a 15 or 30 day period after the earnings announcement provide enough time for a company to finalize the corresponding periodic report? Would such a requirement delay earnings announcements?
- Are there ways other than our proposal to get important information out to investors sooner? Would our proposals cause a delay in the release of earnings announcements? Should we only require that certain information, such as the audited or reviewed financial statements and management's discussion and analysis, be filed on an accelerated basis?
- Do the proposed Form 10–Q and 10–K due dates provide affected companies with enough time to prepare their reports? Do affected companies anticipate any significant problems in complying with the accelerated deadlines?[49] If so, what types of problems?
- Would the proposal impose any significant costs on these companies? If so, what type and amount of costs? Are these short-term or one-time costs to

[39] See, for example, Richard Carbone and Raymond Groves, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in Washington, DC (Mar. 6, 2002) (archived broadcast available at *www.sec.gov*).

[40] See, for example, John White, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in New York, NY (Mar. 4, 2002) (archived broadcast available at *www.sec.gov*); and James Cheek, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in Washington, DC (Mar. 6, 2002) (archived broadcast available at *www.sec.gov*).

[41] See, for example, Edward Nusbaum, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in Chicago, IL (Apr. 4, 2002) (archived broadcast available at *www.sec.gov*).

[42] See note 40 above.

[43] See, for example, Phil Livingston, Remarks at the Financial Disclosure and Auditor Oversight Roundtable in Washington, DC (Mar. 6, 2002) (archived broadcast available at *www.sec.gov*).

[44] Public float is the aggregate market value of a company's outstanding voting and non-voting common equity (*i.e.*, market capitalization) minus the value of common equity held by affiliates of the company. Public float is also one of the key determinants for eligibility for short-form registration under the Securities Act (Form S–3 [17 CFR 239.13] and Form F–3 [17 CFR 239.33]).

[45] The company could select any date within this period to establish whether it met the public float requirement for purposes of establishing the due date for that year's Form 10–K and the subsequent year's Form 10–Q reports.

[46] 15 U.S.C. 78m(a).

[47] If our proposals are adopted, we would make appropriate conforming updates to the Codification of Financial Reporting Policies.

[48] See, for example, Release No. 33–6823 (Mar. 13, 1989) [54 FR 10306] (Revising transition report rules to conform their filing requirements to those for periodic reports).

[49] Shortly after we announced our intention to propose changes to corporate disclosure, the National Investor Relations Institute (''NIRI'') conducted a survey of its corporate members to assess initial reactions to these changes. See ''NIRI Releases Survey Results on SEC Proposed Changes to Corporate Disclosure,'' *Executive Alert* (National Investor Relations Institute, Vienna, VA), Mar. 20, 2002. Based on 406 responses, an 11% response rate, 40% of the respondents stated they would not anticipate any significant problems filing their annual reports within 60 days after the end of the fiscal year, and 46% stated they would not anticipate any significant problems filing their quarterly reports within 30 days after the end of each fiscal quarter.

adjust a company's reporting procedures, or long-term, ongoing costs?

• Would auditors, audit committees and boards of directors have sufficient time to perform their review functions?

• It is our understanding that a company's audit (or review in the case of interim financial statements) is complete or substantially complete by the time the company issues its earnings announcement. Is our understanding accurate? How often do these earnings numbers change between their announcement and the filing of the corresponding periodic report? What steps are involved, and how much time does it take, to prepare the necessary disclosures for the corresponding periodic report after the earnings announcement or the completion of the audit (or review)?

• Would the reliability and accuracy of the reports suffer as a result of shortened due dates?

• As part of our proposal, we also propose to make a conforming change to the date by which all schedules required by Article 12 [50] of Regulation S–X [51] may be filed as an amendment to the annual report. We propose to change this date from 120 calendar days to 90 calendar days for accelerated filers to maintain a 30 day period after the due date of the report to file the amendment. Should we make this conforming change?

• We do not propose to make a conforming change to the 120-day period companies have to file their definitive proxy or information statements involving the election of directors to allow the incorporation by reference of the information required by Part III of Form 10–K.[52] We request comment on whether not changing the 120-day proxy and information statement filing deadline would cause difficulties for companies or decrease the benefits of the proposals to investors because of the delay before receipt of the incorporated information. Should this period also be shortened by 30 days?

• We also are strongly considering making conforming revisions to accelerate the timeliness requirements in Regulation S–X (for example, Rules 3–01, 3–05 and 3–12 of Regulation S–X) [53] for the inclusion of financial statements by accelerated filers in other Commission filings, such as Securities Act registration statements, registration statements under Section 12 of the Exchange Act and proxy and information statements under Section 14 of the Exchange Act.[54] We preliminarily believe there would be no countervailing reasons why we should not make these conforming changes, and note that if we do not make these changes, there would be inconsistencies between these requirements and the periodic report filing requirements. Should we make these conforming revisions? Should we also make similar revisions to the financial statement filing requirements in Item 7 of Form 8–K (*i.e.,* reducing the filing deadlines by one-third from 60 to 40 days)? What ramifications might there be if we make these conforming changes, or if we do not make these changes? Should there be other exceptions or changes made for certain categories of issuers or types of filings? Should changes only be made for accelerated filers that would meet the conditions in Rule 3–01(c) of Regulation S–X? Should we provide a transition period for any such changes?

3. ''Accelerated Filer'' Definition

The public float and reporting history requirements that we propose to use to identify the companies that would be subject to accelerated filing are intended to include the companies that are least likely to find such a change overly burdensome. We are not proposing to change the due dates for annual, quarterly or transition reports for other companies, including small business issuers that file on Forms 10–KSB and 10–QSB, at this time.[55] Those companies will remain subject to the existing filing deadlines. The proposed public float and reporting history requirements are based on the current eligibility requirements for registration of primary offerings for cash on Form S–3.[56] As these companies can take advantage of short-form registration, including the resultant benefits of incorporation by reference and quick access to the capital markets through ''shelf registration,'' [57] a shortening of the deadlines for these companies seems appropriate. In identifying companies that would be subject to this new requirement, we thought it would be appropriate to use a pre-existing threshold to reduce regulatory complexity.

If a company was not already an accelerated filer, a company would determine its public float for purposes of determining whether it will become an accelerated filer as of a date no more than 60 and no less than 30 days before the end of its fiscal year. Hence, a company that meets the float requirement on this determination date would be subject to shortened deadlines for that year's Form 10–K and the reports on Form 10–Q filed in the company's next fiscal year, if it also meets the reporting history requirements on the date the reports are due. If a company meets the public float requirement on the determination date but does not yet meet the reporting history requirements, it would not become an accelerated filer until it does meet the reporting requirements, which could occur at any time during the next fiscal year.

Once a company became an accelerated filer, it would remain an accelerated filer subject to shortened deadlines unless it became eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports.[58] In that case, the issuer would no longer be an accelerated filer unless it subsequently became ineligible to use Forms 10–KSB and 10–QSB and once again met the public float and reporting history requirements.

For example, if in December, 2002, a company with a December 31st fiscal year end determines that it meets the public float requirement but has not filed its first annual report, its annual report for fiscal year 2002, due in 2003, would be subject to a 90 day deadline. However, once it filed its 2002 annual report, and assuming by that time it had also been subject to the Exchange Act reporting requirements for 12 months, the company would now be subject to accelerated deadlines for subsequent Form 10–Q reports filed during the 2003 fiscal year and all annual and quarterly reports filed thereafter. If, in subsequent years, the company's public float fell to the point that it became eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports, it would no longer be an accelerated filer subject to accelerated deadlines. If the company subsequently became ineligible to use Forms 10–KSB and 10–QSB and once

[50] 17 CFR 210.12–01 *et seq.*

[51] 17 CFR 210.1–01 *et seq.*

[52] See General Instruction I.G(3) of Form 10–K.

[53] 17 CFR 210.3–01, 3–05 and 3–12.

[54] 15 U.S.C. 78n.

