

FDC date	State	City	Airport	FDC No.	SIAP
10/19/00 ...	NC	Greenville	Pitt-Greenville	FDC 0/2889	VOR/DME RNAV Rwy 25, Amdt 3B...
10/20/00 ...	GA	Savannah	Savannah Intl	FDC 0/3003	ILS Rwy 36 Amdt 6B...
10/20/00 ...	MD	Baltimore	Baltimore-Washington Intl	FDC 0/2980	RNAV Y Rwy 28 Orig...
10/20/00 ...	NM	Albuquerque	Albuquerque Intl Sunport	FDC 0/2978	Radar-1. Amdt 20A...
10/20/00 ...	OR	Portland	Portland-Hillsboro	FDC 0/3011	ILS Rwy 12, Amdt 5A...
10/20/00 ...	TX	Borger	Hutchinson County	FDC 0/2994	VOR/DME or GPS Rwy 35, Amdt 3...
10/20/00 ...	VA	Richmond/Ashland	Hanover County Muni	FDC 0/2998	VOR Rwy 16 Orig-D...
10/23/00 ...	IA	Boone	Boone Muni	FDC 0/3090	NDB Rwy 32, Amdt 6...
10/23/00 ...	IA	Boone	Boone Muni	FDC 0/3092	NDB Rwy 14, Amdt 9A...
10/24/00 ...	MO	St Louis	Lambert-St Louis Intl	FDC 0/3151	ILS Rwy 30L, Amdt 11...
10/24/00 ...	ND	Grand Forks	Grand Forks Intl	FDC 0/3170	LOC BC Rwy 17R, Amdt 12C...
10/24/00 ...	SD	Rapid City	Rapid City Regional	FDC 0/3157	VOR or TACAN or GPS Rwy 32, Amdt 24A...
10/25/00 ...	AR	Fort Smith	Fort Smith Regional	FDC 0/3220	ILS Rwy 25, Amdt 20...
10/25/00 ...	AR	Fort Smith	Fort Smith Regional	FDC 0/3221	NDB Rwy 25, Amdt 24A...
10/25/00 ...	AR	Rogers	Rogers Muni-Carter Field	FDC 0/3229	VOR Rwy 1, Amdt 13...
10/25/00 ...	MN	Fairmont	Fairmont Muni	FDC 0/3218	IRS Rwy 31, Orig-A...
10/25/00 ...	MN	Rochester	Rochester Intl	FDC 0/3228	VOR or GPS Rwy 2, Amdt 16...
10/25/00 ...	MO	Kansas City	Kansas City Intl	FDC 0/3205	ILS Rwy 19R (Cat. I, II, III), Amdt 9B...
10/25/00 ...	ND	Grand Forks	Grand Forks Intl	FDC 0/3225	ILS Rwy 35L, Amdt 11A...
10/25/00 ...	NJ	Trenton	Trenton Mercer	FDC 0/3233	GPS Rwy 16 Orig-A...
10/25/00 ...	TX	College Station	Easterwood Field	FDC 0/3222	ILS Rwy 3A, Amdt 11A...
10/25/00 ...	TX	College Station	Easterwood Field	FDC 0/3223	NDB Rwy 34, Amdt 11C...
10/25/00 ...	WI	Eau Claire	Chippewa Valley Regional	FDC 0/3230	LOC/DME BC Rwy 4, Amdt 8...

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act

CFR Correction

In Title 16 of the Code of Federal Regulations, parts 0 to 999, revised as of January 1, 2000, on page 288, in the appendices to Part 305, the second "Appendix A1 to Part 305" is removed.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-7912, 34-43487, IC-24715; File No. S7-26-99]

RIN 3235-AH66

Delivery of Proxy Statements and Information Statements to Households

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the proxy rules under the Securities Exchange Act of 1934. These amendments permit companies and intermediaries to satisfy the delivery requirements for proxy statements and information statements with respect to two or more security holders sharing the same address by delivering a single

proxy statement or information statement to those security holders. This method of delivery, often referred to as "householding," will reduce the amount of duplicative information that security holders receive and lower printing and mailing costs for companies. These amendments also modify the rules for householding annual reports. Finally, we are amending Rule 154 under the Securities Act of 1933 to permit householding of proxy statements combined with prospectuses.

EFFECTIVE DATE: The rule amendments will be effective December 4, 2000. This is the date on which companies can rely on these rules to begin householding. Companies may begin to solicit consents to householding prior to the effective date of these rules.

FOR FURTHER INFORMATION CONTACT: Heather Maples, Attorney-Adviser, Division of Corporation Finance, at (202) 942-2900.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 154¹ under the Securities Act of 1933² and Rules 14a-2,³ 14a-3,⁴ 14a-7,⁵ 14b-1,⁶ 14b-2,⁷ 14c-3,⁸ and Schedules 14A and 14C⁹ under the Securities Exchange Act of 1934.¹⁰

I. Background

The federal securities laws generally require public companies to deliver a "proxy statement" when they solicit proxy voting authority from their security holders.¹¹ Even when they are not soliciting proxy voting authority, these companies must deliver an "information statement" to security holders when they are taking certain corporate actions. Lastly, in connection with the delivery of a proxy statement or information statement, when directors are being elected, these companies must send security holders an annual report.¹² As a result of ownership of securities by individuals through different types of accounts, such as brokerage accounts, individual retirement accounts and custodial accounts for minors, duplicate copies of these documents often are delivered to a single household.¹³

We are adopting amendments to the proxy rules to reduce the amount of this duplicative information that security holders receive.¹⁴ Today's amendments expand upon rules we adopted in November 1999 that permit companies to household prospectuses, annual reports and investment company semi-annual reports if the document is delivered to a shared address and security holders properly consent to householding.¹⁵

At the time we originally proposed those rules, we did not propose rules to permit householding of proxy statements and information statements. However, in response to those original proposals, several commenters suggested that we consider further action to permit the householding of proxy materials. A number of commenters noted that householding proxy materials would facilitate the common practice of mailing the annual report together with the proxy statement or information statement. A few commenters further suggested that we extend the proposed householding provisions expressly to permit broker-dealers and banks ("intermediaries") to household delivery of annual reports, proxy statements and information statements to beneficial owners of equity securities.

In response to these comments, when we adopted the rules to permit the householding of prospectuses, annual reports and investment company semi-annual reports, we also proposed to permit delivery of one proxy statement or information statement to security holders who share an address. We proposed these rules to reduce the number of duplicate documents delivered to security holders and conform the provisions regarding the householding of proxy statements and information statements to the amendments that permit the householding of prospectuses, annual reports and investment company semi-annual reports.

We received 16 comment letters in response to the proposals.¹⁶ Commenters generally supported householding of proxy statements and information statements, but many suggested changes that would affect the scope and conditions of the rules. We are adopting the proposed amendments, with a number of modifications that address issues raised by commenters. The adopted rules differ from the proposed rules in that they will

- Expand the permitted forms of addressing householded annual reports and proxy statements or information statements to include any form to which

each security holder included in a householded group consents in writing;

- Shorten the notification period for householding by implied consent to 60, rather than 90, days;

- Eliminate the proposed requirement that the notice of intent to household by implied consent be delivered separately from any other communications; and
- Permit intermediaries to household only if the company does not object.

Rule 154, as originally adopted, prohibited the householding of combination proxy statement-prospectuses delivered for business combinations, exchange offers or reclassifications of securities registered on Forms N-14,¹⁷ S-4¹⁸ and F-4.¹⁹ To coordinate Rule 154 with today's amendments to the proxy rules, we are adopting, as proposed, an amendment to Rule 154 that removes the prohibition on householding of those combination proxy statement-prospectuses.

I. Discussion

A. Purpose of the Amendments

Companies, intermediaries and security holders have indicated to us in the past that the distribution of multiple copies of the same document to security holders who share the same address often inundates security holders with unwanted mail and causes the company to incur higher than necessary printing and mailing costs. Today's amendments will alleviate these concerns by allowing companies and intermediaries to household proxy statements and information statements to both record and beneficial security holders in the same manner as they may household prospectuses and annual reports to security holders.

B. Delivery of Proxy Statements and Information Statements to a Household

1. Today's Amendments

Exchange Act Rule 14a-3 requires a company to furnish a proxy statement to security holders before soliciting proxy voting authority for a matter submitted to a security holder vote.²⁰ Companies are able to deliver proxy statements directly only to their security holders of record; they generally must deliver proxy statements to their beneficial security holders indirectly through intermediaries.²¹

¹⁷ 17 CFR 239.23.

¹⁸ 17 CFR 239.25.

¹⁹ 17 CFR 239.34.

²⁰ See Rule 14a-3(a) [17 CFR 240.14a-3(a)].

²¹ Under Rules 14b-1 and 14b-2, an intermediary is required to forward proxy soliciting materials and forms of proxy or requests for voting instructions to beneficial owners on whose behalf the

¹ 17 CFR 230.154.

² 15 U.S.C. 77a *et seq.*

³ 17 CFR 240.14a-2.

⁴ 17 CFR 240.14a-3.

⁵ 17 CFR 240.14a-7.

⁶ 17 CFR 240.14b-1.

⁷ 17 CFR 240.14b-2.

⁸ 17 CFR 240.14c-3.

⁹ 17 CFR 240.14a-101 and 240.14c-101.

¹⁰ 15 U.S.C. 78a *et seq.*

¹¹ The proxy rules apply only to companies with equity securities registered under Section 12 of the Exchange Act and to investment companies registered under the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*].

¹² Rule 14a-3(b) [17 CFR 240.14a-3(b)].

¹³ See Delivery of Disclosure Documents to Households, Securities Act Release No. 7475 (Nov. 13, 1997) [62 FR 61933 (Nov. 20, 1997)], at nn.1-6 and accompanying text.

¹⁴ We proposed these amendments in Delivery of Proxy Statements and Information Statements to Households, Securities Act Release No. 7767 (Nov. 4, 1999) [64 FR 62548 (Nov. 16, 1999)] ("Proposing Release").

¹⁵ See Delivery of Disclosure Documents to Households, Securities Act Release No. 7766 (Nov. 4, 1999) [64 FR 62540 (Nov. 16, 1999)].

¹⁶ The commenters included one individual, one corporate issuer, four financial institutions (investment advisers, mutual fund complexes and broker-dealers), six trade associations, one state regulatory commission, one consultant and two providers of security holder communication services. Some commenters endorsed letters submitted by other commenters. These comment letters and a summary of comments prepared by our staff are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549, in File No. S7-26-99. Public comments submitted by electronic mail are on our website, www.sec.gov.

If the proxy solicitation relates to a meeting at which directors will be elected, an annual report to security holders must accompany or precede the proxy statement. That annual report to security holders must include specified financial information about the company.²²

In November 1999, we adopted amendments to Rule 14a-3 to permit companies to household the annual report to security holders. When the annual report must accompany or precede the proxy statement, companies generally mail the annual report with the proxy statement in the same envelope.²³ As a result, a company's inability to household its proxy statement limits its ability to reduce costs by householding the annual report.

Under today's amendments, a proxy statement is considered delivered to all security holders at a shared address,²⁴ for purposes of the federal securities laws, if²⁵

- The company or intermediary relying on the rules delivers the document to the shared address;
- The company or intermediary relying on the rules addresses the document in accordance with the rules;
- The security holders consent to delivery of a single document in accordance with the rules;
- If the document is a proxy statement, the company includes a separate proxy card for each security holder sharing an address; and
- The company includes an undertaking regarding prompt delivery

intermediary holds securities. In Regulation of Communications Among Shareholders, Exchange Act Release No. 31326 (Oct. 16, 1992) [57 FR 48276 (Oct. 22, 1992)], we indicated that companies and their security holders may mail proxy soliciting materials directly to non-objecting or consenting beneficial owners, provided that they also disseminate the materials through the record holders and provide adequate disclosure concerning the need for the record holders to execute the proxies.

