SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 240 and 249

[Release Nos. 33–8128; 34–46464; FR–63; File No. S7–08–02]

RIN 3235–AI33

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

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to our rules and forms to accelerate the filing of quarterly and annual reports under the Securities Exchange Act of 1934 by domestic reporting companies that have a public float of at least $75 million, that have been subject to the Exchange Act's reporting requirements for at least 12 calendar months and that previously have filed at least one annual report. The changes for these accelerated filers will be phased-in over three years. The annual report deadline will remain 90 days for year one and change from 90 days to 75 days for year two and from 75 days to 60 days for year three and thereafter. The quarterly report deadline will remain 45 days for year one and change from 45 days to 40 days for year two and from 40 days to 35 days for year three and thereafter. The phase-in period will begin for accelerated filers with fiscal years ending on or after December 15, 2002. We also are adopting amendments to require accelerated filers to disclose in their annual reports where investors can obtain access to their filings, including whether the company provides access to its Forms 10–K, 10–Q and 8–K reports on its Internet website, free of charge, as soon as reasonably practicable after those reports are electronically filed with or furnished to the Commission.

DATES: *Effective Date:* November 15, 2002. *Compliance Dates:* The phase-in period for accelerated deadlines of quarterly and annual reports will begin for reports filed by companies that meet the definition of ''accelerated filer'' as of the end of their first fiscal year ending on or after December 15, 2002. These accelerated filers must comply with the new disclosure requirements concerning website access to reports for their annual reports on Form 10–K to be filed for fiscal years ending on or after December 15, 2002. Registrants voluntarily may comply with the new filing deadlines and disclosure requirement before the compliance dates.

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

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 3–01,[1] 3–09[2] and 3–12[3] of Regulation S–X[4] and Item 101[5] of Regulation S–K[6] under the Securities Act of 1933 (''Securities Act''),[7] Forms 10–Q[8] and 10–K[9] under the Securities Exchange Act of 1934 (''Exchange Act'')[10] and Exchange Act Rules 12b–2,[11] 13a–10[12] and 15d–10.[13]

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[1] 17 CFR 210.3–01.
[2] 17 CFR 210.3–09.
[3] 17 CFR 210.3–12.
[4] 17 CFR 210.1–01 *et seq.*
[5] 17 CFR 229.101.
[6] 17 CFR 229.10 *et seq.*
[7] 15 U.S.C. 77a *et seq.*
[8] 17 CFR 249.308a.
[9] 17 CFR 249.310.
[10] 15 U.S.C. 78a *et seq.*
[11] 17 CFR 240.12b–2.
[12] 17 CFR 240.13a–10.
[13] 17 CFR 240.15d–10.

I. Background and Overview of Rule Amendments

A. The Exchange Act Reporting System

The Exchange Act requires public companies to make information publicly available to investors on an ongoing basis to aid in their investment and voting decisions.[14] Issuers that have been subject to the reporting requirements for a certain period of time also can incorporate information from their Exchange Act reports into their registration statements under the Securities Act. Investors purchasing securities in public offerings therefore also rely on Exchange Act disclosure.

The Commission's rules under the Exchange Act now require disclosure at quarterly and annual intervals, with specified significant events reported on a more current basis.[15] Specifically, a domestic issuer subject to the Exchange

[14] See Sections 13(a) and 15(d) of the Exchange Act [15 U.S.C. 78m(a) and 78o(d)]. The following types of companies are subject to the obligation to provide information to the secondary markets through reports filed with the Commission:

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

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

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

Under Section 15(d) of the Exchange Act, a company that has filed a registration statement under the Securities Act that became effective and has not met the thresholds for suspension of the reporting requirements; and

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

[15] See, for example, Exchange Act Rules 13a–1, 13a–11, 13a–13, 15d–1, 15d–11 and 15d–13 [17 CFR 240.13a–1, 13a–11, 13a–13, 15d–1, 15d–11 and 15d–13]. In addition, Section 409 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107–204, section 409, 116 Stat. 745 (2002)] added Section 13(l) of the Exchange Act [17 U.S.C. 78m(l)], which also requires disclosure on a rapid and current basis of such additional information concerning material changes in the financial condition or operations of the issuer as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.