[55] The definition of ''small business issuer'' excludes issuers with a public float of $25 million or more. As a result, all small business issuers are effectively excluded from our proposal.

[56] See General Instructions I.A.3 and I.B.1 of Form S–3.

[57] ''Shelf registration'' is the commonly used term for delayed offerings under Securities Act Rule 415 [17 CFR 230.415]. Rule 415 permits offerings to be delayed until some point determined by the registrant after effectiveness of the relevant registration statement.

[58] See Item 10(a)(2) of Regulation S–K [17 CFR 228.10(a)(2)] for the conditions for entering and exiting the small business reporting system. A reporting company that is not a small business issuer must meet the definition of a small business issuer at the end of two consecutive fiscal years before it will be considered a small business issuer for purposes of Form 10–KSB and Form 10–QSB.

again met the public float and reporting history conditions, it would again become an accelerated filer subject to accelerated deadlines.

Currently, companies are required to disclose on the cover page of their annual reports on Form 10–K the company's public float as of a specified date within 60 days before filing. To assist the Commission and investors in evaluating whether a company is subject to accelerated deadlines, we propose to revise this requirement. For a company that was not previously an accelerated filer, we would require disclosure of the public float computed as of a date no more than 60 and no less than 30 days before the last day of the company's most recently completed fiscal year to determine whether the company was an accelerated filer, and the date used for purposes of that computation. If a company was previously an accelerated filer, we would require disclosure of the public float as of a specified date no more than 60 and no less than 30 days before the last day of the company's most recently completed fiscal year.

Questions Regarding Our Proposed Definition of Accelerated Filer

- Would the proposed public float and reporting history requirements exclude the companies that are the least able to comply with shortened deadlines?
- Would different filing deadlines for different companies confuse companies and/or investors?
- Should all reporting companies be subject to shortened filing deadlines? [59] Is the exclusion of small issuers appropriate? Is the need for timely information about these issuers greater than the additional burden or expense these issuers might incur from shortened deadlines? Should all reporting companies be subject to the shortened filing deadlines, except for companies eligible to file under our small business reporting system? Are there additional or alternate factors we should consider?
- Should non-accelerated filers be subject to deadlines shorter than the current deadlines, but not as short as those proposed for accelerated filers (*e.g.,* 75 days for annual reports and 40 days for quarterly reports)?
- Would our proposed changes affect some companies or industries more than others (such as those with complex transactions or accounting or those that regularly access the debt markets instead of equity markets, and therefore may not have a public float)? Should we make exceptions to the proposed due dates for certain companies or industries? If so, which ones and why?
- Currently, foreign private issuers must file their annual reports on Form 20–F within six months after the end of their fiscal years. [60] We are not proposing today to change that interval,[61] although we are continuing to consider this issue and Exchange Act filing requirements generally for foreign issuers. If today's proposal is adopted, the discrepancy between the filing deadlines for larger seasoned U.S. issuers and those for foreign private issuers will increase. The speed with which foreign issuers can capture and analyze information has also probably improved since the six-month interval was established. Foreign issuers are subject to similar obligations as to the information to be reported. There are some categories of information, for example executive compensation, where requirements for foreign issuers are less onerous. Foreign issuers that do not prepare their financial statements in accordance with U.S. GAAP, however, must go through the additional step of preparing a reconciliation of their financial statements to U.S. GAAP. In light of the requirements of Form 20–F and the situation of foreign private issuers, should the deadline for annual reports on Form 20–F be shortened? If so, should it be shortened to five months or four months after the end of the company's fiscal year? To some other period? What would be the impact of such a change?
- Should the public float requirement be higher or lower than that currently proposed? If higher, how would that level be consistent with the level currently required for short-form registration on Form S–3 (or should that level also be raised)? If a different level is appropriate, what levels should be considered, and why?
- Is the method for determining the measurement date for the public float test clear? Is the delineation of which reports would be subject to accelerated deadlines appropriate? Should the determination of which reports would be subject to accelerated deadlines be made at a point other than a date no more than 60 and no less than 30 days before the last date of the issuer's fiscal year?
- While we have proposed to use the public float test, we are seriously considering alternative thresholds and request comment on such alternatives. For example, should all reporting companies be subject to shortened filing deadlines, except for companies below a certain revenue or asset threshold (for example, $5 million)? Should we accelerate the filing dates only for companies whose equity securities are listed or actively traded on an exchange or Nasdaq? How would we define ''actively traded?'' Are there other alternatives that will balance the need for timely, high quality disclosure with the ability of companies to prepare the disclosure without undue burden?
- Should the reporting history requirement be shorter or longer than proposed? Is a history of preparing reports relevant to the ability of a company to report on an accelerated timeframe? Is less or more experience needed than that proposed?
- We are proposing the requirement that a company file at least one annual report to provide reasonable opportunity for a company to gain enough filing experience before it is subject to shortened deadlines. Is such experience relevant to prepare information in a shorter timeframe?
- Is the proposed method for entering and exiting accelerated filing status that relies on the small business issuer reporting system clear? Is it appropriate? In the alternative, should there be some other mechanism for companies to enter and exit accelerated filer status? For example, should a company be permitted to exit accelerated filer status if its public float has fallen below some specified threshold (*i.e.,* $25 million or $50 million) and has remained below that threshold for some specified period of time? Should a threshold other than public float be considered? What factors should be considered in formulating such an alternative?
- Should we require a company to provide notice that it is entering or exiting accelerated filer status? Should such a notice be through a filing on Form 8–K and/or through some other method or combination of methods to ensure broad dissemination of this announcement? Would the lack of an affirmative requirement to announce a change in a company's filing status disadvantage investors or the markets?

4. Impact of Accelerated Filing Deadlines

The proposed shortening of the due dates for quarterly and annual reports could create the risk that more companies would file their reports late or would need a filing extension.

[59] In our 1998 release, we solicited comment on accelerating deadlines for all reporting companies. See note 26 above.

[60] In addition, foreign private issuers that undertake registered offerings under the Securities Act are effectively subject to a three-month reporting deadline for their audited annual financial statements. See Item 8.A.4 of Form 20–F.

[61] In our 1998 release, we proposed to shorten the interval to five months. See note 26 above.

Moreover, if a company was late in filing its reports, it would lose the availability of short-form registration for at least one year from the date of the late filing. Being late also could render Securities Act Rule 144 temporarily unavailable for security holders' resales of restricted and control securities, and make new filings on Form S–8 temporarily unavailable for resales of employee benefit plan securities.[62]

Questions Regarding the Impact of Accelerating Filing Deadlines

• Are there ways we can minimize these negative effects aside from continuing to permit companies to rely on Exchange Act Rule 12b–25 for extensions of the annual report and quarterly report deadlines?[63]

• Would the current filing extension periods remain sufficient under accelerated deadlines? Should these periods be shortened (for example, to 10 days for an annual report or three days for a quarterly report) to conform to the accelerated filing due dates of these reports and to ensure timely filings? Would shorter periods provide companies with enough time to make Exchange Act Rule 12b–25 useful? Instead, should these periods be lengthened (for example, to 20 days for an annual report or 10 days for a quarterly report) to provide companies more time to file their reports because of the effect of accelerated filing due dates? What factors should we consider in determining whether and by how much these periods should be changed?

• Would companies not subject to the accelerated deadlines find it more difficult to retain the necessary outside advisors to prepare their reports in the appropriate timeframe? Would the quality of their reports suffer?

• Would companies that currently integrate their annual or quarterly reports to security holders with their Form 10–K or Form 10–Q reports, or publish and mail both in a single document, encounter difficulty in meeting the accelerated due dates?[64]

• Are there special circumstances associated with the preparation of transition reports that weigh against reducing the filing periods for those reports?

5. Transition Period

We expect that, if adopted, the proposal would have a delayed effectiveness date to provide affected companies with time to prepare for the transition to shortened due dates. Companies could, of course, voluntarily file their reports sooner during this transition period, just as they may today. If we adopt the proposal, we expect to make the proposal effective for companies that meet the public float and reporting history requirements as of the end of their first fiscal year ending after October 31, 2002. We request comment on the factors we should consider in selecting an appropriate transition period.