²² See Rule 14a-3(b).

²³ Some companies have chosen to deliver proxy statements and annual reports in electronic rather than paper format. Section II.B.2.d. of this release discusses householding of electronic documents.

²⁴ A company may household annual reports, proxy statements or information statements to a single security holder holding the same securities in two or more accounts with the same address without having to comply with the householding provisions relating to annual reports, proxy statements or information statements. This is also true when a security holder is acting as custodian for securities (1) in an account created under a state Uniform Gifts to Minors Act or Uniform Transfers to Minors Act and the security holder also holds the same security in his or her own account, with the same address; or (2) in two or more accounts created under a state UGMA or UTMA. See Delivery of Disclosure Documents to Households, Securities Act Release No. 7766 (Nov. 4, 1999) [64 FR 62540 (Nov. 16, 1999)], at n. 6.

²⁵ Rule 14a-3(e)(1) [17 CFR 240.14a-3(e)(1)].

of separate copies of the document in the proxy statement.

We are amending Rule 14c-3 to permit companies to household information statements in the same manner as they may household proxy statements under Rule 14a-3.²⁶

2. Conditions to Today's Amendments

a. Consent.

Amended Rule 14a-3 requires a company to obtain consent from each security holder who will be included in a householded group.²⁷ A company could either obtain an affirmative written consent from a security holder or rely on an implied consent obtained in accordance with the rules we adopt today.²⁸

i. Affirmative written consent.

A company may household the proxy statement or information statement to related or unrelated security holders sharing an address if each of the security holders consents in writing²⁹ to the company's delivery of one proxy statement or information statement to the shared address. In order to satisfy the written consent requirement, a security holder would need to consent specifically to householding of proxy statements and information statements. In addition, in order for a written consent to be considered valid, a security holder must be informed of the following, prior to giving written consent:

- The duration of the consent,
- The procedures the security holder must follow to revoke consent, and
- The company's obligation to begin sending individual copies to a security holder within 30 days after the security holder revokes consent.

ii. Implied consent.

Today's amendments permit a company to deliver a single proxy statement or information statement to multiple security holders who share an address without obtaining affirmative written consent to householding from those security holders, if all of the following conditions are met.³⁰

- Each security holder at the shared address has the same last name as the other security holders (or the company

²⁶ Rule 14c-3(c) [17 CFR 240.14c-3(c)].

²⁷ Rule 14a-3(e)(1)(i)(C) [17 CFR 240.14a-3(e)(1)(i)(C)].

²⁸ Rule 14a-3(e)(1)(ii) [17 CFR 240.14a-3(e)(1)(ii)].

²⁹ Securities Act Rule 154, Exchange Act Rule 14a-3(e)(1) and Investment Company Act Rule 30d-1 do not prevent security holders from consenting or revoking consent electronically.

³⁰ Rule 14a-3(e)(1)(ii)(B) [17 CFR 240.14a-3(e)(1)(ii)(B)].

reasonably believes that they all are members of the same family).³¹

- At least 60 days before beginning delivery by householding, the company sends each record security holder at the shared address a separate written notice in plain English³² of its intention to household proxy statements and information statements.³³

- The notice or envelope in which the notice is mailed includes the following prominent statement, or similar clear and understandable statement, in boldface type: "Important Notice Regarding Delivery of Security Holder Documents." If the notice is mailed with other security holder communications, both the notice and the envelope containing the notice must include this prominent statement.³⁴

- The notice provides security holders who object to householding with a reply form or toll-free telephone number to object to householding.³⁵

- The notice states the duration of the consent and explains how a security holder can revoke consent to householding.³⁶

- The company does not receive notice that the security holders object to householding within the 60-day waiting period.³⁷

³¹ Rule 14a-3(e)(1)(ii)(B)(1) [17 CFR 240.14a-3(e)(1)(ii)(B)(1)]. Some commenters expressed concern about the ability to discern whether certain security holders residing at the same address are members of the same family (e.g., a husband and wife with different surnames). We believe that companies relying on the rule may, in many cases, be able to base their reasonable belief on information already provided by the security holder (e.g., in an account agreement).

³² See Note to Rule 14a-3(e)(1)(ii)(B)(2) [17 CFR 240.14a-3(e)(1)(ii)(B)(2)]. This Note refers to Securities Act Rule 421(d)(2) [17 CFR 230.421(d)(2)].

³³ An intermediary may household proxy statements or information statements to beneficial owners of the company's securities so long as the company does not object. In that event, the intermediary, rather than the company, must send the required written notice of its intention to household. See the Notes to Rules 14b-1(b)(2) [17 CFR 240.14b-1(b)(2)] and 14b-2(b)(3) [17 CFR 240.14b-2(b)(3)] and Section I.L.C. of this release.

³⁴ Rule 14a-3(e)(1)(ii)(B)(2)(vii) [17 CFR 240.14a-3(e)(1)(ii)(B)(2)(vii)].

³⁵ Rule 14a-3(e)(1)(ii)(B)(2)(iii) [17 CFR 240.14a-3(e)(1)(ii)(B)(2)(iii)]. In addition to providing a reply form or toll-free telephone number, the notice also may provide supplemental methods of opting out of householding, such as sending the reply form to a facsimile telephone number or responding by e-mail. Reply forms to be returned by mail must be pre-addressed and returnable by business reply mail or by another method in which the person relying on the rule pays the postage.

³⁶ Rule 14a-3(e)(1)(ii)(B)(2)(iv) and (v) [17 CFR 240.14a-3(e)(1)(ii)(B)(2)(iv) and (v)].

³⁷ Rule 14a-3(e)(1)(ii)(B)(3) [17 CFR 240.14a-3(e)(1)(ii)(B)(3)]. If the company receives notice that one or more security holders object to householding within the 60-day waiting period, but there are two or more security holders at the shared address who do not object, the company would be able to household to the non-objecting security holders.

• The company delivers householded proxy statements or information statements only to a post office box or residential street address.³⁸

(A) Same last name or members of same family.

Almost all of the commenters supported householding by implied consent, noting that an implied consent procedure will reduce the costs of obtaining householding consents.

Although several commenters urged us to relax this requirement for householding by implied consent,³⁹ two commenters supported the requirement that a company could only use implied consent for members of the same household who share the same last name or who the company reasonably believes are members of the same family. This, they thought, is a useful safeguard to ensure that all security holders at a shared address have access to the proxy statement or information statement.⁴⁰

As discussed in the proposing release for Rule 154, we designed the prospectus householding rule so that householding by implied consent would be limited to circumstances suggesting that the security holders not receiving a separate disclosure document would wish to consent and that they would have access to the disclosure document if delivered to another security holder. This was because householding without affirmative consent creates the risk that a security holder who wishes to receive a document will not receive one. Due to these concerns, and in response to the comments supporting the restrictions as

necessary to safeguard security holders, we are retaining the requirement as proposed and will limit householding by implied consent to circumstances where the security holders share the same last name or the company reasonably believes they are members of the same family.⁴¹ This approach also will help ensure consistency with the procedures required by Rule 154 regarding householding of prospectuses.

(B) 60-day waiting period.

We originally proposed that companies be required to send the notice of their intention to household at least 90 days before beginning delivery of householded documents. The majority of commenters felt that a 90-day waiting period would be too long. Today's amendments require that companies send the notice at least 60 days in advance of beginning householding. In addition to maintaining consistency with Rule 154, we believe the 60-day waiting period adequately protects security holders by allowing them a reasonable time to respond. We caution companies, however, to carefully examine their schedules for proxy printing and delivery so that they can allow additional time necessary to avoid interfering with the proxy statement mailing schedule.⁴²

(C) Required legend on the notice.

The proposed proxy statement and information statement householding rules would have required companies to mail the notice of intent to household separately from other security holder communications. We have relaxed that requirement to allow those notices to be mailed with other communications, such as, for example, account statements, dividend checks or security holder reports.⁴³ However, because of this change, we also have revised the

⁴¹ As explained in the release adopting Rule 154, we believe companies may use information they have previously obtained from security holders or other sources to form a reasonable belief that security holders are members of the same family. However, a company may not form a reasonable belief that security holders are members of the same family based solely on the fact that the security holders reside at the same address.

⁴² A company should not mail householded materials until the 60-day waiting period for implied consent has run and the company has processed any objections received during the 60-day waiting period. Also, companies should consider how their obligations under Rule 14a-13 [17 CFR 240.14a-13] affect their schedule. Rule 14a-13 generally requires companies to request the number of sets of materials needed by intermediaries for delivery to beneficial owners 20 business days before the company's record date. The number of security holders receiving householded documents will affect the number of sets of materials needed by intermediaries.

⁴³ Although the notice may be mailed in the same package with other communications, it must be a separate written document.

legending requirement from the proposal.⁴⁴ We proposed to require companies to include a prominent statement reading "Important Notice Regarding Delivery of Security Holder Documents," or a similar clear and understandable statement, in bold-face type on either the notice itself or the envelope in which the notice was mailed. Because the notice may now be included in the same package as other materials, we believe it is appropriate to revise this section to make it consistent with Rule 154, which requires the legend to appear on both the notice and the envelope containing it if the notice is mailed with other security holder communications.

(D) Implied consent only for post office boxes or residential street addresses.

There was limited objection to the proposed requirement that companies deliver documents householded by implied consent only to a residential street address or post office box. Under Rule 14a-3(e)(1), a company can assume that any street address is residential unless the company has information indicating that the address is a business.⁴⁵ We have adopted the requirement as originally proposed. We intend that the residential street address requirement will prevent companies, absent affirmative written consent, from householding a proxy statement or information statement to security holders with the same last name who share a business address but are not related.

b. Duration of consent.

Companies could solicit from security holders a consent to householding of perpetual duration that is valid until revoked, or a consent of limited duration such as one year or a specified number of years. If a company relies on implied consent to householding, the required 60-day notice to security holders must state clearly whether the company intends to household indefinitely or for a specified period.⁴⁶ Security holders may revoke their consent to householding at any time by instructing the company orally or in writing. A company could not continue to household the proxy statement or information statement more than 30

⁴⁴ Rule 14a-3(e)(1)(ii)(B)(2)(vii).

⁴⁵ See Note to Rule 14a-3(e)(1)(ii)(B)(4).

⁴⁶ Rule 14a-3(e)(1)(ii)(B)(2)(iv). Even if a company solicits "perpetual" consent to householding from all of its security holders, it will have to solicit consent from new security holders as they open their accounts or at a later time.

³⁸ Rule 14a-3(e)(1)(ii)(B)(4) [17 CFR 240.14a-3(e)(1)(ii)(B)(4)]. One of the conditions to householding proxy statements and information statements by implied consent requires delivery of the householded document to a post office box or residential street address. As a result, the rules do not permit householding by implied consent to an electronic address. Section II.B.2.d. of this release discusses householding of electronic documents.