Act must, among other obligations, file the following reports: [16]

- An annual report on Form 10–K (or Form 10–KSB in the case of a small business issuer [17]) no later than 90 calendar days after the end of its fiscal year; [18]
- Quarterly reports on Form 10–Q (or Form 10–QSB in the case of a small business issuer) no later than 45 calendar days after the end of the first three quarters of its fiscal year; [19] and
- Current reports on Form 8-K for a number of specified events generally within five or 15 days after their occurrence.[20]

In addition, a company may be required to file transition reports on Form 10–K or 10–KSB or Form 10–Q or 10–QSB when it changes its fiscal year.[21]

B. Proposing Release

In April 2002, we published for comment proposals to shorten the filing deadlines of quarterly and annual reports for many companies as a step in modernizing the periodic reporting system and improving the usefulness of periodic reports to investors.[22] The annual and quarterly report deadlines were last changed 32 years ago.[23] We proposed accelerating the deadline for annual reports from 90 days to 60 days after the end of the company's fiscal year and accelerating the deadline for quarterly reports from 45 days to 30 days after the end of the company's first three fiscal quarters. These proposals would have applied to companies that met the definition of an ''accelerated filer'' as of the end of their first fiscal year ending after October 31, 2002. We proposed the definition of an accelerated filer to include companies that had a public float [24] of at least $75 million, that had been reporting for at least 12 months and that previously had filed at least one annual report.

We also proposed to require a company subject to these accelerated filing deadlines to disclose in its annual report on Form 10–K where investors can obtain timely access to company filings, including whether the company provides access to its Forms 10–K, 10–Q and 8–K reports on its Internet website, free of charge, as soon as reasonably practicable after, and in any event on the same day as, these reports are electronically filed with or furnished to the Commission.[25] Under the proposals, a company that did not provide website access in this manner would have been required to disclose why it did not do so and where else investors could access these filings electronically immediately upon filing. The company also would be required to disclose its website address, if it has one.

We received responses to our proposals from 305 commenters.[26] 302 commented on the acceleration of periodic report deadlines. Generally, these commenters fell into two groups. The first group (20 commenters) represented primarily investors, institutional investors and other users of company reports who supported the proposals and our objective to provide investors with more timely access to company filings. The second group (282 commenters) represented primarily companies, business associations, law firms and accounting firms who opposed the extent of acceleration and length of transition period proposed because, in their view, preparing reports in the proposed timeframes would be too burdensome and could result in less accurate filings. However, many offered alternatives with longer transition periods or filing deadlines or alternative measures to limit the number of accelerated filers. Most of the 141 commenters expressing a view on the proposals concerning website access supported them, although some suggested refinements.

C. Final Rule Amendments

We have considered the commenters' views and have modified the proposed amendments to reflect these comments. A summary of the final rules follows:

1. Phase-In of Accelerated Deadlines

Commenters representing investors, investor groups and other users of financial information favored receiving reports within a shortened timeframe. Most of the commenters who objected to the proposals believed that the

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

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

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

[19] Form 10–Q (and Form 10–QSB [17 CFR 249.308b]) currently consists of two parts. Part I requires disclosure of specified financial statements, management's discussion and analysis of financial condition and results of operations and quantitative and qualitative disclosure about market risk. Part II requires disclosure regarding legal proceedings, changes in securities, sales of unregistered securities, the use of proceeds from recent sales of securities, defaults on senior securities, exhibits and a list of current reports filed on Form 8–K.

[20] 17 CFR 249.308. These events currently include change in control of the registrant, the acquisition or disposition of a significant amount of assets, the bankruptcy or receivership of the registrant, changes in the registrant's certifying accountant, the resignation of a member of the registrant's board of directors and any other event that the registrant deems of significance to security holders. Item 7 of Form 8–K states that financial statements and related pro forma financial information required to be included on Form 8–K when a company acquires a business may be filed with the initial report or by amendment not later than 60 days after the date that the initial Form 8–K to report the acquisition must be filed. See Item 7(a)(3) of Form 8–K. On June 17, 2002, we proposed adding 11 new items that would require a company to file Form 8–K, moving two items currently required to be included in annual and quarterly reports to Form 8–K, amending several existing Form 8–K disclosure items and shortening the filing deadline for most items to two business days after the triggering event. See Release No. 33–8106 (June 17, 2002) [67 FR 42914].

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

[22] See Release No. 33–8089; 34–45741 (Apr. 12, 2002) [67 FR 19896] (the ''Proposing Release'').

[23] See Release No. 34–9000 (Oct. 21, 1970) [35 FR 16919] and Release No. 34–9004 (Oct. 28, 1970) [35 FR 17537].

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

[25] Even if a company chooses not to make its reports available on its website, investors still would be able to access information about the company through our EDGAR system. A company's posting of its reports on its website is not a substitute for filing documents with the Commission. EDGAR is an acronym for the Electronic Data Gathering, Analysis and Retrieval system.