B. Website Access to Information

1. Reasons for Proposal

Widespread access to timely corporate information promotes the efficient functioning of the secondary markets by enabling investors to make informed investment and voting decisions. Further, ready access to Exchange Act information is critical to short-form registration of securities offerings by seasoned issuers under the Securities Act. Our system of short-form registration, which is available in varying degrees for domestic issuers on Forms S–2, [65] S–3, S–4,[66] and S–8,[67] allows certain information about the company conducting the offering to be incorporated by reference from the company's Exchange Act reports without, in many instances, separate delivery of these reports. One rationale for these abbreviated registration forms is that the information in a company's Exchange Act reports already has been adequately disseminated and evaluated by the marketplace.

The development of the Internet has revolutionized information production, availability, and dissemination.[68] The increased availability of information has helped to promote transparency, liquidity, and efficiency in our capital markets. One of the key benefits of the Internet is that companies can make information available to many investors and the financial markets quickly and in a cost-effective manner. Online access to Internet information also helps to democratize the capital markets by enabling many small investors to access corporate information just as readily as large institutional investors.[69]

We have taken a number of steps to encourage companies and market intermediaries to take advantage of electronic media to communicate with, and deliver information to, investors.[70] We also have relaxed restrictions on communications by companies with security holders and the financial markets in connection with business combinations and similar transactions, thereby allowing companies greater flexibility to communicate, including via the Internet.[71] For 18 years, we have been continually improving and modernizing electronic access to companies' Exchange Act reports through our EDGAR system, including by providing Internet access to these reports.[72]

An efficient and economical method for companies to make information available about themselves to many investors is through an Internet website. In addition to other existing sources of company information, such as our website, a company's website is often an obvious place for investors to find information about a company. Investors following particular companies can use electronic devices to alert them to the posting of new information about the companies on a website. Many companies, realizing the benefits of this technology for information dissemination, have established websites to furnish company and industry information. As discussed

[62] Securities Act Rule 144 [17 CFR 230.144] requires that for such a resale to be valid, the issuer of the securities must have made all filings required under the Exchange Act during the preceding 12 months. Form S–8 [17 CFR 239.16b] requires that an issuer be current in its reporting for the last 12 calendar months (or such shorter period that the issuer was required to file such reports and materials). If a company was late in filing its reports, the company would lose Rule 144 eligibility and eligibility to file a Form S–8 during the time that the company was not current in its reporting.

[63] 17 CFR 240.12b–25. If a company complies with Rule 12b–25, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. For quarterly reports, the company can file its quarterly report no later than the fifth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date.

[64] See General Instructions G and H of Form 10–K and General Instructions D and E of Form 10–Q.

[65] 17 CFR 239.12.

[66] 17 CFR 239.25.

[67] 17 CFR 239.16b.

[68] See, for example, note 25 above.

[69] See, for example, Ianthe Jeanne Dugan, ''Small Investors United by Web Find New Power,'' The Washington Post, May 30, 1999, at A01.

[70] We have issued a series of interpretive releases to encourage the use of electronic media to satisfy document delivery requirements under the federal securities laws. See, for example, Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458] (the ''1995 Release''); Release No. 33–7289 (May 9, 1996) [61 FR 24652]; and Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843] (the ''2000 Release''). Last October, we announced that we are currently reviewing whether our previous pronouncements on electronic delivery should be modified. *See In the Matter of The American Separate Account 5 of The American Life Insurance Company of New York,* Release No. 33–8027 (Oct. 25, 2001) (available at *www.sec.gov*).

[71] See Release No. 33–7760 (Oct. 22, 1999) [64 FR 61408]. In that release, we adopted a new regulatory system that relaxes restrictions on communications in cash tender offers, mergers, exchange offers, and proxy solicitations.

[72] Numerous third-party vendors also make information filed with the Commission electronically available to investors, but many charge fees for this service.

below, a substantial number of these companies also already provide access to their Commission filings through their websites.

Modernizing the disclosure system under the federal securities laws involves recognizing the importance of the Internet in fostering prompt and more widespread dissemination of information. We believe company disclosure should be more readily available to investors on a timely basis in a variety of locations to facilitate investor access to that information. We believe it is important for companies to make investors aware of the different sources that provide access to company information.

2. Description of Proposal

We encourage companies to make their Commission filings as broadly available to the public as possible. In particular, we encourage every reporting company to make its filings available to investors free of charge on its Internet website, if it has one, as soon as reasonably practicable after, and in any event on the same day as, such material is electronically filed with or furnished to the Commission. We applaud the efforts already being made by many reporting companies to provide access to their Commission filings through their websites. We would like more companies to make similar efforts. We also would like to encourage companies to disseminate their Exchange Act reports via their websites to promote consistent and relative uniform access to these reports in the place where investors may most likely look for them. Website access to Exchange Act reports helps to promote consistent, direct, timely, and more widespread access of information to investors and the financial markets. It also furthers the proper functioning of the integrated disclosure and short-form registration systems. However, we do not want to impose undue burdens and expenses on companies that may not have the resources to provide such access.

Accordingly, we propose to require companies that would be subject to our proposed accelerated filing deadlines (that is, companies with at least a $75 million public float, that have been subject to the Exchange Act reporting requirements for at least 12 calendar months, and that have filed at least one annual report) to disclose in their annual reports on Form 10–K the following: [73]

- That the public may read and copy the company's filings at our Public Reference Room, and can access information electronically filed on our website; [74]
- The company's website address, if it has one; [75]
- Whether the company makes available free of charge on its website, if it has one, its annual report on Form 10–K, quarterly reports on Form 10–Q, current reports on Form 8–K, and all amendments to those reports as soon as reasonably practicable after, and in any event on the same day as, such material is electronically filed with or furnished to the Commission;
- If the company does not make its filings available in this manner, the reasons why it does not do so (including, where applicable, that it does not have an Internet website);
- If the company does not make its filings available in this manner, one or more locations where the public can access these filings electronically immediately upon filing, if any, and whether there is a fee for such access; and
- Whether the company voluntarily will provide electronic or paper copies of its filings free of charge upon request.

We understand that companies currently provide website access to their Exchange Act reports in a variety of ways, including by establishing a hyperlink to its Exchange Act reports via a third-party service in lieu of maintaining the reports itself.[76] In this case, we encourage companies to hyperlink directly to the company's reports (or to a list of its reports) instead of just to the home page of the third-party service. Currently, hyperlinking to our EDGAR system would not allow a company to state that it provides website access to its reports as soon as reasonably practicable after, and in any event on the same day, as those reports are filed. This is because filings on the Commission's EDGAR website currently are posted after a 24-hour delay. Similarly, if a company did not provide website access to its reports in the manner proposed, reference to our EDGAR website would not currently qualify as one of the locations where those filings are available immediately in electronic form. We anticipate eliminating this 24-hour delay for filings posted to our website, thus providing real-time posting of disseminated filings.

Whether a company provides access to its Exchange Act reports either directly or through a third-party service, we recognize that some companies display the reports in electronic formats (for example, PDF) other than the official electronic format used to transmit the filing to our EDGAR system. In fact, we encourage companies to do so if alternative formats enhance readability and accessibility of the reports, so long as all of the information in the reports remains retrievable. However, the use of a particular medium to access the reports should not be so burdensome that the intended recipients cannot effectively access the information provided.[77]

We also encourage companies at a minimum to provide website access to their previous reports for at least a twelve month period. Of course, we encourage companies to provide access to their previous reports on an appropriately archived portion of their website over an even longer timeframe. We also encourage companies to provide website access to all of their filings with the Commission, including their filings under the proxy rules and their Securities Act filings.