³⁹ See comment letters of ADP Investor Communication Services, the American Society of Corporate Secretaries, the Corporate Actions Division of the Securities Industry Association, Fidelity Management & Research Company, the Investment Company Institute, Prudential Securities, and the Association of Publicly Traded Companies. These commenters noted that individuals often share a household without sharing the same last name or otherwise belonging to the same family. In addition, these commenters were concerned that the process of gathering information necessary to form a reasonable belief that security holders are members of the same family may offend some individuals' sense of privacy and, in any event, may not yield a clear indication that two clients sharing the same residence are related. These commenters generally believed that security holders sharing a residence would be more than adequately protected by the rules' notice and consent revocation procedures.

⁴⁰ See comment letters of the Alabama Securities Commission and the North American Securities Administrators Association.

days after receiving a revocation instruction from a security holder.⁴⁷

c. Addressing.

We are adopting, as proposed, provisions that allow companies the flexibility to address the householded copy of the proxy statement or information statement either to security holders as a group (e.g., "ABC Corporation Security Holders," "Jane Doe and Household" or "Household of Jane Doe") or to each of the security holders sharing the address (e.g., "Jane Doe and Mary Doe").⁴⁸ We understand from the comments received that it may be less costly in some instances for companies to address the householded proxy materials using an existing account title (e.g., to one individual in the household), rather than using a group address. In response to these comments, the final rule allows an additional alternative; security holders may consent to an alternative, specific means of addressing, if the company so requests.⁴⁹ The alternative addressing provision will allow companies to vary only the recipient line of the address; companies may not use this provision to deliver a householded document to an address that is not shared by each security holder included in the householded group. A company may rely on the alternative addressing provision only if each security holder to be included in the householded group consents, in writing, to the specific form of address the company will use. A company will not be required to comply with security holder requests to address the materials in any format not suggested by the company. However, if a security holder indicates that his or her consent is contingent on a particular form of addressing, that consent will not be valid unless the company addresses the materials in the format requested by the security holder.

Companies may request that those security holders to be included in a householded group consent to addressing the materials to only one of the security holders. However, before using that form of address, a company must receive a written consent to using the company-suggested form of address from each security holder to be included in the householded group.

The term "address," for purposes of today's amendments, means a street address, post office box number, an electronic mail address, facsimile

⁴⁷ Rule 14a-3(e)(1)(iii) [17 CFR 240.14a-3(e)(1)(iii)].

⁴⁸ Rule 14a-3(e)(1)(i)(B) [17 CFR 240.14a-3(e)(1)(i)(B)].

⁴⁹ Note, however, that Rule 154, as amended, does not allow companies to use an alternative addressing format.

telephone number or similar destination to which paper or electronic documents are delivered. If a company has reason to believe that an address is a street address of a multi-unit building, the address also would have to include the unit number.

d. Electronic householding.

Some companies have chosen to deliver proxy statements and annual reports in electronic rather than paper format. Because the potential benefits of householding electronic documents appeared to be minimal,⁵⁰ we did not propose and the amendments we adopt today will not allow companies or intermediaries to rely on implied consent to household electronically delivered proxy statements and information statements.

However, a company may household documents delivered electronically, provided it obtains a valid consent to electronic delivery of documents and a valid affirmative written consent to householding. We have previously issued interpretive guidance on the procedures a company should follow to obtain valid consent to electronic delivery of documents.⁵¹ In this regard, we note that the recently enacted Electronic Signatures Act⁵² also addresses consenting to receive information electronically. We are still considering that legislation and will address how it may impact our previous interpretive guidance at a later time.

Under Rule 14a-3(e)(1)(i)(B), a company must address a householded document to the security holders as a group, to each of the security holders individually, or to the security holders in a form to which each of the security holders has consented in writing. Securities Act Rule 154 and Investment Company Act Rule 30d-1 require a company to address a householded document to the security holders as a group or to each of the security holders individually. A company householding electronically delivered documents may

⁵⁰ In response to our proposals regarding householding of prospectuses and annual reports to security holders, none of the comments stated that householding electronically delivered documents would save money or that security holders had been requesting this form of delivery. See *Delivery of Proxy Statements and Information Statements to Households*, Securities Act Release No. 7767 (Nov. 4, 1999) [64 FR 62548 (Nov. 16, 1999)] at n. 43.

⁵¹ Those procedures were set forth in *Use of Electronic Media*, Securities Act Release No. 7856 (April 28, 2000) [65 FR 25843 (May 4, 2000)]; *Use of Electronic Media for Delivery Purposes*, Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53548 (Oct. 13, 1995)]; and *Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information*, Securities Act Release No. 7288 (May 9, 1996) [61 FR 24644 (May 15, 1996)].

⁵² *Electronic Signatures in Global and National Commerce Act*, Pub. L. No. 106-229 (2000).

satisfy those provisions by including either of the two specified group address formats in the subject line of the electronically delivered document. A company householding electronically under Rule 14a-3(e)(1) may, in the alternative, obtain the affirmative written consent of each security holder at the shared electronic address to deliver the documents to that electronic address (e.g., jdoe@isp.com).⁵³ Companies and intermediaries should also note that because householded documents must be delivered to a shared address, they may not deliver householded documents electronically to security holders who share the same street address but who do not share the same electronic address.

3. Disclosure Regarding Householding and Undertaking to Provide Additional Copies of Household Documents

When a company households an annual report, proxy statement or information statement, it must undertake, in its proxy statements and information statements, to deliver a separate copy of the document to any security holder who did not receive an individual copy of the householded document and who requests an extra copy.⁵⁴ The company must provide instructions as to how a security holder may notify the company that the security holder wishes to receive an additional copy of an annual report, proxy statement or information statement. Although the proposed rules did not include a requirement that companies include specific instructions to inform security holders how to request additional copies, we believe this information is necessary for the required undertaking to adequately protect security holders. Providing a single point of contact for security holders requesting additional copies also will allow companies to respond more efficiently to these requests. The company would have to deliver the separate copy promptly after receiving a security holder request.

This undertaking requirement ensures that a security holder who has consented to householding, but then

⁵³ We would not consider two security holders who have separate electronic addresses under one internet service provider account to share an electronic address. For example, a security holder using the electronic address johndoe@isp.com does not share an electronic address with a security holder using the electronic address janedoe@isp.com, even though the two addresses may be provided under the same internet service account.

⁵⁴ The security holder must be allowed to request an extra copy orally or in writing. See Rule 14a-3(e)(1)(i)(E) [17 CFR 240.14a-3(e)(1)(i)(E)], Item 23 of Schedule 14A [17 CFR 240.14a-101]; and Item 5 of Schedule 14C [17 CFR 240.14c-101].

experiences a change in circumstances that makes sharing a householded document impractical, still has access to the annual report, proxy statement or information statement. Although the 1999 amendment to Rule 14a-3 did not require this undertaking, today's amendments impose the requirement not only for proxy statements and information statements but also for annual reports.

We have revised Rule 14a-3(e)(1)(i)(E) from the proposal to clarify that a company must include the undertaking in each proxy statement or information statement if the company or any intermediary delivers annual reports, proxy statements or information statements in householded form to either record or beneficial security holders. In addition, at the company's option, it may restate the undertaking in any document delivered in householded form. We have amended Schedules 14A⁵⁵ and 14C⁵⁶ to require the undertaking.

We also have amended Schedules 14A⁵⁷ and 14C⁵⁸ to require a company that chooses to household the annual report, proxy statement or information statement to include the following information in the proxy statement or information statement:

- A statement that only one annual report, proxy statement or information statement is being delivered to multiple security holders sharing an address unless the company has received contrary instructions from one or more of the security holders;

- The phone number and mailing address of a point of contact the security holder can use to notify the company that the security holder wishes to receive a separate annual report, proxy statement or information statement in the future; and

- Instructions as to how security holders can request householding if they are receiving multiple copies of the annual report, proxy statement or information statement.

We received no comments objecting to the proposed content of the required disclosure.⁵⁹ Companies should note that they will be responsible for providing this disclosure if any

intermediary households proxy statements or information statements to beneficial owners.⁶⁰

4. Inclusion of Multiple Proxy Cards with Single Proxy Statement

Rule 14a-4(f)⁶¹ forbids any person conducting a proxy solicitation to deliver a form of proxy, often referred to as a "proxy card," to a security holder unless it is accompanied or preceded by a proxy statement. Therefore, security holders generally receive the proxy card in the same envelope that contains the company's proxy statement and annual report. Proxy cards are addressed based on the security holder account titles appearing on a company's list of registered holders.

Under today's amendments, a company would need to continue sending a separate proxy card with the householded proxy statement for each separate security holder account with respect to which proxy authority is being solicited. For example, if a husband and wife each hold the same company's securities in their own individual accounts, a company could deliver a single proxy statement and annual report to them but would have to provide two separate proxy cards and designate the proxy cards individually based on the two account titles.

We understand that inserting multiple proxy cards with a single set of proxy materials may not be the best solution for all companies or intermediaries. Several commenters indicated, for instance, that they may include one proxy card with the householded materials and mail the remaining proxy cards in separate envelopes. In order to comply with Rule 14a-4(f), which requires a definitive proxy statement to accompany or precede any proxy card delivered, companies may presume that they meet the requirements of that rule if any proxy cards to be delivered separately are mailed after the householded definitive proxy statement is mailed and the proxy cards and proxy statement are mailed using the same method of delivery (*e.g.*, first class mail).

5. State Law Requirements Concerning Notice of Meeting

Many state corporate codes contain provisions requiring companies to provide security holders of record with written notices of meetings and adjourned meetings. The provisions generally state that written notice of a meeting at which security holders are required or permitted to take action must be sent to each security holder of

record a specified number of days before the meeting date. For example, the Delaware General Corporate Code states that written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each security holder entitled to vote at the meeting.⁶² This notice typically is transmitted with the proxy statement.

Because it is unclear whether a householded proxy statement that includes the meeting notice would satisfy state law requirements that companies deliver a notice to each record security holder, we solicited comment on whether and how companies could meet state law notice requirements under the proposed rules. Although two commenters indicated that state law meeting notice requirements present neither legal nor practical obstacles to householding,⁶³ one commenter expressed the view that the Commission should work with the states to make clear that the householding rules apply to security holder meeting notices delivered pursuant to state law.⁶⁴ We wish to clarify that the requirements for security holder meeting notices are governed by state law, rather than by the Commission's proxy rules, and these rule amendments are not intended to preempt state law. Therefore, any company choosing to household the proxy statement will have to consider the possible need to deliver separately the notice of meeting to each security holder in the household to satisfy state law requirements.

6. Business Combination Proxy Statement-Prospectuses

As adopted in November 1999, Securities Act Rule 154 prohibited the householding of prospectuses delivered in connection with business combination transactions, exchange offers and reclassifications of securities.⁶⁵ In the release proposing Rule 154,⁶⁶ we requested comment on whether companies should be permitted to household those types of prospectuses, given that they generally

⁶² 8 Del. C. Section 222 (1999).

⁶³ See comment letters of Lucent and the American Society of Corporate Secretaries.

⁶⁴ See comment letter of Charles Schwab.

⁶⁵ This prohibition was in paragraph (e) of Rule 154 [17 CFR 230.154(e)]. That paragraph prohibited reliance on Rule 154 in connection with the delivery of a prospectus filed as part of a registration statement on Forms N-14, S-4 or F-4 or delivered in connection with a business combination transaction, exchange offer or reclassification of securities. As part of today's amendments, we are rescinding paragraph (e) of Rule 154.

⁶⁶ Delivery of Disclosure Documents to Households, Securities Act Release No. 7475 (Nov. 13, 1997) [62 FR 61933 (Nov. 20, 1997)].

⁵⁵ See Item 23 of Schedule 14A.

⁵⁶ See Item 5 of Schedule 14C.