[26] The public comments we received, and a summary of the comments prepared by our staff (the ''Comment Summary''), can be reviewed in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–08–02. Public comments submitted by electronic mail and the Comment Summary also are available on our website, *www.sec.gov*.

proposals were too aggressive in terms of the extent of acceleration and the speed with which we expected companies to begin complying with accelerated deadlines. These commenters offered alternatives to reduce the potential costs and burden to registrants and a possible inadvertent negative impact on disclosure quality. Also, while comments were mixed, the majority of commenters addressing the issue believed it would be more difficult to accelerate filing of the quarterly report than the annual report.

As we stated in our Proposing Release, in establishing the appropriate timeframes for filing periodic reports, we must balance the market's need for information with the time companies need to prepare that information without undue burden. Accordingly, in response to comments, we are phasing-in accelerated deadlines over a three year period, with no change in deadlines for the first year and a less extensive ultimate acceleration of the quarterly report deadline. For companies that meet our revised definition of accelerated filer as of the end of their first fiscal year ending on or after December 15, 2002, the annual report deadline will remain 90 days for year one and will then be reduced 15 days per year over two years to 60 days. The quarterly report deadline for these filers will remain 45 days for year one and will then be reduced five days per year over two years to 35 days. We also are making conforming amendments to transition reports filed by accelerated filers. These changes are summarized in the following table:

For fiscal years ending on or after	Form 10–K deadline (days after fiscal year end)	Form 10–Q deadline (days after fiscal quarter end)
December 15, 2002	90	45
December 15, 2003	75	45
December 15, 2004	60	40
December 15, 2005	60	35

2. Definition of Accelerated Filer

Comments were mixed on the proposed definition of accelerated filer. Several commenters believed all public companies should be subject to the same filing deadlines, regardless of a company's size or experience in preparing filings. Other commenters agreed with the notion of excluding smaller companies that may not have the necessary resources and infrastructure to report on an accelerated basis. Comments also were somewhat mixed on the proposed use of public float as a method to differentiate between companies. Several commenters thought the $75 million public float threshold was too low.

After evaluating the comments, we are adopting the proposals substantially as proposed with some minor clarifications. Under the final rules, accelerated deadlines will apply to a company after it first meets the following conditions as of the end of it fiscal year:

- Its common equity public float was $75 million or more as of the last business day of its most recently completed second fiscal quarter;
- The company has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months;
- The company has previously filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and
- The company is not eligible to use Forms 10–KSB and 10–QSB.

While we agree that there would be benefits from accelerating deadlines for all companies, we must balance the market's need for information with the ability of companies to prepare that information without undue burden. We are adopting the reporting history requirements and the $75 million public float threshold substantially as proposed, although we changed the determination date for the public float requirement to give companies more time to prepare for accelerated reporting. We believe that a public float test serves as a reasonable measure of size and market interest. A one-year reporting history requirement and a $75 million threshold excludes nearly half of all publicly traded companies from the category of accelerated filers. These requirements are based primarily on the current eligibility requirements for short-form registration and ''shelf registration.'' [27] Further, we believe the adoption of a three-year phase-in period for accelerating deadlines and a less extensive acceleration of the quarterly report deadline militates against the need to raise the threshold.

3. Conforming Amendments for Other Commission Filings

In the Proposing Release, we requested comment on several possible conforming revisions to other Commission rules as a result of the proposals. Based on the responses we received, we are making several conforming amendments. We are adopting amendments to Regulation S–X to conform the timeliness requirements for the inclusion of financial information in other Commission filings, such as Securities Act and Exchange Act registration statements and proxy statements and information statements under Section 14 of the Exchange Act.[28] Under the conforming amendments, financial information included in these documents still will be required to be at least as current as financial information filed under the Exchange Act. However, in response to the concerns of commenters, separate financial statements of subsidiaries not consolidated and 50% or less owned persons required by Rule 3–09 of Regulation S–X will not be accelerated for inclusion in a company's annual report on Form 10–K if the subsidiary or 50% or less owned person is not an accelerated filer. Companies will be able to file these financial statements by amendment within the existing time periods.[29] We also are adopting as proposed conforming amendments to maintain an extra 30 days for companies to file schedules required by Article 12 of Regulation S–X [30] as an amendment to their annual report on Form 10–K, if needed.

As proposed, we are not shortening the period of time companies have to file their definitive proxy or information statements to allow the incorporation by reference of information required by Part III of Form 10–K. We also are not making conforming revisions to the financial statement filing requirements in Rule 3–05 of Regulation S–X [31] and Item 7 of Form 8–K for financial statements of businesses acquired.