Questions Regarding Our Website Access Proposal

- Would our proposal aid in encouraging companies to make information available in a variety of locations and hence make corporate information more widely accessible and disseminated? Would investors find this information useful? Would the proposed disclosure requirement provide sufficient notice to investors of the available sources of corporate information?
- The proposed new disclosure requirement only would apply to companies subject to the accelerated filing deadlines. Is excluding small issuers appropriate? Is the need for timely information about these issuers greater than the additional burden or expense these issuers would incur due

[73] See proposed revisions to Item 101(e) of Regulation S–K.

[74] This disclosure element is currently required of electronic filers in Securities Act registration statements by Item 101(e) of Regulation S–K. In this regard, our proposed amendments also would require this disclosure element for accelerated filers that file annual reports on Form 10–K.

[75] The inclusion of the company's website address would not, by itself, include or incorporate by reference the information on the site into the company's Commission filing (unless the company otherwise acts to incorporate the information by reference). In this instance, we would not consider the presence of the Internet address to make the company's website part of the company's filing if the company takes reasonable steps to ensure that the address is inactive (for example, by removing ''a>href'' tagging) and includes a statement to denote that the address is an inactive textual reference only. See, for example, the 2000 Release, note 70 above, at n.41 and the accompanying text.

[76] In the 2000 Release, we provided interpretive guidance on the possible effects of hyperlinking to a third party website. See the 2000 Release, note 70 above, at n.48 and the accompanying text.

[77] See, for example, the 1995 Release, note 70 above, at n. 24 and the accompanying text.

to the proposed new requirement? Should all reporting companies be subject to the proposed new requirement?

• The proposal only would apply to companies that file on Form 10–K. Should we also include foreign private issuers that file on Form 20–F? Would expanding this requirement be overly burdensome?

• What are the expected additional costs of posting Exchange Act reports on company websites, either directly or by hyperlinking to a third-party service? Please specify the types of costs that would be incurred and quantify them, if possible.

• Would the proposed new disclosure be overly burdensome? Should additional disclosure be required? Is some of the proposed disclosure not necessary or appropriate?

• Is additional guidance necessary in how to comply with the proposal? If so, in what areas would guidance be helpful?

• Should the disclosure appear in other company filings, such as quarterly reports? We encourage companies also to put this disclosure in their annual report to shareholders.

• Our proposal would require disclosure of a company's Internet address. Is this requirement helpful to investors? What are the ramifications of requiring disclosure of a company's website address? Are there reasons why a company would not want to provide disclosure of its website address?

• We have not proposed a conforming change to require disclosure of a company's website address in Securities Act registration statements. Currently, companies are only encouraged to provide their website address in these documents. We request comment on whether we should make this conforming change. Would there be any negative impacts from this change?

• Should a company be required to disclose whether it provides access to all of its Exchange Act filings (and not just its periodic and current reports)? Should access to exhibits or supplemental schedules be excluded? Should Securities Act filings be included? Should information under the proxy rules be included, or at least the information required by Part III of Form 10–K incorporated by reference from a company's definitive proxy or information statement?

• We recognize that not all investors may have ready access to the Internet. Are there additional ways to facilitate access to Commission information for those without Internet access?

3. Impact of Website Proposal

The participants at the financial disclosure and auditor oversight roundtables noted that many companies already provide website access to their Exchange Act reports as a matter of good corporate practice.[78] Our Office of Economic Analysis examined a sample of 152 companies with at least a $75 million public float to determine how many of these companies have websites and how many already provide access to their Commission filings through their websites. According to this analysis, all of the companies sampled maintained an Internet website. Approximately 83% of those with websites provided some form of access to their Commission filings through their websites, either via a hyperlink with a third-party service providing real-time access to the filings (45%), by posting the filings directly on their websites (29%) or via a hyperlink to our EDGAR database (15%). Not all of the companies providing access directly on their websites provided access to all of their Exchange Act reports.

While we believe that this proposal would benefit investors of all companies, we seek to minimize any new costs or burdens that affected companies may incur. Therefore, we are only proposing this new requirement for companies subject to the accelerated filing deadlines. According to available data, most of these companies already provide some form of Internet access to corporate information. As with our proposal to accelerate filing deadlines, disclosure of real-time access to the filings of these companies may be particularly appropriate given their ability to rely on short-form registration.

4. Transition Period

As with the proposal to shorten the deadlines for quarterly and annual reports, we anticipate that a transition period would be necessary for this proposal, if adopted. This transition period would give affected companies sufficient time to modify their websites or make other arrangements as necessary to provide the new disclosure. Accordingly, we propose to make the new disclosure requirement effective three months after the date of adoption. We request comment on the appropriate length of this transition period.

[78] In addition, according to the NIRI survey, 89% of the respondents did not anticipate that they would encounter any significant problems if required to post Exchange Act reports on their websites at the same time they transmitted the filings to the Commission. See note 49 above.

C. General Request for Comment

We invite any interested person wishing to submit written comments on the proposed amendments, and any other matters that might have an impact on the proposed amendments, to do so. We specifically request comment from companies that would be subject to the accelerated filing deadlines and new website disclosure requirements, investors, and other users of Exchange Act information, as well as facilitators of capital formation, such as underwriters. We also specifically request comment on any conforming changes that should be made to rules and regulations under the Securities Act or Exchange Act for other Commission filings.

III. Paperwork Reduction Act

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[79] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[80] The titles for the collection of information are ''Form 10–K'' and ''Form 10–Q.'' 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.

Form 10–K (OMB Control No. 3235–0063) was adopted pursuant to Sections 13 and 15(d) of the Exchange Act and prescribes information that a registrant must disclose annually to the market about its business. Preparing and filing an annual report on Form 10–K is a collection of information.

Form 10–Q (OMB Control No. 3235–0070) was adopted pursuant to Sections 13 and 15(d) of the Exchange Act and prescribes information that a registrant must disclose quarterly to the market about its business. Preparing and filing a quarterly report on Form 10–Q is a collection of information.

We currently estimate that Form 10–K results in a total annual compliance burden of 4,035,120 hours and an annual cost of $3,631,608,000. The burden was calculated by multiplying the estimated number of respondents filing Form 10–K annually (9,384) by the estimated average number of hours each entity spends completing the form (1,720 hours). We estimate that 25% of the burden is prepared by the respondent ($9,384 \times 1,720 \times 0.25 = 4,035,120$). We estimate that 75% of the burden is prepared by outside advisors retained by the respondent at an average

[79] 44 U.S.C. 3501 *et seq.*

[80] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

cost of $300 per hour (9,384 × 1,720 × 0.75 × $300 = $3,631,608,000). This portion of the burden is reflected as a cost.

We currently estimate that Form 10–Q results in a total annual compliance burden of 909,364 hours and an annual cost of $818,427,600. The burden was calculated by multiplying the estimated number of reports on Form 10–Q filed annually (26,746) by the estimated average number of hours each entity spends completing the form (136 hours). We estimate that 25% of the burden is prepared by the respondent (26,746 × 136 × 0.25 = 909,364). We estimate that 75% of the burden is prepared by outside advisors retained by the respondent at an average cost of $300 per hour (26,746 × 136 × 0.75 × $300 = $818,427,600). This portion of the burden is reflected as a cost.

A. Summary of Proposed Amendments

The proposed amendments, if adopted, would accelerate the filing deadlines of quarterly reports on Form 10–Q and annual reports on Form 10–K by companies subject to our proposed public float and reporting history requirements. The proposed amendments, if adopted, also would require those companies to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether the company provides access to its Exchange Act reports free of charge on its Internet website, as soon as reasonably practicable, and in any event on the same day as, those reports are electronically filed with or furnished to the Commission. If a company does not provide website access in this manner, it must also disclose the reasons why it does not do so, and where else investors can access its Exchange Act reports. We also propose to require companies to disclose their website address if they have one. We believe that the proposed revisions would promote direct, uniform and more widespread dissemination of timely information to investors and the markets and further the purposes of short-form registration under the Securities Act.