⁵⁷ See Item 23 of Schedule 14A.

⁵⁸ See Item 5 of Schedule 14C.

⁵⁹ Some commenters said that we should be more flexible as to the location of the required disclosures. The information will be more useful to security holders if it is included in a document that is actually delivered to security holders, rather than in a document that is filed with the Commission but not delivered. We, therefore, think the more appropriate location for the disclosure is in proxy statements and information statements.

⁶⁰ See Section II.C. of this release for a further discussion.

⁶¹ 17 CFR 240.14a-4(f).

are accompanied by proxy cards or tender offer material that must be executed by each security holder. Several commenters on the proposed proxy householding rules supported broadening Rule 154 to permit householding of those types of prospectuses.⁶⁷

Upon consideration of these comments, and because the proposals described in this release would permit the householding of proxy statements, we are amending Rule 154 to expand its coverage to include combined proxy statement-prospectuses delivered in connection with business combinations, exchange offers or reclassifications of securities. As with householding of proxy statements that are not combined with prospectuses, companies householding the combined proxy statement-prospectuses would continue to have to include separate proxy cards that need to be executed by each individual security holder in the household. Similarly, amended Rule 154 does not affect any other applicable requirement of state or federal law concerning the delivery of any document that requires individual execution, such as a security holder response to a tender offer.

C. Householding of Proxy Statements and Information Statements by Intermediaries to Beneficial Owners

Rule 14b-1 sets forth obligations of registered brokers and dealers to forward company communications to beneficial owners. Rule 14b-2 sets forth similar obligations of banks, associations and other entities that exercise fiduciary powers. We proposed changes to Rules 14b-1 and 14b-2 that would have permitted these intermediaries, on their own initiative or at the request of a company, to household the annual report, proxy statement or information statement to beneficial owners sharing an address if the householding requirements were met.

We received significant comment on this proposal. Commenters agreed that it was appropriate to allow intermediaries to household materials in the same manner as companies.⁶⁸ However,

⁶⁷ See comment letters of the American Society of Corporate Secretaries, the Corporate Actions Division of the Securities Industry Association, Charles Schwab, the Investment Company Institute, and Fidelity Management & Research Company.

⁶⁸ See comment letters of ADP Investor Communication Services, the American Society of Corporate Secretaries, the Corporate Actions Division of the Securities Industry Association, Fidelity Management & Research Company, the Securities Industry Association, the Investment Company Institute, Charles Schwab, Prudential

comment was divided regarding whether intermediaries should be permitted to household without the consent of companies,⁶⁹ whether companies may require intermediaries to household⁷⁰ and whether intermediaries or companies should bear the expense related to the gathering of consents to householding.⁷¹

In response to the commentary on this proposal, we believe that it is appropriate that companies and intermediaries mutually agree to the householding of materials. Therefore, we are adding notes to Rules 14b-1(b)(2) and 14b-2(b)(3) to permit, but not require, an intermediary to household annual reports, proxy statements and information statements⁷² either

- At the request of the company, or
- On its own initiative, but only if the company does not object.

An intermediary need not obtain an affirmative consent from a company

Securities, and Lucent. We received no comments objecting to householding by intermediaries.

⁶⁹ Fidelity Management & Research Company and the Investment Company Institute supported a requirement that intermediaries obtain company consent before householding, noting concerns that companies be able to control their expenses and that companies ultimately retain the responsibility to provide the disclosure documents. The American Society of Corporate Secretaries, ADP Investor Communication Services, Charles Schwab, Prudential Securities and the Securities Industry Association thought that intermediaries should not have to obtain company consent, with some noting that the requirement to obtain each company's consent might prevent the most cost-effective implementation of householding.

⁷⁰ Lucent, the Investment Company Institute, Fidelity Management & Research Company and the American Society of Corporate Secretaries indicated that companies should be able to direct intermediaries to household. These commenters cited maximum realization of savings and control of company or fund expenses as support for their views. In contrast, ADP Investor Communication Services and the Corporate Actions Division of the Securities Industry Association opposed giving companies the ability to direct intermediaries to household. These commenters noted that intermediaries would potentially face differing instructions from various companies. They also indicated that intermediaries would have to make substantial changes to their systems in order to accommodate householding at the company level.

⁷¹ ADP Investor Communication Services and the American Society of Corporate Secretaries commented that companies should reimburse intermediaries for the cost of soliciting consents to householding if the company requests the solicitation. Charles Schwab and Prudential felt that companies should be required to reimburse intermediaries for implementing householding irrespective of whether the company consents to householding. The Corporate Actions Division of the Securities Industry Association argued that companies should reimburse intermediaries for expenses incurred in obtaining consents to householding, but did not clearly indicate whether intermediaries should be required to obtain company consent before householding.

⁷² Pursuant to today's amendment to Rule 154, intermediaries also would be able to household combined proxy statement-prospectuses to beneficial owners.

before beginning householding. We think it is sufficient if the intermediary provides advance notice to a company that it intends to begin householding, with specific instructions as to how the company may object to householding. The intermediary should direct this notice to the company's senior officer in charge of security holder communications or other person the company specifies for this purpose. If a company objects, the intermediary may not household that company's documents. An intermediary must cease householding a company's documents if the company objects at any time.

Under amended Rules 14b-1(b)(2) and 14b-2(b)(3), an intermediary, rather than the company, would follow the procedures described in Rule 14a-3(e)(1), with the exception of Rule 14a-3(e)(1)(i)(E), and obtain consent to householding from beneficial owners.⁷³ Intermediaries using voting instruction forms to elicit information from beneficial owners as to how their shares should be voted would have to include a separate form for each beneficial owner who will receive a householded proxy statement.⁷⁴ This is similar to the requirement that companies must include a separate proxy card for each individual record holder who receives a householded proxy statement.

Several commenters discussed whether the company or the intermediary should be responsible for satisfying the undertaking to provide an additional copy of the householded materials upon request from a security holder. We believe that the company should bear this responsibility. However, as today's amendments permit intermediaries to household only when there is mutual agreement between the company and the intermediary, those two parties may agree otherwise.

Under today's amendments, intermediaries or their agents may offer

⁷³ A signature on a new bank or broker-dealer account agreement will not satisfy the written consent requirement if the agreement merely refers to or incorporates by reference another document, such as the proxy statement or information statement, and does not describe the householding procedures.

⁷⁴ Intermediaries generally use a form of voting instruction rather than a form of proxy to facilitate automated processing of the beneficial owners' voting instructions regarding non-routine matters. The voting instruction form contains the same information as the proxy card with respect to the items presented for security holder vote. Once the intermediary tabulates the results from the voting instruction forms, it executes a proxy card in its own name and returns it to the company or the company's designated agent. An intermediary would have to include a separate voting instruction form for each beneficial owner who will receive a householded proxy statement in order to fulfill the requirement of Rule 14a-3(e)(1)(i)(D), as required by the Notes to Rules 14b-1(b)(2) and 14b-2(b)(3).

security holders the option of consenting to householding of proxy statements and information statements relating only to a particular company or to householding of all proxy statements or information statements the intermediary is required to forward to the security holder. Today's amendments, however, do not require that intermediaries give security holders the option of limiting their consent to a particular company.

Today's amendments state that intermediaries must exclude annual reports, proxy statements and information statements that will be eliminated pursuant to householding procedures in responding to company requests concerning the number of the intermediaries' customers that are beneficial owners of the companies' securities.⁷⁵

Because intermediaries will be permitted to household unless a company objects, we believe it is appropriate that they bear the burden of the consent solicitation expenses, unless the company affirmatively agrees to pay these expenses. In particular, we note that intermediaries may receive consents from security holders to household materials from numerous companies. That being the case, it is not clear how intermediaries would apportion the costs of the consent solicitations between companies. Furthermore, we note that intermediaries are under no obligation to household and that including the implied consent notice with other security holder communications will allow the intermediaries to conduct the consent solicitation at a much lower cost than under our proposed rules. We also note that companies will retain the obligation to provide additional copies of householded documents and include appropriate disclosure regarding householding in their proxy statements and information statements.

The proxy rules do not require intermediaries to forward information promptly to beneficial security holders if a company does not provide assurance of reasonable reimbursement of the intermediaries' reasonable expenses, both direct and indirect, incurred in performing those obligations.⁷⁶ The proxy rules do not include a schedule of "reasonable fees," but the NYSE rules and rules of other self-regulatory organizations do include

a fee schedule.⁷⁷ Nearly all large broker and many bank intermediaries currently outsource the proxy material distribution function for beneficial security holders to ADP Investor Communications Services. ADP, as agent for intermediaries, is able to charge companies for the proxy distribution services in accordance with applicable fee schedules. Today's amendments will not affect the fees that ADP or other security holder communication agents may charge companies on behalf of intermediaries. Fees for forwarding proxy statements, information statements and annual reports must be charged in accordance with any applicable self-regulatory organization fee schedules.

D. Householding of Proxy Statements by Security Holders

Today's amendments permit security holders who deliver a proxy statement to other security holders to household the proxy statement to record and beneficial holders if the company or intermediary previously has obtained security holder consent to householding in accordance with the procedures in Rule 14a-3(e)(1).⁷⁸ Rule 14a-7 sets forth the obligations of companies either to provide a security holder list to a requesting security holder or to mail the security holder's proxy materials. The rule provides that the company has the option to provide the list or mail the security holder's materials, except when the company is soliciting proxies in connection with going private or roll-up transactions. In those cases, the security holder has the option to request the list or have the company mail its materials. In addition to requiring that the company supply householding information that it previously has obtained when providing the security holder list, today's amendments require companies to share the benefit of written or implied consents to householding that they have obtained when mailing materials on a security holder's behalf.⁷⁹

Intermediaries generally deliver proxy materials on behalf of soliciting parties other than the company under the conditions set forth in Exchange Act Rules 14b-1 and 14b-2.⁸⁰ We requested

but received no supportive comment as to whether Rules 14b-1 and 14b-2 should be revised explicitly to require this practice. We, therefore, have not included such a requirement at this time. Nonetheless, under today's amendments, an intermediary would still be permitted to household proxy materials delivered on behalf of soliciting parties other than the company.

III. Delivery of Proxy Materials to Registered Investment Advisers and Investment Managers

Many of the self-regulatory organizations have adopted rules that allow registered investment advisers designated by beneficial owners and investment managers designated by named fiduciaries of ERISA plans to vote proxies and receive proxy material on behalf of the beneficial owners or ERISA plans.⁸¹ Our proposed householding rules did not include any specific provisions regarding householding of proxy materials to these designated advisers and plan managers. We did, however, request comment on whether

- Companies and intermediaries should be able to household proxy materials to these investment advisers and investment managers without having to rely on the proposed householding rules since it is unlikely that a single person or entity making the proxy voting decision on behalf of others would need more than one copy of the proxy materials; and

- Companies and intermediaries should be allowed to household proxy material without written or implied consent to trustees, executors, administrators, guardians or persons who act in similar capacities and who have been vested with proxy voting authority.

Two commenters supported householding by implied consent to

⁸¹ See Order Approving Proposed Rule Changes by the NASD, Exchange Act Release No. 35681 (May 5, 1995) [60 FR 25749 (May 12, 1995)]; Order Approving Proposed Rule Changes by the New York Stock Exchange, Exchange Act Release No. 34596 (Aug. 25, 1994) [59 FR 45050 (Aug. 31, 1994)]; and Order Approving Proposed Rule Changes by the American Stock Exchange, Exchange Act Release No. 34294 (July 1, 1994) [59 FR 35152 (July 8, 1994)]. The SRO rules require the beneficial owner to notify the member organization in writing of the name of the investment adviser and specify that the investment adviser has been designated to receive the proxy and related materials and vote the proxy. In an Information Memo to its member organizations, the NYSE stated that the member organizations may wish to provide consolidated proxies and related materials to investment advisers designated by beneficial owners to exercise voting discretion.