4. Disclosure Concerning Web Site Access to Company Reports

The vast majority of commenters—representing investors, investor groups, companies and professional associations—supported the proposals that would require disclosure concerning website access to company reports. Accordingly, we are adopting the disclosure requirement substantially as proposed with minor modifications. Since the Proposing Release, we have arranged for real-time access to companies' electronically filed periodic reports through our Internet website.[32]

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

[28] 15 U.S.C. 77n.

[29] See revisions to 17 CFR 210.3–09(b).

[30] 17 CFR 210.12–01 *et seq.*

[31] 17 CFR 210.3–05.

[32] See Press Release No. 2002–75 (May 30, 2002).

Elimination of the 24-hour delay in accessing EDGAR reports on our website substantially facilitates provision by companies of free, real-time website access to their reports by hyperlinking to our website. We also have eliminated two of the proposed disclosure elements to minimize the amount of disclosure required.

As adopted, the amendments require accelerated filers to disclose the following in their annual reports on Form 10–K beginning with reports for fiscal years ending on or after December 15, 2002:

- The company's website address, if it has one;
- Whether the company makes available free of charge on or through its website, if it has one, its annual report on Form 10–K, quarterly reports on Form 10–Q, current reports on Form 8–K, and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the Commission;
- If the company does not make its filings available in this manner, the reasons it does not do so (including, where applicable, that it does not have an Internet website); and
- If the company does not make its filings available in this manner, whether the company voluntarily will provide electronic or paper copies of its filings free of charge upon request.

II. Discussion of Amendments

A. Reporting Deadlines for Annual and Quarterly Reports

1. Proposed Rules

The proposed rules would have shortened the filing due date of annual reports from 90 days to 60 days after the end of a company's fiscal year and the filing due date of quarterly reports on Form 10–Q from 45 days to 30 days after the end of a company's first three fiscal quarters for companies that met our proposed definition of ''accelerated filer.'' [33] We proposed similar conforming amendments for transition reports filed on Forms 10–K and 10–Q by an accelerated filer when it changes its fiscal year.

As discussed in the Proposing Release, we believe that periodic reports contain valuable information for investors. While quarterly and annual reports at present generally reflect historical information, a lengthy delay before that information becomes available makes the information less valuable to investors. While the specific disclosure required in periodic reports has evolved over the past 30 years, and the integrated disclosure system has placed added emphasis on Exchange Act reporting, the basic structure and timeframes that were established in 1970 remain in place today.

The more extensive information in periodic reports is evaluated by investors and particularly analysts and institutional investors as a baseline for the incremental disclosures made by a company. These reports also contain more detailed information that is essential to conduct comparative analyses, as this information is often not contained in earnings releases or other incremental disclosures. Moreover, the information in Exchange Act reports, due to its required nature and the liability to which it is subject, provides a verification function against other statements made by the company in press releases and other public announcements. Investors and other users of the reports can judge previous informal statements by the company against the more extensive and mandated disclosure provided in the reports that have been reviewed by independent public accountants and other advisors.[34] Accelerating the availability of this information will enable this verification to occur at an earlier point in time. Accelerating the availability of these reports also may increase the relevance of the reports, as the timeliness of information has considerable value to investors and the markets.

In addition, many public companies issue press releases to announce quarterly and annual results well before they file their reports with us. These earnings announcements reflect the importance of financial information and investors' demand for it at the earliest possible time. Assuming that companies are collecting and evaluating information before they issue these announcements, the availability of this information also suggests that much of the process involved in preparing the financial information contained in periodic reports is substantially complete. However, these earnings announcements themselves are generally less complete in their disclosure than quarterly or annual reports, and they can emphasize information that is less prominent in quarterly or annual reports.[35] Investors often must wait for the periodic reports to receive financial statements and the accompanying notes prepared in accordance with generally accepted accounting principles, management's discussion and analysis, or MD&A, and other vitally important financial disclosures. These additional disclosures increase transparency for investors.

In establishing the appropriate timeframes for filing periodic reports, however, we must balance the market's need for information with the time companies need to prepare that information without undue burden. Significant technological advances over the last three decades have both increased the market's demand for more timely corporate disclosure and the ability of companies to capture, process and disseminate this information. However, we acknowledge that, while the deadlines for filing periodic reports have not changed in over 30 years, the disclosure requirements have changed and some companies, particularly those with widespread operations, face additional complexities in today's environment. Not all companies, particularly small and unseasoned companies, may have the resources and infrastructure in place to prepare their reports on a shorter timeframe without undue burden or expense. Our amendments must speed the flow of information to investors without sacrificing accuracy or completeness or imposing undue burden and expense on registrants.