B. Reporting and Cost Burden Estimates

We estimate that approximately 59% of Form 10–K and Form 10–Q respondents, or 5,494 respondents, would satisfy our proposed definition of accelerated filers, and thus would be subject to accelerated deadlines and the requirement to make the enhanced disclosure in their Form 10–K regarding website access to their Exchange Act reports. [81]

For our proposal regarding filing deadlines, the amount of information required to be included in Exchange Act reports would remain the same. Accordingly, for purposes of the Paperwork Reduction Act, our preliminary estimate is that the amount of time necessary to prepare the reports, and hence, the total amount of burden hours, would not change. However, there is the possibility that preparing these reports on a shorter timeframe may result in the respondent investing more resources in technology, relying to a greater extent on outside advisors, or that the average cost associated with the portion of the burden prepared by outside advisors may increase. Accelerating the filing deadline may, on the other hand, increase efficiencies in preparing these reports and decrease the burden over time. We request comment on whether, for purposes of the Paperwork Reduction Act, the burden will increase or decrease. If so, by what amount? Would the proposal have any other effect on the total compliance burden?

We estimate that the preparation of the required disclosure regarding information access in a respondent's Form 10–K would add 0.50 burden hours to each annual report on Form 10–K. Thus, we estimate this aspect of the proposal will add an additional 2,747 burden hours to the current Form 10–K (0.50 hours × 5,494 respondents). We estimate that 25% of the burden is prepared by the respondent (0.50 × 5,494 × 0.25 = 687). We estimate that 75% of the burden is prepared by outside advisors retained by the respondent at an average cost of $300 per hour (0.50 × 5,494 × 0.75 × $300 = $618,075). This portion of the burden is reflected as a cost.

As a result, we estimate the total annual compliance burden for Form 10–K after our proposed revisions to be 4,035,807 hours and an annual cost of $3,632,226,075, an increase of 687 hours and $618,075 in cost. Compliance with the disclosure requirement would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential. We do not believe that the imposition of this requirement would alter significantly the number of respondents that file on Form 10–K.

C. Request for Comment

We request comment in order to (a) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimates of the burden of the proposed collections of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7–08–02. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–08–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

[81] We arrived at this estimate by multiplying the approximate number of respondents that file on Form 10–K that do not only have a class of securities registered under Section 15(d) of the Exchange Act (and hence are less likely to have listed equity and therefore a public float) (7,384) by 74.4%, which represents the percentage of companies in Standard & Poors Research Insight Compustat Database with a market capitalization above $75 million out of the total number of companies in the Compustat Database with a market capitalization above $25 million (the upper limit for small business filers on Form 10–KSB). It is our understanding that the data in the Compustat Database is derived principally from larger companies, so our estimate may overstate the actual percentage of companies that would be affected by the proposals.

IV. Cost-Benefit Analysis

The proposed amendments are part of our initiative to modernize and improve the regulatory system for periodic disclosure under the Exchange Act. We are sensitive to the costs and benefits that result from our rules. In this section, we examine the benefits and costs of our proposed amendments. We request that commenters provide views and supporting information as to the benefits and costs associated with the proposals. We seek estimates of these costs and benefits, as well as any costs and benefits not already identified.

The proposed rule and form changes would enhance the timeliness and availability of disclosure in Exchange Act reports in two ways:

- Shortening the due dates of quarterly and annual reports (and transition reports) for domestic reporting companies that meet certain public float and reporting history requirements; and
- Requiring companies to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether companies provide access to their Exchange Act reports on their Internet websites.

A. Acceleration of Quarterly and Annual Report Due Dates

The due dates for quarterly and annual reports by domestic issuers have not changed in over 30 years, despite enormous advances in information technology and productivity. Many companies now routinely release quarterly and annual results well before they file their formal reports with us. However, the presentation of these results vary and may not contain all of the information found in a company's Exchange Act reports. Delayed filing of reports means investors often make decisions without the more extensive information in the company's Exchange Act reports.

Shortening the due dates for quarterly, annual and transition reports would provide many benefits. Most importantly, it would accelerate the delivery of information to investors and the capital markets, enabling them to make more informed investment and valuation decisions.[82] This helps the capital markets function more efficiently, which means more efficient valuation and pricing. Shortening the due dates would help shorten the information gaps between the end of a fiscal year or quarter, a company's announcement of earnings results and the filing of more extensive information in its periodic reports. The information in Exchange Act reports, due to its required nature and the liability to which it is subject, provides a verification function against other statements made by the company. Investors can judge previous informal statements by the company against the more extensive disclosure provided in the reports, including financial statements prepared in accordance with generally accepted accounting principles. Accelerating the availability of this information thus shortens the delay before this verification can occur. In addition, the information in these reports often is used in comparative and other quantitative financial analyses. Accordingly, earlier availability of this information may decrease the time before these analyses can occur.

Also, the accelerated filing of reports could serve to make them more relevant to investors, thereby increasing the use of such reports and investor scrutiny of them. Increased focus on and scrutiny of the reports may in turn cause an increase in their quality. Moreover, seasoned issuers incorporate information from their Exchange Act reports in their Securities Act registration statements. Hence, investors buying in these public offerings, particularly in on-going shelf offerings, would also benefit from more timely disclosure. All of these benefits are difficult to quantify.

The proposed amendments may increase the costs to the affected reporting companies, although companies may, and some already do, report within the proposed deadlines voluntarily. Specifically, the amendments may increase the costs in preparing quarterly and annual reports because although companies already must prepare their quarterly and annual reports, they may have to delay other projects or use additional resources, including in-house personnel, outside legal counsel and outside auditors to prepare the information in a shorter timeframe. These costs may vary by company given their individual circumstances, such as the complexity of their business or industry. Some companies also may need to make additional capital investments, such as in additional information systems, to prepare their reports in a shorter timeframe.

We anticipate that some, and perhaps most, of these costs may be short-term or one-time costs to adjust a company's reporting procedures to a shorter timeframe. Our proposed requirements that limit the application of shortened due dates only to companies with a minimum public float and reporting history also may help to minimize the impact on companies that may find it more difficult to bear these costs. In addition, it is our understanding that a company's audit (or review in the case of interim financial statements) is complete or substantially complete by the time it issues its earnings announcement, which often occurs today well before the proposed filing due dates. We request comment on the type, amount and duration of these costs.

The proposed amendments may have indirect effects as well. Preparing the information on a 33% shorter timeframe could create a risk that the quality or accuracy of the information would diminish. We do not propose to change the liability standards for these reports, nor do we propose to decrease the amount of information required in these reports. Investors and the capital markets may suffer if quality or accuracy diminished, causing the markets to function less efficiently and investment decisions to be impaired. Another possible effect is that more affected companies may be late in filing their periodic reports, or more companies may request additional time to file their reports under Exchange Act Rule 12b–25. Either result could delay the delivery of information to investors and the market. Moreover, if a company was late in filing its reports, it would lose eligibility for short-form registration for at least one year, and Securities Act Rule 144 and Form S–8 would be temporarily unavailable during the period of noncompliance. This could negatively affect shareholders reselling or attempting to resell securities or employees whose securities are subject to Form S–8.

Smaller companies are likely to be more sensitive to any increased costs in preparing their reports. These entities may not have the infrastructure and resources available or necessary to prepare their reports on a shorter timeframe. As a result, shorter timeframes could discourage companies near the accelerated filer threshold from becoming public companies or accessing the public securities markets. This may adversely impact their ability to raise capital, the ability of their investors to obtain adequate information and the liquidity of their securities. Our proposal limits the application of

[82] Some academic evidence shows that annual reports on Form 10–K filed through the EDGAR system provide incremental information to the market even after the firm has made an earnings announcement. See, for example, Daqing Qi, Woody Wu, and In-Mu Haw, 2000, ''The Incremental Information Content of SEC 10–K Reports Filed Under the EDGAR System,'' *Journal of Accounting, Auditing, and Finance* 15 (Winter) : 25–45.

shortened deadlines to issuers with a certain public float and reporting history, effectively excluding all issuers that may rely on our small business reporting system. We request comment regarding these matters, including empirical data if possible.