⁷⁷ See, e.g., 2 NYSE Guide (CCH), Rules of Board, Rules 451 and 465; NASD Manual (CCH), Conduct Rules, Rules 2260 and IM-2260.

⁷⁸ See the Note to Rule 14a-3(e)(1) [17 CFR 240.14a-3(e)(1)].

⁷⁹ See Rules 14a-7(a)(2)(i) and (ii) [17 CFR 240.14a-7(a)(2)(i) and (ii)].

⁸⁰ For example, the soliciting party agrees to reimburse the intermediary for reasonable expenses incurred by the intermediary to forward the proxy statement to beneficial owners even though these rules are silent with respect to any such obligations.

⁷⁵ Rules 14b-1(c)(3) and 14b-2(c)(4) [17 CFR 240.14b-1(c)(3) and 240.14b-2(c)(4)].

⁷⁶ See Rules 14b-1(c)(2) and 14b-2(c)(2) [17 CFR 240.14b-1(c)(2) and 240.14b-2(c)(2)].

investment advisers⁸² and three commenters indicated we should permit householding to investment advisers without requiring compliance with the householding rules.⁸³ The commenters did not indicate what procedures companies and intermediaries have followed in implementing householding to investment advisers. While we believe that companies and intermediaries could easily comply with the householding rules by obtaining either written or implied consent from investment advisers, we are also persuaded that, in most cases, companies and intermediaries should be allowed to continue to household to investment advisers as they have in the past. Thus, we will allow such householding to continue outside the scope of the rules we adopt today, provided that the investment adviser is eligible to vote the proxies under the self-regulatory organization rules and does not object to householding.

In contrast, we are not persuaded that companies and intermediaries should be able to household proxy materials to trustees, executors, administrators, guardians or persons who act in similar capacities and who have been vested with proxy voting authority without first obtaining their written or implied consent. Given the lack of a supplementary regulatory regime and the uncertainty as to whether all of these individuals would share the same level of sophistication as investment advisers covered by the self-regulatory organization rules, we conclude that these categories of individuals should be covered by the provisions of the rules we adopt today.

IV. Paperwork Reduction Act

Certain provisions of the rule amendments adopted today contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.⁸⁴ We published notice soliciting comments on the collection of information requirements relating to Schedules 14A and 14C in the proposing release,⁸⁵ and submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for those collections of

information are: "Regulation 14A (Commission Rules 14a-1 through 14b-2 and Schedule 14A)"; and "Regulation 14C (Commission Rules 14c-1 through 14c-7 and Schedule 14C)." OMB approved the regulations' information collection requirements and subsequently approved a revision to the regulations' collection of information requirements in connection with our proposal to revise the Commission's auditor independence requirements.⁸⁶ All burden estimates in this section have been revised from the proposing release to include the increased paperwork burdens approved in the subsequent revision.⁸⁷

We did not receive any comments that address specifically the estimated paperwork burdens associated with the proposed collections of information. The comments we received primarily addressed the costs and benefits of the proposals in general terms, rather than issues relating to the collection of information. Those concerns are addressed more fully in the cost-benefit and other sections of this release.

The rule amendments permit delivery of a single annual report, prospectus, proxy statement or information statement to a household to satisfy the delivery requirements with respect to two or more security holders in the household. A person relying on one of the rules must obtain either written or implied consent to householding from each security holder who will no longer receive a separate copy of the document. The rules require persons who wish to household with implied consent to send a notice to each security holder stating that the security holders in the household will receive one annual report, prospectus, proxy statement or information statement in the future unless the security holders provide contrary instructions. The purpose of this requirement is to give reasonable assurance that all security holders have access to the annual report, prospectus, proxy statement or information statement.

The rule amendments also require companies choosing to household proxy statements or information statements to

provide disclosure in their proxy statements or information statements informing security holders how they can revoke their consent to householding, request householding or request extra copies of any householded document. The purpose of this requirement is to allow security holders whose circumstances have changed to revise their delivery arrangements in order to ensure that they continue to have convenient access to the disclosure documents.

Preparing and sending the initial notice that a company intends to household by implied consent and preparing the proxy statement and information statement householding disclosure are collections of information. Companies and intermediaries are the primary respondents. The information collection requirements imposed by the rule amendments are required for those companies, banks or broker-dealers that decide to rely on the rules to obtain the benefit of sending fewer documents to each household. Those companies, banks, and broker-dealers that decide not to obtain that benefit are not required to rely on or comply with the rule amendments. Responses to the collection of information will not be kept confidential.

We estimate that 9,892 respondents are subject to Regulation 14A and 253 respondents are subject to Regulation 14C. We estimate that 10% of these respondents will deliver the notice that they intend to household by implied consent and prepare the Schedule 14A or Schedule 14C householding disclosure. Taking into account today's amendments, we estimate that the total respondent reporting burdens for Schedules 14A and 14C, in terms of hours, are 179,966 hours and 4632 hours, respectively, or approximately 18 hours per respondent under each schedule. These estimates include 5,192 and 131 hours for respondents subject to Regulations 14A and 14C, respectively, to prepare and deliver the notice of intent to household and to prepare and include the required proxy statement and information statement disclosure regarding householding.⁸⁸ In addition to

⁸⁶ See Revision of the Commission's Auditor Independence Requirements, Securities Act Release No. 7870 (June 30, 2000) [65 FR 43148 (July 12, 2000)].

⁸⁷ The OMB control numbers for the rules are as follows: Rules 14a-2, 14a-3, 14a-7, 14b-1, 14b-2 and Schedule 14A, contained in Regulation 14A (3235-0059, expires September 30, 2003); Rules 14c-3 and Schedule 14C, contained in Regulation 14C (3235-0057, expires September 30, 2003). 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.

⁸⁸ We estimate that registrants will prepare 25% of the required notices and householding disclosures and that outside counsel will prepare the remaining 75%. Accordingly, 25% of the total burden resulting from our householding rules is reflected as burden hours and the remaining 75% is reflected in the total cost of complying with the information collection requirements. We used an estimated hourly rate of \$175 to determine the estimated cost to the respondent of the disclosure prepared by outside counsel. The Commission arrived at that hourly rate estimate after consulting with several private law firms.

⁸² See comment letters of Prudential Securities and the Corporate Actions Division of the Securities Industry Association.

⁸³ See comment letters of the Investment Company Institute, Fidelity Management & Research Company and Charles Schwab.

⁸⁴ 44 U.S.C. 3501 *et seq.*

⁸⁵ Delivery of Proxy and Information Statements to Households, Securities Act Release No. 7767 (Nov. 4, 1999) [64 FR 62548 (Nov. 16, 1999)].

the internal hours they will expend, we expect that issuers will hire outside counsel to help prepare the required disclosures. The internal hours issuers will require to comply with Regulations 14A and 14C are reflected as Hours in the table below; the additional costs they will incur to comply with those regulations are reflected as Cost. The total dollar costs of complying with Regulations 14A and 14C, revised to include the additional outside counsel costs expected from today's amendments, are estimated to be \$92,461,000 and \$2,395,000, respectively. The increases in the burden hours and total costs required to comply with the regulations are primarily attributable to increases in the number of respondents subject to Regulations 14A and 14C.

	Hours	Cost
Schedule 14A	179,966	\$92,461,000
Schedule 14C	4,632	2,395,000

When the Commission proposed rules in 1997 to permit householding of annual reports by implied consent,⁸⁹ it submitted a request for approval of revisions to Regulations 14A and 14C to OMB. OMB approved the revisions and they were adopted with some modification.⁹⁰ In that submission, the Commission estimated that the time required to prepare and arrange delivery of the notice (required to be mailed by companies choosing to solicit implied consent to householding of the annual report from security holders) would be approximately 20 hours per respondent per year. Because the annual report and proxy statement or information statement generally are mailed to security holders together in the same package, it is likely that companies and intermediaries will be able to mail only one notice to obtain consent to householding of both the annual report and the proxy statement or information statement. In connection with our 1997 proposals, we increased our estimated paperwork burden associated with Regulations 14A and 14C to include 20 hours per respondent for the time they would spend preparing and mailing the notice of implied consent to household annual reports. Because we anticipate that respondents will mail only one notice of implied consent to household both annual reports and proxy statements or information statements,

⁸⁹ Delivery of Disclosure Documents to Households, Securities Act Release No. 7475 (Nov. 13, 1997) [62 FR 61933 (Nov. 20, 1997)].

⁹⁰ See Delivery of Disclosure Documents to Households, Securities Act Release No. 7766 (Nov. 4, 1999) [64 FR 62540 (Nov. 16, 1999)].

we do not believe the requirement that companies and intermediaries send out this notice if they intend to rely on implied consent to household proxy statements and information statements will result in a greater paperwork burden than previously approved.

We have, however, adjusted our estimate of the paperwork burden associated with Regulations 14A and 14C to reflect the increased number of respondents required to file proxy statements and information statements in compliance with those regulations. In 1997, when we proposed to allow companies to household annual reports by implied consent, there were only 9321 respondents subject to Regulation 14A and 150 respondents subject to Regulation 14C. There are now 9892 and 253 respondents subject to regulations 14A and 14C, respectively. We have, therefore, increased the burden hours companies will require to prepare and deliver the notices that they intend to household by implied consent under Regulations 14A and 14C by 285 hours and 50 hours, respectively. We calculated the increase in burden hours under Regulation 14A by multiplying the difference in the number of estimated householders by 20, our estimate of the total amount of time it will take a company and its outside counsel to prepare and deliver the notices. We then increased our estimate of the company's total burden hours by 25% of that figure, as we estimate companies will bear approximately 25% of the increased reporting burden. The remaining 75% is attributed to the total cost of complying with the regulation, as we assume that outside counsel will be responsible for approximately 75% of the reporting burden increase. Thus, we have also increased the total costs associated with Regulations 14A and 14C by approximately \$150,000 and \$26,000, respectively.

We believe that it would be inappropriate to increase our previously approved burden estimate for complying with Rule 154,⁹¹ as companies and intermediaries can inform security holders of their intent to household combination proxy statement-prospectuses delivered for business combinations, exchange offers, or reclassifications of securities registered on Forms N-14, S-4 and F-

⁹¹ In connection with our adoption of Rule 154, we submitted the collection of information requirements contained in Rule 154, as originally adopted, to the Office of Management and Budget. The title for that collection of information is "Rule 154 under the Securities Act of 1933, Delivery of prospectuses to investors at the same address." (OMB control number 3235-0495, expires Feb. 28, 2001).

4 using the same implied consent notice that they would send to notify security holders of their intent to household proxy statements, information statements and annual reports.

We estimate that the time to respond to the disclosure requirements of Schedules 14A and 14C will be approximately one hour per respondent per year. We previously increased our estimate of the burden hours and approximate cost associated with Regulation 14A by 247 hours and \$130,000 to reflect the increased burden respondents will face as a result of the disclosure requirements. Our estimates of the burden hours and approximate cost associated with Regulation 14C were likewise previously increased by 6 hours and \$3,000, respectively.

V. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules on affected persons and entities. In November 1999, the Commission adopted rules allowing companies to deliver one copy of an annual report or prospectus (except those required to be delivered for business combinations, exchange offers or reclassifications of securities) to consenting security holders at a shared residential address. We refer to the shared delivery of a disclosure document as householding. Several commenters on the rules adopted in November 1999 noted that the ability of companies to household annual reports would be limited by their inability also to household proxy statements and information statements, as annual reports are often delivered in the same package as proxy statements or information statements. Those commenters encouraged the Commission to adopt similar rules permitting the householding of proxy and information statements. We are now adopting rules that will permit companies and intermediaries to household proxy and information statements, as well as prospectuses delivered in connection with business combinations, exchange offers and reclassifications of securities. The rules we adopt today will permit companies and intermediaries to send fewer copies of disclosure documents than they currently must send, and therefore should result in savings in printing, postage, and other delivery costs. Security holders will benefit from the decrease in delivery costs paid by companies and from no longer being burdened with duplicate documents. The rules require companies and intermediaries who rely on the rules to comply with certain procedures, including obtaining either written

consents from security holders or delivering notices 60 days in advance of householding. In addition, companies relying on the rules will need to include certain householding disclosure in their proxy and information statements. Because householding is voluntary, the Commission expects that the rules will not have any negative impact on small businesses and that companies, banks, and broker-dealers generally will rely on the rules only if the benefits of householding outweigh the costs.

In the proposing release, the Commission noted that companies would incur costs in obtaining consents and sending notices to security holders, and estimated that the cost savings to companies would far exceed the costs of obtaining the consents and mailing notices. The Commission also noted that the cost of providing proxy statement or information statement disclosure regarding householding would be minimal, as the disclosure would be included in proxy statements or information statements already being prepared by each company. The Commission requested comment on the costs and benefits of the rules. Commenters generally supported the goals of the proposal but advocated certain changes that they believed would decrease the costs and increase the benefits of the rules.

A. Benefits

Several respondents commented on the potential benefits of the amended rules. Every commenter who addressed the issue indicated that allowing companies and intermediaries to household proxy statements, information statements and prospectuses used in connection with business combinations would allow companies to significantly reduce the costs of printing and mailing those documents. Many of those commenters also indicated that they had received numerous complaints from security holders expressing disapproval of duplicative wasteful mailings.

One commenter estimated that U.S. security holders would save somewhere between \$200 and \$400 million annually if companies and intermediaries were allowed to household proxy and information statements. He extrapolated that range from his estimate that almost every company would save at least 10% of their printing and mailing costs and that companies with "household names" could save as much as 60% of their printing and mailing costs. He assumed that the advance notices would not be delivered separately and the company or intermediary could address the

package of householded materials to any one security holder in the household. He did not explain the precise methodology and assumptions he used to obtain that figure, and one of his assumptions was inconsistent with the rules we adopt today. As discussed below, the rules we adopt today will allow companies and intermediaries to include the notice of householding with other security holder communications. However, the rules will not allow companies to address the materials to any one security holder without obtaining the written consent of each security holder in the household. That would impact the above estimate as some commenters noted that the group addressing requirement would increase the cost of complying with the required householding procedures.

Charles Schwab estimated that if its proprietary fund family were allowed to household a hypothetical proxy statement, fund shareholders could save approximately \$862,000, or 16% of total expenses for a shareholder meeting, in printing, packaging and mailing expenses.

ADP Investor Communication Services, a company that handles the proxy material distribution function for nearly all large broker and many bank intermediaries, commented that each percentage point reduction in mailings that results from householding, using ADP's base of anticipated proxy mailings, equates to a savings of approximately \$11.6 million in the aggregate to companies, assuming a unit cost of \$5 for the printing of an annual report, notice of proxy and proxy statement, and postage of \$1.30. Other commenters stated more generally that allowing the householding rules to be in place for the last proxy season would have produced consequent savings of many millions of dollars, and that they expect the cost savings to companies to far exceed the cost of obtaining the consents and mailing the advance notices required for householding by implied consent. While some commenters noted that they might need to continue to separately deliver each security holder's proxy voting card, they noted that the savings likely to be generated from the reduction in printing and postage expenses would fully justify the householding of proxy statements even if the proxy voting cards continued to be mailed separately.

Relying on the savings estimates provided by Charles Schwab and ADP, the Commission estimates that the incremental benefit from each eliminated mailing would be approximately \$6, assuming a savings of \$5 from printing and \$1.30 from mailing

a proxy package, and \$.32 cost for mailing the proxy card separately.⁹²

B. Costs

The Commission requested, but did not receive, any estimates of the total cost of soliciting and obtaining consent and providing the required householding disclosure in a company's proxy and information statements. Likewise, the Commission did not receive any comment estimating the cost of determining which security holders could be householded by implied consent or implementing programming or software changes necessary to track consents or print and mail proxy packages.

Most of the comments the Commission received on the costs of the rules were qualitative comments identifying provisions which commenters felt needlessly raised the costs of householding. In particular, most commenters who addressed the issue argued that the rules should permit householding based on implied consent for all security holders sharing a household, whether or not the security holders shared the same last name. These commenters indicated their belief that security holders would be adequately protected by the implied consent notice and revocation disclosure procedures. As adopted, the rules will not permit householding by implied consent to security holders who do not share the same last name, unless the company or intermediary relying on the rules reasonably believes the security holders are members of the same family. However, the rules will allow companies or intermediaries to encourage those security holders who must give written consent to submit their consents via electronic mail. This procedure should enable companies and intermediaries to minimize compliance costs associated with the rules while still ensuring that, absent their affirmative consent, security holders who wish to receive separate copies of the disclosure documents will continue to receive them.

Several commenters also indicated their view that requiring companies to address the householded materials to the group of security holders, rather than any one of them, would unnecessarily increase the cost of householding without providing additional security holder protection. These commenters noted that in order to

⁹² New York Stock Exchange members may also incur a \$.50 fee for each eliminated proxy mailing under the NYSE fee schedule for proxy mailings. Payment of that fee would result in those companies saving \$.50 less on each eliminated mailing.

comply with the group addressing requirement, they may need to print and include an extra sheet of paper in the householded proxy materials package, and would thus face higher printing and possibly higher mailing costs than they would if they could simply show one of the security holder's names through the envelope window. One commenter indicated that requiring group addressing might result in fewer companies adopting the benefits of householding. Another indicated that group addressing may require transfer agents to implement costly programming changes and changes in the processes used to place proxy materials in envelopes, with the costs of those changes passed on to companies. That commenter noted that addressing the householded material to any one of the individual stockholders would require much more modest and manageable programming and operational changes.

The Commission is sensitive to these concerns but believes the householded materials should be addressed in such a manner that security holders will be aware that the householded package is intended for the group of security holders included in the household. Therefore, we have decided to allow alternative forms of addressing but only if each security holder in the household has consented in writing to the alternative form of address. We believe that the non-quantifiable benefit from security holders being easily able to understand that documents are to be shared by the household fully justifies the costs of the addressing requirements, as adopted.

Many commenters opposed the proposed requirement that the company mail separately its advance notice of its intention to deliver documents in householded form. These commenters argued that separate delivery of the notice would unnecessarily increase costs without providing additional security holder protection. They recommended that companies and intermediaries be allowed to include the notice with other security holder communications, as they may do when they distribute an advance notice of their intention to household prospectuses under Securities Act Rule 154. In response to those comments, we have modified the rule; as adopted, the rule will permit companies and intermediaries to mail the notice of their intent to household with other security holder communications, so long as the notices are mailed to each individual in the household and both the notice and the envelope in which it is mailed contain a prominent legend alerting

security holders of the importance of the contents. The elimination of the separate delivery requirement will reduce the cost to companies and intermediaries of complying with the rules.

Finally, some commenters thought that requiring intermediaries to obtain the consent of each company to household its materials would increase the costs of compliance with the rule. ADP noted that attempting to limit the householding option on a company-by-company basis is operationally very difficult and impractical to implement for nominee intermediaries. ADP argued that without widespread support of intermediaries, which will come with standardized practices and operations, costs for implementation could offset benefits and perhaps stall the initiative. ADP also indicated that it anticipated there would be very limited requests from companies to suppress householding to their security holders. Another commenter stated that having to limit its ability to household only where the company consents would add unnecessary complexity and expense and that placing restrictions on an intermediary's ability to household would increase the costs and reduce the benefits of householding. The Securities Industry Association also indicated that it would oppose any provision that makes householding contingent on approval by each company, because requiring specific procedures for individual holdings within an account would result in less efficiency and higher costs. Conversely, one company indicated that in order for the rules to generate the intended savings, companies must have ways to require intermediaries to household at a reasonable cost to companies. The Investment Company Institute commented that the Commission should allow intermediaries to household only at the direction of the company, as companies bear the ultimate responsibility to provide the disclosure document and reimburse the intermediaries' expenses of distributing the proxy materials. Fidelity Management and Research Co. also believes that fund companies should have the right to decide whether intermediaries household proxy statements, as the decision of whether to household could affect fund expenses. We had originally proposed that intermediaries be able to household to beneficial owners at their own discretion.

Because of the importance of the required proxy and information statement disclosure, the necessity of some entity retaining an inventory of

extra copies of the disclosure documents, as well as our agreement that companies must have ways to control their expenses, we ultimately concluded that companies should be able to object to intermediary householding. However, as there is not yet enough empirical data to determine the true cost of householding, from the perspectives of both companies and intermediaries, we believe it is appropriate for all entities involved to retain the ability to opt out of householding. We recognize that many intermediaries will incur large start-up costs to implement householding. However, we note that companies remain required to reimburse intermediaries for their reasonable proxy distribution expenses, and that many intermediaries may be able to recoup some of their expenses through the imposition of a paper and postage elimination fee.

The Commission estimates that the cost of obtaining a security holder's consent, using the implied consent procedure allowed by the amendments, would be less than \$.80 per implied consent notice. The actual cost of obtaining an implied consent may in fact be less, as the above estimate assumes that the notice will be mailed separately from other communications. Under the rules adopted today, companies and intermediaries may mail the notice with other security holder communications as long as a prominent legend is included on both the notice and the envelope containing the notice. Companies and intermediaries will also incur costs in determining which security holders may be mailed materials in householded form, implementing programming or software changes necessary to track consents, implementing programming changes necessary for the printing and mailing of householded packages, and providing the proxy and information statement disclosure required under today's rules. Other nonquantifiable costs will include the costs to security holders who, for whatever reason, wish to but do not receive disclosure documents⁹³ and the costs that companies and intermediaries will incur in responding to security holder consent revocations. We do not expect those costs to be significant. The Commission anticipates that the only recurring cost of today's rules would be the cost of including the required

⁹³ For example, a security holder might not receive a disclosure document if the security holder changes his or her mailing address without notifying the company or intermediary, or if the security holder neglects to read and respond to a notice that the company intends to household using the implied consent procedures.

disclosure in the proxy and information statements, and that such cost will be marginal as the disclosure will be included in documents that would otherwise be required. The Commission estimated in the proposing release that the time required to prepare this disclosure would be approximately one hour per respondent per year. Assuming that the disclosure is prepared by outside counsel, the Commission estimates that the disclosure requirement would cost companies who elect to household an additional \$175 per year.