2. Comments on the Proposal

We received responses from 302 commenters on the proposals to accelerate periodic report deadlines. Generally, these commenters fell into two groups. The first group (20 commenters) represented primarily investors, institutional investors and financial analysts who supported the proposals and our objective to provide investors with more timely access to company filings. The second group (282 commenters) represented primarily companies, business associations, law firms and accounting firms who

[33] As mentioned in the Proposing Release, the Commission previously had requested comment as to whether it should shorten the due dates for quarterly and annual reports for all issuers. See Release No. 33–7606A (Nov. 13, 1998) [63 FR 67174]. Comments received on that release are available through our Public Reference Room under File No. S7–30–98.

[34] In addition, the information in these reports must now be certified by the principal executive officer and principal financial officer of the company. See Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107–204, sections 302 and 906, 116 Stat. 745 (2002)].

[35] See Release No. 33–8039 (Dec. 4, 2001) [66 FR 63731]. In addition, Section 401(b) of the Sarbanes-Oxley Act of 2002 [Pub. L. 107–204, section 401(b), 116 Stat. 745 (2002)] directs the Commission to issue final rules providing that pro forma financial information included in any periodic or other report, or in any public disclosure or press or other release, shall be presented in a manner that reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

opposed the extent of acceleration and transition period proposed because, in their view, preparing reports in the proposed timeframes would be too burdensome and could result in less accurate filings. Most of these commenters believed that any incremental benefit from the speed and extent of acceleration proposed was insufficient to warrant the added burdens on registrants and the risk of diminished disclosure quality, although these commenters generally did not analyze the benefits from the perspective of users of the reports.

Many commenters representing investors, users of financial information and several companies believed that shortening deadlines will improve the delivery and flow of reliable information to investors and capital markets and assist in the efficient operation of the markets.[36] These commenters emphasized the importance of the extensive information in periodic reports and investors' demand for it at the earliest possible time.[37] Several other companies, accounting firms and professional associations agreed in concept that shortening due dates would improve the flow of information, but believed the due dates should reflect concerns about the quality of information to be filed.[38] A few companies, law firms and business organizations, however, believed that existing deadlines and market practices are sufficient to satisfy investors' needs.[39] These commenters did not think a significant benefit would result from shortening deadlines, but also generally did not attempt to address the question of possible benefits from the perspective of users of the reports.

While some companies commented that they could or already comply with the proposal without undue burden,[40] the group that objected to the proposal raised several common concerns over the extent of acceleration and transition period proposed. The most common concern was that the proposed deadlines would negatively affect the quality and accuracy of reports.[41] According to one professional association, two-thirds of its survey respondents expected a reduction in the precision of reported information under the original proposals.[42] Many commenters thought the proposals were contrary to other initiatives that the Commission has undertaken to increase the quantity and quality of company disclosure. Many believed that focusing on and improving accuracy and quality should be the objective, not speed.

Another common concern was that the proposed deadlines would impair the ability of management, external auditors, boards of directors and especially audit committees to scrutinize and review filings properly and give appropriate consideration to the form, substance and priority of disclosures, especially MD&A disclosures and financial statement footnotes.[43] These commenters feared that disclosures could be reduced or become more boilerplate if companies have less time to prepare and review them. These commenters believed that accelerating deadlines in the manner proposed would also undermine the governance and review mechanisms that have been put in place to ensure quality. We have separately proposed and the Sarbanes-Oxley Act of 2002 establishes new requirements to ensure that procedures are in place to ensure that a company is able to collect, process and disclose the information required in its periodic reports and for senior officers to certify the accuracy of those reports.[44]

A third concern was that advances in technology over the past 30 years have been largely offset by increases in accounting and disclosure requirements.[45] Business operations have also become increasingly global and complex, further complicating report preparation. These commenters argued that technological advances that have allowed companies to generate earnings results quickly in an earnings release do not address the additional analysis necessary to prepare periodic reports. Processes and systems would need to be changed to report on an accelerated basis.

Commenters objecting to the original proposals also were concerned that

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[36] See, for example, the Letters of the American Federal of Labor and Congress of Industrial Organizations (''AFL–CIO''); Association of Investment Management and Research (''AIMR''); AOL Time Warner Inc.; Adrienne Randle Bond; Corporate Communications Broadcast Network (''CCBN''); Council of Institutional Investors (''CII''); Comcast Corporation; CSX Corporation; Delphi Corporation; The Dow Chemical Company; EDGAR Online Inc.; Financial Executives Institute (''FEI''); IMC Global, Inc.; Maverick Capital Ltd.; McDonald's, Inc.; PepsiCo, Inc.; Pfizer Inc.; Pharmacia Corporation; SBC Communications Inc.; Scott H. Schulke; and Teachers Insurance and Annuity Association of America—College Retirement and Equities Fund (''TIAA–CREF''). In addition, one commenter provided the results of an unpublished study that argued that there is statistically reliable evidence of an investor response to periodic reports. See the Letter of Paul A. Griffin.