We considered several regulatory alternatives in formulating our proposals. In our 1998 release proposing Securities Act reform, we proposed requiring companies to report selected financial information on Form 8–K on the earlier of the date they issue a press release containing earnings information or either the date that is 30 days after the end of each of the first three quarters of their fiscal year or 60 days after the end of their fiscal year. However, this information would not contain the more extensive information found in the quarterly and annual periodic reports, and in many instances only would repeat the information in the earnings press release. Moreover, we have subsequently adopted Regulation FD to address some of the concerns over selective disclosure of information.[83] We also considered linking the filing of a company's annual and quarterly reports to its public earnings announcements, but we were concerned that this only would serve to delay earnings releases, which may not be helpful to investors.

We have been considering shortening filing deadlines for all reporting companies, although we do not propose to do so at this time. Although we believe investors in less large or unseasoned companies may want and benefit from more timely disclosures just as much as investors in larger, listed companies, we are concerned that this may impose undue burden and expense on these companies. Accordingly, we propose shortening the filing deadlines only for companies with a minimum public float or reporting history. Of course, smaller companies may file their reports earlier voluntarily. We have been considering several different conditions for shortening deadlines, but based on our research and past experience, we believe the public float test currently used in Form S–3 is consistent with our purposes. We request comment regarding the relative costs and benefits of pursuing alternative regulatory approaches.

B. Website Access to Information

Widespread access to timely company information promotes the efficient functioning of the capital markets. Also, ready access to Exchange Act information is critical to short-form registration of securities offerings by seasoned issuers. One rationale for short-form registration is that the information in a company's Exchange Act reports already has been adequately disseminated and absorbed by the market place.

Many aspects of our disclosure system were adopted well before the revolutions in information technology brought about by the Internet. In modernizing and improving our disclosure system, we should recognize the benefits of the Internet in promoting the more widespread dissemination of information. An efficient and cost effective method for companies to make information available about themselves is through their Internet website. In addition to other existing sources of company information, such as our website, a company's website is one obvious place for many investors to find information about a company. We encourage companies to provide investors with website access to their Exchange Act reports. We believe company disclosure should be more readily available to investors on a timely basis in a variety of locations to facilitate investor access to that information. We believe it is important for investors to know of additional sources where they can access company information.

Providing this disclosure and encouraging companies to post their Exchange Act reports on their websites would provide many benefits. The proposal protects investors by alerting them to sources where they can obtain direct and easy access to the information they should have to make informed investment and valuation decisions. It would help promote consistent, direct, timely and more widespread access of information to investors and the markets, and further the proper functioning of the integrated disclosure and short-form registration system. An efficiently functioning registration system facilitates capital formation. Not all reporting companies now make their Exchange Act filings available through their websites, and not all the ones that do make information available provide access in real-time. Our proposal would encourage uniform best practices to aid in an investor's search for timely information, thereby potentially reducing the costs to gather such information. For those companies that elect not to provide website access, our proposed disclosure requirement would provide investors with the information necessary to locate this information on an ongoing basis. These potential benefits are difficult to quantify. We request comment on our assessment of these benefits, including information on the ability to quantify these benefits.

The proposed amendments may also increase the costs to affected companies, although we seek to minimize those costs. Companies would be required to include minimal additional disclosure in their annual report on Form 10–K. For purposes of the Paperwork Reduction Act, we estimate this will result in a total additional burden of 687 hours and $618,075 in additional costs for all affected companies. Our proposal would only apply to companies that meet our proposed public float and reporting history requirements, which should help to minimize the impact on companies potentially less able to bear additional costs. Our proposal also would not require a company to provide website access. Of course, we encourage all reporting companies to make their reports widely available through their websites. We request comment on the number of issuers our proposal would impact and the amount of any additional costs they may incur.

We considered several regulatory alternatives in formulating our proposal. Many companies already voluntarily provide at least some access to their filings on their websites, but not all provide access to all of their filings or in real-time. Also, our proposed disclosure requirement for companies that do not provide website access provides investors with information on where else they can obtain access to these filings on an ongoing basis. We considered requiring website access to company reports as an additional eligibility requirement for short-form registration under the Securities Act. However, we were concerned that the potential loss of form eligibility from non-compliance with the requirement would be overly burdensome on companies. We request comment regarding the relative costs and benefits of pursuing alternative regulatory approaches.

V. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [84] we solicit data to determine whether the proposed amendments constitute ''major'' rules. Under SBREFA, a rule is considered

[83] See 17 CFR 243.100–103.

[84] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

''major'' where, if adopted, it results or is likely to result in:

- an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 23(a)(2) of the Exchange Act [85] 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 proposed amendments are intended to improve the timeliness and accessibility of Exchange Act reports to investors and the financial markets. We anticipate these proposals would enhance the proper functioning of the capital markets. This increases the competitiveness of companies participating in the U.S. capital markets. The proposals would affect certain companies and not others, so the impacts of the proposal may not be equally distributed. Also, if not all competitors in a given industry are subject to accelerated deadlines, information about some competitors may be disclosed ahead of other competitors (for example, the filing of material contracts).[86] This could potentially give some competitors an informational advantage. If the proposals to shorten filing deadlines increased the number of companies who filed their reports late, this could reduce the number of companies eligible for short-form and delayed shelf registration. For our website access proposal, companies that would be subject to accelerated deadlines may incur increased minimal costs from providing additional disclosure that would not be incurred by companies not subject to these deadlines.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act [87] and Section 3(f) of the Exchange Act [88] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The proposed amendments would enhance our reporting requirements in light of technological advances. The purpose of the amendments is to promote greater timeliness and accessibility of this information so that investors can more easily make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. As noted above, however, the proposals could have certain indirect negative effects, such as discouraging or precluding some companies near the threshold from using short-form registration, which could adversely impact their ability to raise capital. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act. [89] This IRFA involves proposed amendments to the rules and forms under the Securities Act and the Exchange Act to:

- Shorten the due dates of quarterly and annual reports (and transition reports) for domestic reporting companies that meet certain public float and reporting history requirements; and
- Requiring companies to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether companies provide access to their Exchange Act reports on their Internet websites.

A. Reasons for, and Objectives of, Proposed Amendments

The proposed amendments have two primary objectives. First, we propose to accelerate disclosure of information to investors and the capital markets by shortening the due dates of quarterly and annual periodic reports and transition reports for domestic reporting companies that meet certain minimum public float and reporting history requirements. These due dates have not changed in over 30 years, despite advances in information technology and productivity and increases in the pace of and need for communications in the capital markets. Accelerating the delivery of information to the capital markets would help enhance the efficient functioning of those markets. Many companies routinely release quarterly and annual financial results before they file their formal reports with us. However, the presentation in these results vary and may not contain all of the more extensive information found in the company's formal reports. Shortening the deadlines would shorten this information gap, thereby increasing the relevancy of those reports. Investors buying in public offerings of issuers that incorporate their Exchange Act reports in their Securities Act registration statements also would benefit from more timely disclosure.

Second, we wish to encourage more direct and widespread accessibility and dissemination of timely information to investors and the capital markets in a variety of locations. Accordingly, we propose to require companies subject to the accelerated filing deadlines to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether the company provides access to its Exchange Act reports free of charge on its Internet website, as soon as reasonably practicable, and in any event on the same day as, those reports are electronically filed with or furnished to the Commission. Our proposal would help promote consistent, direct, timely and more widespread access of information to investors and the markets and further the proper functioning of the integrated disclosure and short-form registration system. Not all public companies currently make their filings available on their websites, and not all provide access to all of their reports or in real-time. Our proposal would thus promote greater access for investors.

B. Legal Basis

We are proposing the amendments to the forms and rules under the authority set forth in Sections 3(b) and 19(a) of the

[85] 15 U.S.C. 78w(a)(2).

[86] The Commission does have rules in place that allow for the non-disclosure of certain limited information filed with the Commission. See, for example, Exchange Act Rule 24b–2 [17 CFR 240.24b–2].

[87] 17 U.S.C. 77b(b).

[88] 15 U.S.C. 78c(f).