We understand companies and intermediaries will incur costs to revise their proxy printing and mailing systems to comply with the rules we adopt today. We have not received enough information to estimate those costs with any reliability. However, as discussed above, the cost savings from householding are potentially substantial. Assuming a cost savings of \$6 for each set of materials eliminated through householding, that approximately 245 million sets of proxy materials are mailed annually, that companies and intermediaries will be able to household 16 percent of the mailings they would otherwise be required to deliver individually, and that 10% of all companies will choose to household their proxy statements and information statements, householding could result in aggregate cost savings of up to \$23.5 million annually. The Commission derived its estimate of the total annual proxy mailings by assuming that ADP's mailings represent approximately 75% of the total annual proxy mailings. That assumption is based on the Commission's recognition that ADP controls nearly 100% of the market⁹⁴ for delivery of proxy materials to security holders whose securities are held in street name and that approximately 70–80% of all outstanding securities are held in street name.⁹⁵ ADP Investor Communication Services commented that, assuming a unit cost of \$6.30 for each eliminated mailing, companies could save approximately \$11.6 million in the

aggregate for each percentage point reduction in ADP's base of anticipated proxy mailings. Using those figures, the Commission estimated ADP's anticipated base of mailings to be approximately 184 million. The percent of estimated consents was based on the comment letter of Charles Schwab & Co., which estimated that if Schwab's proprietary fund family were allowed to household a hypothetical proxy statement, fund security holders could save approximately 16% of total expenses, in printing, packaging and mailing expenses for a security holder meeting.⁹⁶ We assume that the reduction in expenses would be proportional to the reduction in eliminated mailings.

Based on information provided in the comment letters and its own analysis, the Commission believes that the rule amendments adopted today will permit companies and intermediaries to cost-effectively reduce the number of mailings they are required to distribute to security holders and that, in the long term, the benefits of the rules adopted today will justify the costs of implementing householding and complying with the householding rules.

VI. Effects on Efficiency, Competition, and Capital Formation

As required by Section 23(a) of the Exchange Act,⁹⁷ we considered the impact any new Exchange Act rule would have on competition. We requested comment on any anti-competitive effects of the proposals. We received one comment letter responding to that request. That commenter noted its belief that the proposals would not have an adverse effect on competition. We believe that the amendments will not have any anti-competitive effect, as the rules are voluntary and are designed to allow companies and intermediaries to decrease their current printing and mailing costs.

In addition, Section 2(b) of the Securities Act⁹⁸ and Section 3(f) of the Exchange Act⁹⁹ require us, in adopting a rule that requires a public interest finding, to consider whether the proposed rule will promote efficiency, competition and capital formation. We sought comment on how these changes would affect competition, capital formation and market efficiency. The sole commenter on these issues indicated its view that the proposals would promote efficiency, not adversely affect competition, and have no effect

on capital formation. Because the householding of proxy and information statements will eliminate many unwanted duplicate mailings and allow companies to save printing and mailing costs, we believe the amendments will have a positive effect on efficiency and capital formation. We do not believe the amendments will have any effect on competition.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act. It relates to amendments to: Securities Act Rule 154, Exchange Act Rules 14a-2, 14a-3, 14a-7, 14b-1, 14b-2, 14c-3, and Schedules 14A and 14C.

A. Need for the Rule Amendments

The new rule amendments are designed to enable companies and intermediaries to reduce the number of identical mailings sent to security holders sharing the same household. The Commission is adopting the rule amendments in order to permit companies and intermediaries to household proxy and information statements as well as prospectuses delivered in connection with business combinations, exchange offers and reclassifications of securities.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the proposing release. We received no comments on the IRFA.

C. Small Entities Subject to the Rule Amendments

Rule 0-10 under the Exchange Act defines the term "small business" as a company whose total assets on the last day of its most recent fiscal year were \$5 million or less.¹⁰⁰ The only small businesses subject to the proxy rules are those that have securities registered under Section 12 of the Exchange Act. There are approximately 771 reporting companies that have assets of \$5 million or less. The actual number of reporting companies affected by the proxy rules may be less than 771, as not all reporting companies are subject to the proxy rules. As stated above, the proposed householding rules would be optional. Under amended Rules 14b-1 and 14b-2, broker-dealers and banks are required to forward security holder communications to beneficial owners on

⁹⁴ See Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials, Exchange Act Release No. 42433 (Feb. 16, 2000) [65 FR 10137 (Feb. 25, 2000)].

⁹⁵ See Self-Regulatory Organizations; New York Stock Exchange, Inc., Exchange Act Release No. 41177 (Mar. 16, 1999) [64 FR 14294 (Mar. 24, 1999)] (stating that research provided by the NYSE indicates that approximately 70 to 80 percent of all outstanding shares are held in street name).

⁹⁶ See also comment letter of Lucent.

⁹⁷ 15 U.S.C. 78w(a).

⁹⁸ 15 U.S.C. 77b(b).

⁹⁹ 15 U.S.C. 78c(f).

¹⁰⁰ 17 CFR 240.0-10.

whose behalf they hold securities. Under Exchange Act Rule 0-10, a broker or dealer is considered a small business if it has less than \$500,000 total capital, calculated in accordance with Rule 0-10(c)(1). In addition, a broker or dealer will not be considered a small business if it is affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0-10. The Exchange Act rules do not contain a definition of small banks. The Regulatory Flexibility Act defines the term "small entity" by reference to definitions published by the Small Business Administration.¹⁰¹ The Small Business Administration has defined a "small entity" for banking purposes as a national or commercial bank, savings institution or credit union with less than \$100 million in assets.¹⁰²

The rule amendments would define the circumstances under which broker-dealers and banks could household materials to security holders on whose behalf they hold securities. There are approximately 913 broker-dealers registered with the Commission that would be considered small businesses under Rule 0-10. We estimate that there are approximately 4946 entities potentially subject to Rule 14b-2 that could be considered small businesses under the Small Business Administration's size regulations.

An indeterminable number of entities could be affected by the amendment to Rule 154, as companies who have not previously registered with the Commission can use the forms prescribed for business combinations, exchange offers, or reclassifications of securities. However, as discussed above, there are approximately 771 reporting companies that have assets of \$5 million or less.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The primary goal of the rule amendments is to remove unnecessary regulatory requirements. The amended rules, however, will require a company or other party choosing to solicit implied consent to householding from security holders to mail a separate written notice of its intention to household proxy and information statements. The proposed rules also will require companies to undertake in the proxy statement or information statement to provide, upon written or oral request, a separate copy of the annual report, proxy statement or information statement to a security holder residing at an address to which

the company or intermediary delivered a householded copy. Additionally, companies choosing to household the annual report and proxy statement or information statement would have to provide instructions in the proxy statement or information statement as to how: (1) a security holder can revoke consent to householding; (2) security holders sharing an address can request householding; and (3) security holders can request extra copies of the annual report, proxy statement or information statement. It is likely that the company's notice of its intent to household generally would not exceed one page, and the proxy statement or information statement disclosure would be only a paragraph or two in length.

E. Agency Action To Minimize Effects on Small Entities

As required by Sections 603 and 604 of the Regulatory Flexibility Act, the Commission has considered the following alternatives to minimize the economic impact of the rule amendments on small entities: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation or simplification of compliance and reporting requirements under the rule amendments for small entities; (3) the use of performance rather than design standards; and (4) an exemption from the coverage of the rule, or any part thereof, for small entities.

The adopted rules are intended to remove regulatory requirements for all companies, including those that are small entities. Because householding is voluntary, the Commission expects that the rules will not have any negative impact on small businesses and that companies, banks, and broker-dealers generally will rely on the rules only if the benefits of householding outweigh the costs. The Commission considered exempting small entities that are reporting companies from the notice, undertaking, and disclosure requirements, but believes that security holders in companies of all sizes should be notified that a company intends to household any disclosure document and have the opportunity to object. Because the proposed rules will be optional and should benefit small entities, it was unnecessary to consider exempting them from coverage of the adopted rules.

VIII. Statutory Authority

We are amending Rule 154 pursuant to the authority set forth in Section 19(a) of the Securities Act. We are amending

Rules 14a-2, 14a-3, 14a-7, 14a-101, 14b-1, 14b-2, 14c-3, and 14c-101 under the authority set forth in sections 12, 14 and 23(a) of the Exchange Act.

List of Subjects

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z-3, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

§ 230.154 [Amended]

2. Section 230.154 is amended by removing paragraph (e).

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, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

4. Section 240.14a-2 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 240.14a-2 Solicitations to which § 240.14a-3 to § 240.14a-15 apply.

(a) * * *

(1) * * *

(ii) Furnishes promptly to the person solicited (or such person's household in accordance with § 240.14a-3(e)(1)) a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who shall furnish copies thereof for such purpose and who shall, if requested, defray the reasonable expenses to be

¹⁰¹ See 5 U.S.C. 601.

¹⁰² See 13 CFR 121.201.

incurred in forwarding such material, and

* * * * *

5. Section 240.14a-3 is amended by revising paragraph (e)(1) to read as follows:

§ 240.14a-3 Information to be furnished to security holders.

* * * * *

(e)(1)(i) A registrant will be considered to have delivered an annual report or proxy statement to all security holders of record who share an address if:

(A) The registrant delivers one annual report or proxy statement, as applicable, to the shared address;

(B) The registrant addresses the annual report or proxy statement, as applicable, to the security holders as a group (for example, "ABC Fund [or Corporation] Security Holders," "Jane Doe and Household," "The Smith Family"), to each of the security holders individually (for example, "John Doe and Richard Jones") or to the security holders in a form to which each of the security holders has consented in writing;

Note to paragraph (e)(1)(i)(B): Unless the company addresses the annual report or proxy statement to the security holders as a group or to each of the security holders individually, it must obtain, from each security holder to be included in the householded group, a separate affirmative written consent to the specific form of address the company will use.

(C) The security holders consent, in accordance with paragraph (e)(1)(ii) of this section, to delivery of one annual report or proxy statement, as applicable;

(D) With respect to delivery of the proxy statement, the registrant delivers, together with or subsequent to delivery of the proxy statement, a separate proxy card for each security holder at the shared address; and

(E) The registrant includes an undertaking in the proxy statement to deliver promptly upon written or oral request a separate copy of the annual report or proxy statement, as applicable, to a security holder at a shared address to which a single copy of the document was delivered.

(ii) *Consent.* (A) *Affirmative written consent.* Each security holder must affirmatively consent, in writing, to delivery of one annual report or proxy statement, as applicable. A security holder's affirmative written consent will only be considered valid if the security holder has been informed of:

(1) The duration of the consent;

(2) The specific types of documents to which the consent will apply;

(3) The procedures the security holder must follow to revoke consent; and

(4) The registrant's obligation to begin sending individual copies to a security holder within thirty days after the security holder revokes consent.

(B) *Implied consent.* The registrant need not obtain affirmative written consent from a security holder for purposes of paragraph (e)(1)(ii)(A) of this section if all of the following conditions are met:

(1) The security holder has the same last name as the other security holders at the shared address or the registrant reasonably believes that the security holders are members of the same family;

(2) The registrant has sent the security holder a notice at least 60 days before the registrant begins to rely on this section concerning delivery of annual reports and proxy statements to that security holder. The notice must:

(i) Be a separate written document;

(ii) State that only one annual report or proxy statement, as applicable, will be delivered to the shared address unless the registrant receives contrary instructions;

(iii) Include a toll-free telephone number, or be accompanied by a reply form that is pre-addressed with postage provided, that the security holder can use to notify the registrant that the security holder wishes to receive a separate annual report or proxy statement;

(iv) State the duration of the consent;

(v) Explain how a security holder can revoke consent;

(vi) State that the registrant will begin sending individual copies to a security holder within thirty days after the security holder revokes consent; and

(vii) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: "Important Notice Regarding Delivery of Security Holder Documents." This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to security holders, this statement may appear either on the notice or on the envelope in which the notice is delivered.