[37] In addition, according to a web-based survey on The Motley Fool's website, 67% of the 1,391 respondents thought that faster information was important to them. *See http://www.fool.com/Community/PollingAllFools/pollingallfoolsview.asp?questiondate=5%2F9%2F2002+12%3A45%3A29+PM.*

[38] See, for example, the Letters of the American Electric Power; American Institute of Certified Public Accountants (''AICPA''); BDO Seidman, LLP; The Coca-Cola Company; Computer Sciences Corporation; Fidelity Management & Research Company; Investment Company Institute; J.P. Morgan Chase & Co.; KPMG LLP; PG&E Corporation; Sidley Austin Brown & Wood LLP (''Sidley''); and Toys R Us, Inc.

[39] See, for example, the Letters of the American Bar Association (''ABA''); AFLAC Incorporated; the Association of the Bar of the City of New York (''NYCBA''); BioReliance Corporation; Compass Bankshares, Inc.; Commercial Federal Corporation; Emerson Electric Co.; Greenberg Traurig, P.A.; HealthSouth Corporation; Kellogg Company; Kimball International, Inc.; and SCANA Corporation.

[40] See, for example, the Letters of Delphi Corporation; The Dow Chemical Company; Microsoft Corporation; Siebel Systems, Inc.; TIAA–CREF; United Technologies Corporation; and V. I. Technologies, Inc.

[41] See, for example, the Letters of the ABA; American Corporate Counsel Association (''ACCA''); Association of Financial Professionals (''AFP''); American Insurance Association (''AIA''); AICPA; American Society of Corporate Secretaries (''ASCS''); Ashland Inc.; AT&T Corp.; BDO Seidman, LLP; the Business Roundtable; The Chubb Corporation; Deloitte & Touche LLP; Dell Computer Corporation; Ernst & Young LLP; Eli Lilly and Company; Financial Institutions Accounting Committee (''FIAC''); Grant Thornton LLP; Joseph A. Grundfest; H&R Block, Inc.; Halliburton Company; HealthSouth Corporation; Kellogg Company; KPMG LLP; Liberty Media Corporation; Merck & Co., Inc.; New York State Bar Association (''NYSBA''); NYCBA; Papa John's International, Inc.; PepsiCo, Inc.; PricewaterhouseCoopers LLP; Securities Industry Association (''SIA''); Ronald S. Stowell; Sullivan & Cromwell; SCANA Corporation; Shearman & Sterling; Sidley; Sotheby's Holdings, Inc.; Washington Mutual, Inc.; The Williams Companies, Inc.; and Kathryn J. Wilson.

[42] See the Letter of the ASCS.

[43] See, for example, the Letters of the ABA; American Counsel of Life Insurers (''ACLI''); ACCA; AFP; AICPA; ASCS; AT&T Corp.; BDO Seidman, LLP; The Bank of New York Company, Inc.; The Chubb Corporation; The Coca-Cola Company; Comcast Corporation; Deloitte & Touche LLP; Ernst & Young LLP; Eli Lilly and Company; FIAC; Grant Thornton LLP; Greenberg Traurig, P.A.; Joseph A. Grundfest; HealthSouth Corporation; KPMG LLP; Liberty Media Corporation; Simon M. Lorne; Marathon Oil Corporation; Merck & Co., Inc.; McGuireWoods LLP; NYCBA; NYSBA; Papa John's International, Inc.; PepsiCo, Inc.; PG&E Corporation; Pharmacia Corporation; PricewaterhouseCoopers LLP; Reed Smith LLP; Sullivan & Cromwell; SCANA Corporation; Shearman & Sterling; SIA; Sidley; Sotheby's Holdings, Inc.; Washington Mutual, Inc.; and The Williams Companies, Inc.

[44] See Release No. 34–46079 (June 14, 2002) [67 FR 41877]; Release No. 34–46300 (Aug. 2, 2002) [67 FR 51508]; Release No. 33–8124 (Aug. 29, 2002); and Sections 302, 404 and 906 of the Sarbanes-Oxley Act of 2002 [Pub. L. No. 107–204, §§ 302, 404 and 906, 116 Stat. 745 (2002)].