[89] 5 U.S.C. 603.

Securities Act[90] and Sections 12, 13, 15(d) and 23(a) of the Exchange Act.

C. Small Entities Subject to the Proposed Amendments

The proposed amendments would affect certain small entities that are required to file quarterly and annual periodic reports and transition reports under the Exchange Act. For purposes of the Regulatory Flexibility Act, Exchange Act Rule 0–10(a)[91] defines the term ''small business'' to be an issuer, other than an investment company, that, on the last day of its most recent fiscal year, has total assets of $5 million or less. The Securities Act defines a ''small business'' issuer, other than investment companies, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less and is engaged in or proposes to engage in an offering of securities of $5 million or less.[92]

We estimate that there are approximately 2,500 companies subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act that have assets of $5 million or less. The proposal to shorten the deadlines for annual and quarterly periodic and transition reports and the proposal regarding website access to Exchange Act reports would apply to these small entities if they have a public float of $75 million or more, have been subject to the Exchange Act's reporting requirements for at least one year, and have filed at least one annual report. We have no way to determine exactly how many small entities meet these requirements, although it is unlikely that many of these entities would meet the public float requirement.

According to the Standard & Poors Research Insight Compustat Database, of the 711 reporting companies listed with assets of $5 million or less, 10, or 1.4%, had a market capitalization greater than $75 million.[93] Assuming that this sample is representative of all small entities, the public float requirement would have the effect of almost completely excluding all small entities. We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

D. Reporting, Recordkeeping, and Other Compliance Requirements

For reporting companies that meet our proposed public float and reporting history requirements, we are proposing to shorten the due dates of annual reports on Form 10–K from 90 days to 60 days after a reporting company's fiscal year end and the due dates of quarterly reports on Form 10–Q from 45 days to 30 days after the first three quarters of a company's fiscal year. We propose similar changes to transition reports these companies must file when they change their fiscal year. We do not propose to change the filing deadlines for other companies, including small business issuers eligible to rely on our small business reporting system, at this time.

While the amount of information required to be included in Exchange Act reports, and hence the amount of time necessary to prepare them, would remain the same, affected companies may be required to use additional resources, including in-house personnel, in preparing their reports on a shorter timeframe. Small entities that meet the public float and reporting history requirements may incur additional costs in seeking the help of outside experts, particularly outside legal counsel and auditors. We request comment on the ability of affected small entities to meet shortened filing deadlines. If they would incur additional costs, what are the particular types and amounts of costs that may be required, and would small entities be able to bear these costs? Would the proposal disproportionately impact small entities?

Companies that were late in filing their reports would lose eligibility for short-form registration for at least one year, and Securities Act Rule 144 and Form S–8 would be temporarily unavailable during the period of noncompliance.[94] On the margin, affected small entities that are unable, or cannot afford, to prepare their reports on a shorter timeframe may be discouraged from remaining public companies or accessing the public markets. This may adversely affect their ability to raise capital. We request comment on the likelihood of this possibility.

We also propose to require accelerated filers to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether the company provides access to its Exchange Act reports free of charge on its Internet website, as soon as reasonably practicable, and in any event on the same day as, those reports are electronically filed with or furnished to the Commission. If a company does not provide such access, it must also disclose why it does not do so and where else investors can access these filings electronically immediately upon filing. In formulating our proposal, we have sought to minimize its costs, particularly on small entities. The proposal would apply only to companies that met our proposed public float and reporting history requirements. Companies would not be required to establish an Internet website for purposes of this requirement if they did not otherwise have one. Also, a company could elect not to provide website access to their reports as long as they disclosed that they have elected not to do so, the reasons why they have elected not to do so (which could include cost) and where else the public can access the company's reports. We request comment on whether there are additional alternatives to further our goal that we have not mentioned.

We seek comment on these views. How difficult would it be for affected small entities to comply with the website proposal? Would our proposal disproportionately impact small entities?

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with our proposals, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Our proposals to shorten the filing deadlines would apply only to entities that meet minimum public float and reporting history requirements, which should serve to exclude almost all small

[90] 15 U.S.C. 77c(b) and 77s(a).

[91] 17 CFR 240.0–10(a).

[92] 17 CFR 230.157.

[93] It is our understanding that the data in the Compustat Database is derived principally from larger companies, so our estimate could understate the actual percentage of companies that would be affected by the proposals.

[94] One-time extensions of due dates are available under certain circumstances under Exchange Act Rule 12b–25.

entities. As a result, different timetables would apply for most small entities. We strive to strike a balance between timely delivery of information to investors and giving companies enough time to prepare their reports. We have been considering the alternative of only shortening the filing deadlines for companies whose securities are listed on the NYSE or AMEX or quoted on Nasdaq National Market System or Small Cap Market. However, we believe investors in companies that are not as large or listed but nevertheless meet the public float or reporting history requirements may want and benefit from more timely disclosures just as much as investors in larger, listed companies. Accordingly, we are not proposing to exempt small entities in their entirety from the coverage of these proposals, but we will consider comments on this point.

In addition, we are not aware of how to further clarify, consolidate or simplify these proposals for small entities. In this regard, we are proposing already to limit the shortened deadlines to entities that meet minimum public float and reporting history requirements. We do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context. Because specified information in Exchange Act reports must be reported in a timely manner to be useful, design standards are necessary to achieve the objectives of the proposal. We request comment, however, on these matters.

Our proposals regarding disclosure of website access to company reports are designed to enhance the accessibility and dissemination of information to investors. These proposals also would apply only to entities that met minimum public float and reporting history requirements, which should serve to exclude almost all small entities. We believe our proposals strike a balance between providing investor access to information and giving companies alternatives in providing this access. Different compliance or reporting requirements for affected small entities or exemptions for all affected small entities are not considered warranted at this time because it is just as important that information be adequately disseminated and easily available for affected small entities as it is for large entities, if not more so. The expected low costs of complying with the proposal, as well as the effect of the proposed public float requirement in lessening the impact on small entities, also contributed to our proposal not to exclude small entities in their entirety.

Companies could choose whether to provide website access and therefore the disclosure that would be necessary in their annual report on Form 10–K. This allows companies, including small entities, the flexibility to choose the alternative that bests suits their individual circumstances. We believe this freedom should apply to all entities, large and small. We are not aware of ways to further clarify, consolidate or simplify these proposals for small entities. We request comment, however, on these matters.

G. Request for Comments

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comment on the number of small entities that would be affected by the proposed amendments, the nature of the impact, how to quantify the number of small entities that would be affected, and how to quantify the impact of, the proposed amendments. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views if possible. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments.

VII. Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in Sections 3(b) and 19(a) of the Securities Act and Sections 12, 13, 15(d) and 23(a) of the Exchange Act.

Text of Proposed Amendments

List of Subjects in 17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

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

1. 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, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

* * * * *

2. Section 229.101 is amended by revising paragraph (e) to read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(e) *Available information.* Disclose the information in paragraphs (e)(1) and (e)(2) of this section in any registration statement you file under the Securities Act (15 U.S.C. 77a *et seq.*), and disclose the information in paragraphs (e)(2) and (e)(3) of this section if you are an accelerated filer (as defined in § 240.12b–2 of this chapter) filing an annual report on Form 10–K (§ 249.310 of this chapter).

(1) Whether you file reports with the Securities and Exchange Commission. If you are reporting company, identify the reports and other information you file with the SEC.

(2) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). You are encouraged to give your Internet address, if available, except that if you are an accelerated filer filing an annual report on Form 10–K, you must disclose your Internet address, if you have one.