Note to paragraph (e)(1)(ii)(B)(2): The notice should be written in plain English. See § 230.421(d)(2) of this chapter for a discussion of plain English principles.

(3) The registrant has not received the reply form or other notification indicating that the security holder wishes to continue to receive an individual copy of the annual report or proxy statement, as applicable, within 60 days after the registrant sent the notice; and

(4) The registrant delivers the document to a post office box or residential street address.

Note to paragraph (e)(1)(ii)(B)(4): The registrant can assume that a street address is residential unless the registrant has information that indicates the street address is a business.

(iii) *Revocation of consent.* If a security holder, orally or in writing, revokes consent to delivery of one annual report or proxy statement to a shared address, the registrant must begin sending individual copies to that security holder within 30 days after the registrant receives revocation of the security holder's consent.

(iv) *Definition of address.* Unless otherwise indicated, for purposes of this section, address means a street address, a post office box number, an electronic mail address, a facsimile telephone number or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If the registrant has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

Note to paragraph (e)(1): A person other than the registrant making a proxy solicitation may deliver a single proxy statement to security holders of record or beneficial owners who have separate accounts and share an address if: (a) the registrant or intermediary has followed the procedures in this section; and (b) the registrant or intermediary makes available the shared address information to the person in accordance with § 240.14a-7(a)(2)(i) and (ii).

* * * * *

6. Section 240.14a-7 is amended by revising paragraphs (a)(2)(i) and (ii) and designating the existing note to § 240.14a-7 as Note 1, revising the heading to the notes and adding Note 2, to read as follows:

§ 240.14a-7 Obligations of registrants to provide a list of, or mail soliciting materials to, security holders.

* * * * *

(a) * * *

(2) * * *

(i) Mail copies of any proxy statement, form of proxy or other soliciting material furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be mailed to the banks, brokers, and similar entities for distribution to all beneficial owners designated by the security holder. If the registrant has received affirmative written or implied consent to deliver a single proxy

statement to security holders at a shared address in accordance with the procedures in § 240.14a-3(e)(1), a single copy of the proxy statement furnished by the security holder shall be mailed to that address. The registrant shall mail the security holder material with reasonable promptness after tender of the material to be mailed, envelopes or other containers therefor, postage or payment for postage and other reasonable expenses of effecting such mailing. The registrant shall not be responsible for the content of the material; or

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request: a reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities holding securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant's or its transfer agent's security holder data systems; the most recent list of names, addresses and security positions of beneficial owners as specified in § 240.14a-13(b), in the possession, or which subsequently comes into the possession, of the registrant; and the names of security holders at a shared address that have consented to delivery of a single copy of proxy materials to a shared address, if the registrant has received written or implied consent in accordance with § 240.14a-3(e)(1). All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the registrant without undue burden or expense. The registrant shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals, provided, however, the registrant need not provide beneficial or record holder information more current than the record date for the meeting or action.

* * * * *
Notes to § 240.14a-7.
 1. * * *

2. When providing the information required by § 240.14a-7(a)(1)(ii), if the registrant has received affirmative written or implied consent to delivery of a single copy of proxy materials to a shared address in accordance with § 240.14a-3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

7. Section 240.14a-101 is amended by adding Item 23 to read as follows:

§ 240.14a-101 Schedule 14A Information required in proxy statement.

* * * * *

Item 23. Delivery of documents to security holders sharing an address.

If one annual report or proxy statement is being delivered to two or more security holders who share an address in accordance with § 240.14a-3(e)(1), furnish the following information:

(a) State that only one annual report or proxy statement, as applicable, is being delivered to multiple security holders sharing an address unless the registrant has received contrary instructions from one or more of the security holders;

(b) Undertake to deliver promptly upon written or oral request a separate copy of the annual report or proxy statement, as applicable, to a security holder at a shared address to which a single copy of the documents was delivered and provide instructions as to how a security holder can notify the registrant that the security holder wishes to receive a separate copy of an annual report or proxy statement, as applicable;

(c) Provide the phone number and mailing address to which a security holder can direct a notification to the registrant that the security holder wishes to receive a separate annual report or proxy statement, as applicable, in the future; and

(d) Provide instructions how security holders sharing an address can request delivery of a single copy of annual reports or proxy statements if they are receiving multiple copies of annual reports or proxy statements.

8. Section 240.14b-1 is amended by adding a note following paragraph (b)(2) and by adding paragraph (c)(3) to read as follows:

§ 240.14b-1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(b)(2) * * *

Note to paragraph (b)(2): At the request of a registrant, or on its own initiative so long as the registrant does not object, a broker or dealer may, but is not required to, deliver one annual report, proxy statement or information statement to more than one beneficial owner sharing an address if the requirements set forth in § 240.14a-3(e)(1) (with respect to annual reports and proxy statements) and § 240.14c-3(c) (with respect to annual reports and information statements) applicable to registrants, with the

exception of § 240.14a-3(e)(1)(i)(E), are satisfied instead by the broker or dealer.

* * * * *

(c) * * *

(3) In its response pursuant to paragraph (b)(1) of this section, a broker or dealer shall not include information about annual reports, proxy statements or information statements that will not be delivered to security holders sharing an address because of the broker or dealer's reliance on the procedures referred to in the Note to paragraph (b)(2) of this section.

9. Section 240.14b-2 is amended by adding a note following paragraph (b)(3) and by adding paragraph (c)(4) to read as follows:

§ 240.14b-2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(b)(3) * * *

Note to paragraph (b)(3): At the request of a registrant, or on its own initiative so long as the registrant does not object, a bank may, but is not required to, deliver one annual report, proxy statement or information statement to more than one beneficial owner sharing an address if the requirements set forth in § 240.14a-3(e)(1) (with respect to annual reports and proxy statements) and § 240.14c-3(c) (with respect to annual reports and information statements) applicable to registrants, with the exception of § 240.14a-3(e)(1)(i)(E), are satisfied instead by the bank.

* * * * *

(c) * * *

(4) In its response pursuant to paragraph (b)(1)(ii)(A) of this section, a bank shall not include information about annual reports, proxy statements or information statements that will not be delivered to security holders sharing an address because of the bank's reliance on the procedures referred to in the Note to paragraph (b)(3) of this section.

10. Section 240.14c-3 is amended by revising paragraph (c) to read as follows:

§ 240.14c-3 Annual report to be furnished security holders.

* * * * *

(c) A registrant will be considered to have delivered an annual report or information statement to security holders of record who share an address if the requirements set forth in § 240.14a-3(e)(1) are satisfied with respect to the annual report or information statement, as applicable.

11. Section 240.14c-101 is amended by adding Item 5 to read as follows:

§ 240.14c-101 Schedule 14C. Information required in information statement.

* * * * *

Item 5. Delivery of documents to security holders sharing an address.

If one annual report or information statement is being delivered to two or more security holders who share an address, furnish the following information in accordance with § 240.14a-3(e)(1):

(a) State that only one annual report or information statement, as applicable, is being delivered to multiple security holders sharing an address unless the registrant has received contrary instructions from one or more of the security holders;

(b) Undertake to deliver promptly upon written or oral request a separate copy of the annual report or information statement, as applicable, to a security holder at a shared address to which a single copy of the documents was delivered and provide instructions as to how a security holder can notify the registrant that the security holder wishes to receive a separate copy of an annual report or information statement, as applicable;

(c) Provide the phone number and mailing address to which a security holder can direct a notification to the registrant that the security holder wishes to receive a separate annual report or proxy statement, as applicable, in the future; and

(d) Provide instructions how security holders sharing an address can request delivery of a single copy of annual reports or information statements if they are receiving multiple copies of annual reports or information statements.

Dated: October 27, 2000.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 00-28137 Filed 11-1-00; 8:45 am]

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DEPARTMENT OF ENERGY
**Federal Energy Regulatory
Commission**
18 CFR Part 157

[Docket No. RM98-16-001; Order No. 608-A]

**Collaborative Procedures for Energy
Facility Applications; Order on
Rehearing**

Issued October 27, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule, order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) affirms, modifies, and clarifies its final rule, Order No. 608.¹ The final rule implemented procedural regulations that offer prospective applicants seeking to construct, operate or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of designing a collaborative process that includes environmental analysis and issue resolution. This pre-filing collaborative process is optional, is designed to be adaptable to the facts and circumstances of each particular case, and is expected to result in improvements in filed applications.

EFFECTIVE DATE: Changes to Order No. 608 made in this order on rehearing will become effective on December 4, 2000.

FOR FURTHER INFORMATION CONTACT:

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Gordon Wagner, Office of the General Counsel, 888 First Street, NE., Washington, D.C. 20426, (202) 219-0122

SUPPLEMENTARY INFORMATION:

Introduction

On September 15, 1999, the Commission issued a final rule providing prospective applicants for natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, to employ a collaborative process to identify and address significant issues.¹ Indicated Shippers² filed a timely request for rehearing.³

We will deny in part and grant in part the request for rehearing, for the reasons discussed below.

Background

Order No. 608 sets forth regulations to govern certain discussions that take place prior to the submission of an application to the Commission. Under these regulations, a prospective applicant that seeks to construct, operate, or abandon natural gas facilities or services may, in appropriate circumstances and prior to filing an application, design a collaborative

process to address and resolve issues raised by its proposal.

The Commission anticipates that if a natural gas company invites entities that might be interested in new facilities or services, or in the abandonment of existing facilities or services, to identify issues and discuss resource impacts as part of the process of developing a proposal, this will facilitate the filing of a complete application. A project sponsor that is able to submit an application that addresses and resolves issues, along with a preliminary draft environmental assessment (EA) or environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA),⁴ may be processed expeditiously. Applications that are incomplete, or that are amended in response to issues identified only after filing, or that require the submission of additional information or studies or resource impacts before the Commission is able to consider the merits, generally take longer to process than applications that are uncontested and complete.

As noted in the final rule, this pre-filing collaborative process is optional and voluntary and is intended to be flexible, adaptable, and responsive to the facts and circumstances of each particular case. The collaborative regulations do not delete or replace any existing regulations. Thus, a prospective gas facility applicant that elects to forego pre-filing collaborative consultation may continue to use the standard authorization procedures.

A project sponsor that seeks to undertake a pre-filing collaboration pursuant to the new regulations must demonstrate to the Commission that it has made reasonable efforts to contact and invite all potentially interested entities to participate and that it has developed a communications protocol to govern how the applicant and participants will communicate. The Commission will give public notice in the **Federal Register** of the requested collaboration and invite comments. The Commission will review the adequacy of the applicant's outreach efforts, consider comments, and weigh whether pre-filing discussions are likely to be productive. If the request to collaborate is approved, then Commission staff will be assigned to help guide the pre-filing process, which can include the preparation of a preliminary draft NEPA document. The applicant will maintain a file, available to the public, of all relevant documentation of the collaboration, including minutes or summaries of meetings.

¹ Collaborative Procedures for Energy Facility Applications, Order No. 608, 64 FR 51209 (Sept. 22, 1999); FERC Stats. & Regs., Regulations Preambles ¶ 31,080 (Sept. 15, 1999).

² Composed of Chevron U.S.A., Inc., Shell Offshore Inc., and Marathon Oil Company.

³ Mr. Frederick W. Martin filed a letter supporting Indicated Shippers' rehearing request. In addition, Travis Kenneth Bynum, I, filed a Motion to Deny Rehearing in this docket that raises no issues relevant to this proceeding.

⁴ 42 U.S.C. 4321-4307a.