[45] See, for example, the Letters of the ABA; ACLI; ACCA; AICPA; ASCS; AT&T Corp.; BDO Seidman, LLP; The Bank of New York Company, Inc.; the Business Roundtable; The Coca-Cola Company; Comcast Corporation; Deloitte & Touche LLP; Ernst & Young LLP; Eli Lilly and Company; FIAC; Grant Thornton LLP; Greenberg Traurig, P.A.; Joseph A. Grundfest; H&R Block, Inc.; HealthSouth Corporation; Institute of Management Accountants; KPMG LLP; Liberty Media Corporation; Helen W. Melman; NYCBA; NYSBA; Papa John's International, Inc.; PepsiCo, Inc.; PG&E Corporation; PricewaterhouseCoopers LLP; Sullivan & Cromwell; SBC Communications Inc.; SIA; Sidley; The Southern Company; Sun Trust Banks, Inc.; Washington Mutual, Inc.; and The Williams Companies, Inc.

companies would face an increased burden in preparing reports, particularly with respect to increased costs and audit fees. While a few commenters believed that the original proposals would not have a significant adverse effect on the cost of preparing reports,[46] most who addressed the subject mentioned that the original proposals would result in increased costs.[47] Many commenters outlined their process of preparing reports to demonstrate the difficulties of accelerating the process.[48] Several commenters provided detailed timelines. The particular steps and timing varied depending on the individual company, and not all companies appear to be at the same level of technological sophistication and staffing for preparing reports. Two professional associations noted that there are no current best practices for preparing reports.[49] As a result, the few cost estimates received varied widely, and many commenters were unable to provide estimates. One company believed it was not possible to put a dollar value on such costs, as it depends on the quality and flexibility of each registrant's present systems, processes and staff.[50] According to one professional association that surveyed its members, 52% of its survey respondents reported that they expected costs to increase in order to comply with the original proposals.[51] Forty-five percent of respondents indicated they would have to hire additional staff, and 27% of respondents indicated they would have to buy or develop additional systems. Other commenters were concerned that the original proposals would result in increased audit fees, particularly for companies with a calendar fiscal year-end, given a compression in the amount of time available for auditors to complete their work for these companies.

Objecting commenters mentioned additional concerns over the original proposals, such as an increased need to use estimates to prepare reports [52] or an increased risk of amendments or restatements because of rushed preparation.[53] Several commenters were especially concerned about accelerating deadlines now given recent events with Arthur Andersen LLP.[54] While comments were mixed, many commenters said that while most audit and review work is substantially complete before the earnings release or the proposed deadlines, the process of preparing reports, including the financial statements and footnotes, is not.[55] However, other commenters noted that the audit and review process is far from complete by the time a company issues an earnings release and little, if any, assurance can be ascribed to the publicly disclosed results.[56] While some commenters prepare their reports concurrently with the earnings release, most described the process as a series of sequential steps where the company first closes its financial books, then prepares and releases its earnings release and then turns its attention to the periodic reports. Some companies would need to revise their internal processes to prepare their reports on a more concurrent basis with the earnings release. Several companies expressed concern that the proposals would be difficult for companies that operate on a decentralized basis with many subsidiaries and operations to consolidate, especially when the subsidiaries and operations are located worldwide or in emerging markets.[57]

Slightly less than half of those objecting to the proposals (129 commenters) did not think any acceleration of deadlines was warranted.[58] However, slightly more than half of those objecting (153 commenters) objected because they believed the Commission was too aggressive in its proposal.[59] Many of these commenters generally supported the Commission's objective to provide investors with more timely access to company information and offered alternatives to reduce the potential costs and burden to registrants and any negative impact on disclosure quality. These alternatives fell roughly into three categories:

- A more gradual phase-in or transition period than that proposed (*e.g.*, reducing deadlines by a set number of days per year over several years or delaying the effective date of accelerated filing deadlines).[60]

- Accelerating deadlines less extensively (*e.g.*, 75 days for the annual report and 35 days for the quarterly report) or accelerating only the annual report deadline.[61] In this regard, while comments were mixed, the majority of commenters addressing the issue believed it would be more difficult to

[46] See, for example, the Letters of the AFL–CIO; AIMR; Delphi Corporation; The Dow Chemical Company; and TIAA–CREF.

[47] See, for example, the Letters of the ABA; ACLI; AFP; American Bankers Association; The Allstate Corporation; Deloitte & Touche LLP; Dollar Tree Stores, Inc.; Ernst & Young LLP; Halliburton Company; HealthSouth Corporation; KPMG LLP; National Association of Real Estate Companies (''NAREC''); National Association of Real Estate Investment Trusts (''NAREIT''); NYCBA; PricewaterhouseCoopers LLP; Southern Union Company; Ronald S. Stowell; and UnionBanCal Corporation.