(3)(i)Whether you make available free of charge on your Internet website, if you have one, your annual report on Form 10–K, quarterly reports on Form 10–Q (§ 249.308a of this chapter), current reports on Form 8–K (§ 249.308 of this chapter), and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) as soon as reasonably practicable after, and in any event on the same day as, you electronically file such material with, or furnish it to, the SEC;

(ii) If you do not make your filings available in this manner, the reasons why you do not do so (including, where applicable, that you do not have an Internet website);

(iii) If you do not make your filings available in this manner, one or more locations where the public can access

these filings electronically immediately upon filing, if any, and whether there is a fee for such access; and

(iv) Whether you voluntarily will provide electronic or paper copies of your filings free of charge upon request.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation 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, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.12b–2 is amended by adding the definition of ''Accelerated filer'' before the definition of ''Affiliate'' to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Accelerated filer. (1)The term ''accelerated filer'' means an issuer filing a report pursuant to Sections 12, 13 or 15(d) of the Act (15 U.S.C. 78*l*, 78m or 78o(d)) after it first meets the following conditions:

(i) The aggregate market value of the voting and non-voting common equity held by non-affiliates of the issuer is $75 million or more;

(ii) The issuer has been subject to the requirements of Section 13(a) or 15(d) of the Act for a period of at least twelve calendar months preceding the filing of the report; and

(iii) The issuer has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Act.

Note to paragraph (1): The aggregate market value of the issuer's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity, as of a date no more than 60 and no less than 30 days before the last day of the issuer's most recently completed fiscal year.

(2) Once an issuer becomes an accelerated filer, it will remain an accelerated filer unless the issuer becomes eligible to use Forms 10–KSB and 10–QSB (§ 249.310b and § 249.308b) for its annual and quarterly reports. In that case, the issuer will not become an accelerated filer again unless it subsequently:

(i) Becomes ineligible to use Forms 10–KSB and 10–QSB (§ 249.310b and § 249.308b) for its annual and quarterly reports; and

(ii) Meets the conditions in paragraph (1) of this definition.

* * * * *

5. Section 240.13a–10 is amended by:

a. Removing the phrase ''90 days'' and adding, in its place, the phrase ''the number of days specified in paragraph (j) of this section'' in the first sentence of paragraph (b) and the second sentence of paragraph (f);

b. Removing the phrase ''45 days'' and adding, in its place, the phrase ''the number of days specified in paragraph (j) of this section'' in the first sentence of paragraph (c), the second sentence of paragraph (e)(2), and the third sentence of paragraph (f); and

c. Adding paragraph (j) before the **Note** to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(j)(1)For transition reports to be filed on the form appropriate for annual reports of the issuer, the number of days shall be 60 days for accelerated filers (as defined in § 240.12b–2) filing on Form 10–K (§ 249.310 of this chapter) and 90 days for all other issuers; and

(2) For transition reports to be filed on Form 10–Q or Form 10–QSB (§ 249.308a or § 249.308b of this chapter), the number of days shall be 30 days for accelerated filers filing on Form 10–Q and 45 days for all other issuers.

* * * * *

6. Section 240.15d–10 is amended by:

a. Removing the phrase ''90 days'' and adding, in its place, the phrase ''the number of days specified in paragraph (j) of this section'' in the first sentence of paragraph (b) and the second sentence of paragraph (f);

b. Removing the phrase ''45 days'' and adding, in its place, the phrase ''the number of days specified in paragraph (j) of this section'' in the first sentence of paragraph (c), the second sentence of paragraph (e)(2), and the third sentence of paragraph (f); and

c. Adding paragraph (j) before the **Note** to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(j)(1) For transition reports to be filed on the form appropriate for annual reports of the issuer, the number of days shall be 60 days for accelerated filers (as defined in § 240.12b–2) filing on Form 10–K (§ 249.310 of this chapter) and 90 days for all other issuers; and

(2) For transition reports to be filed on Form 10–Q or Form 10–QSB (§ 249.308a or § 249.308b of this chapter), the number of days shall be 30 days for accelerated filers filing on Form 10–Q and 45 days for all other issuers.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

* * * * *

8. Section 249.308a is revised to read as follows:

§ 249.308a Form 10–Q, for quarterly and transition reports under sections 13 or 15(d) of the Securities Exchange Act of 1934.

(a) Form 10–Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), required to be filed pursuant to § 240.13a–13 or § 240.15d–13 of this chapter. A quarterly report on this form pursuant to § 240.13a–13 or § 240.15d–13 of this chapter shall be filed within the following period after the end of the first three fiscal quarters of each fiscal year, but no quarterly report need be filed for the fourth quarter of any fiscal year:

(1) 30 days after the end of the fiscal quarter for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(2) 45 days after the end of the fiscal quarter for all other registrants.

(b) Form 10–Q also shall be used for transition and quarterly reports filed pursuant to § 240.13a–10 or § 240.15d–10 of this chapter. Such transition or quarterly reports shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 of this chapter applicable when the registrant changes its fiscal year end.

9. Form 10–Q (referenced in § 249.308a) is amended by revising General Instruction A.1. to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10–Q

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10–Q.

1. Form 10–Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), filed pursuant to Rule 13a–13 (§ 240.13a–13 of this chapter) or Rule 15d–13 (§ 240.15d–13 of this chapter). A quarterly report on this form pursuant to Rule 13a–13 or Rule 15d–13 shall be filed within the following period after the end of

each of the first three fiscal quarters of each fiscal year, but no report need be filed for the fourth quarter of any fiscal year:

a. 30 days after the end of the fiscal quarter for accelerated filers (as defined in § 240.12b–2 of this chapter); or

b. 45 days after the end of the fiscal quarter for all other issuers.

* * * * *

10. Section 249.310 is revised to read as follows:

§ 249.310 Form 10–K, for annual and transition reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934.

(a) This form shall be used for annual reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) for which no other form is prescribed. This form also shall be used for transition reports filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

(b) Annual reports on this form shall be filed within the following period:

(1) 60 days after the end of the fiscal year covered by the report for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(2) 90 days after the end of the fiscal year covered by the report for all other registrants.

(c) Transition reports on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 of this chapter applicable when the registrant changes its fiscal year end.

(d) Notwithstanding paragraphs (b) and (c) of this section, all schedules required by Article 12 of Regulation S–X (§§ 210.12–01—210.12–29 of this chapter) may, at the option of the registrant, be filed as an amendment to the report not later than the following periods:

(1) In the case of an annual report, not later than:

(i) 90 days after the end of the fiscal year covered by the report for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(ii) 120 days after the end of the fiscal year covered by the report for all other registrants; and

(2) In the case of a transition report, not later than 30 days after the due date of the report.

11. Form 10–K (referenced in § 249.310) is amended by revising General Instruction A. and the paragraph before the ''Note'' on the cover page to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10–K

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form 10–K.

(1) This Form shall be used for annual reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) (the ''Act'') for which no other form is prescribed. This Form also shall be used for transition reports filed pursuant to Section 13 or 15(d) of the Act.

(2) Annual reports on this Form shall be filed within the following period:

(a) 60 days after the end of the fiscal year covered by the report for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(b) 90 days after the end of the fiscal year covered by the report for all other registrants.

(3) Transition reports on this Form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 of this chapter applicable when the registrant changes its fiscal year end.

(4) Notwithstanding paragraphs (2) and (3) of this General Instruction A., all schedules required by Article 12 of Regulation S–X (§§ 210.12–01—210.12–29 of this chapter) may, at the option of the registrant, be filed as an amendment to the report not later than the following periods:

(a) In the case of an annual report, not later than:

(i) 90 days after the end of the fiscal year covered by the report for accelerated filers (as defined in § 240.12b–2 of this chapter); or

(ii) 120 days after the end of the fiscal year covered by the report for all other registrants; and

(b) In the case of a transition report, not later than 30 days after the due date of the report.

* * * * *

FORM 10–K

* * * * *

If the registrant is an accelerated filer, state the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of a specified date no more than 60 and no less than 30 days before the end of the registrant's most recently completed fiscal year. If the registrant is not an accelerated filer (as defined in Rule 12b–2 of the Act), state the aggregate market value of the voting and non-voting common equity held by non-affiliates used to determine whether the registrant was an accelerated filer and specify the date used for purposes of this computation.

Note. * * *

* * * * *

By the Commission.

Dated: April 12, 2002.

Margaret H. McFarland,

Deputy Secretary.

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