[48] See, for example, the Letters of the ACCA; ASCS; BioReliance Corporation; Community Health Systems, Inc.; Constellation Energy Group, Inc.; Dean Foods Company; HealthSouth Corporation; Merrill Lynch & Co., Inc.; Nucor Corporation; Technitrol, Inc.; Veritas Software Corporation; and Zygo Corporation.

[49] See the Letters of the ASCS and the Business Roundtable.

[50] See the Letter of American Electric Power.

[51] See the Letter of the ASCS.

[52] See, for example, the ABA; ACLI; AFLAC Incorporated; BioReliance Corporation; The Bank of New York Company, Inc.; ChevronTexaco Corporation; The Chubb Corporation; Crescent Real Estate Equities Company; Dean Foods Company; Deloitte & Touche LLP; Ernst & Young LLP; HealthSouth Corporation; J.C. Penney Company, Inc.; Mercury General Corporation; NAREC; NAREIT; PricewaterhouseCoopers LLP; and Washington Mutual, Inc.

[53] See, for example, the Letters of the ABA; AFLAC Incorporated; Cleary, Gottlieb, Steen & Hamilton; Halliburton Company; J.C. Penney Company, Inc.; Jones & Keller, P.C.; Perkins Coie LLP; PG&E Corporation; PricewaterhouseCoopers LLP; Sidley; and UnionBanCal Corporation.

[54] See, for example, the Letters of Brown-Forman Corporation; Caremark Rx, Inc.; Deloitte & Touche LLP; Joseph A. Grundfest; KPMG LLP; Liberty Media Corporation; NYCBA; PricewaterhouseCoopers LLP; and XTO Energy, Inc.

[55] See, for example, the Letters of the ACCA; ASCS; The Bank of New York Company, Inc.; Cleary, Gottlieb, Steen & Hamilton; Clifford Chance Rogers & Wells LLP; Crowe, Chizek and Company LLP; Greenberg Traurig, P.A.; Halliburton Company; J.P. Morgan Chase & Co.; Mellon Financial Corporation; PepsiCo, Inc.; Pfizer Inc.; SCANA Corporation; Shearman & Sterling; Southern Union Company; and Technitrol, Inc.

[56] See, for example, the Letters of BDO Seidman, LLP; Ernst & Young LLP; The Great Atlantic and Pacific Tea Company, Inc.; HealthSouth Corporation; KPMG LLP; Merrill Lynch & Co., Inc.; PricewaterhouseCoopers LLP; The Southern Company; and SunTrust Banks, Inc. We are surprised and concerned by these assertions given the importance of these announcements to investors and markets and are considering their implications.

[57] See, for example, the Letters of the ABA; AICPA; BDO Seidman, LLP; the Business Roundtable; ChevronTexaco Corporation; The Coca-Cola Company; Dean Foods Company; Deloitte & Touche LLP; Eli Lilly and Company; Grant Thornton LLP; HealthSouth Corporation; KPMG LLP; Marathon Oil Corporation; National Investor Relations Institute (''NIRI''); Perkins Coie LLP; PricewaterhouseCoopers LLP; Reed Smith LLP; Shearman & Sterling; Sidley; Southern Union Company; and Western Wireless Corporation.

[58] See the Comment Summary.

[59] *Id.*

[60] See, for example, the Letters of Abbott Laboratories; ACLI; AICPA; AOL Time Warner Inc.; ASCS; the Business Roundtable; Cabot Corporation; Cleary, Gottlieb, Steen & Hamilton; Deloitte & Touche LLP; Ernst & Young LLP; Joseph A. Grundfest; Halliburton Company; KPMG LLP; NYSBA; Pfizer Inc.; PricewaterhouseCoopers LLP; Sullivan & Cromwell; SIA; Sidley; and The Williams Companies, Inc.

[61] See, for example, the Letters of the ACCA; American Bankers Association; The Coca-Cola Company; Eli Lilly and Company; Harrah's Entertainment, Inc.; Lamar Advertising Company; Merck & Co., Inc.; Merrill Lynch & Co., Inc.; Michael McDonald; NAREC; NAREIT; NYCBA; Scholastic Inc.; Southern Union Company; Toys R Us, Inc.; TXU Corp.; UST Inc.; and Washington Mutual, Inc.

accelerate the quarterly report than the annual report.[62]

• Linking the deadline for filing reports to a company's public announcement of earnings (*e.g.*, the earlier of the existing deadlines or some period of time after a company's issuance of an earnings release).[63]

In addition to the comments received on the Proposing Release, earlier this year we hosted an investor summit in Washington, DC.[64] The summit offered individual investors nationwide an opportunity to ask questions and offer comments about our regulatory agenda. Most participants at the investor summit mentioned their support for our proposals to accelerate the delivery of periodic reports to investors.[65]

As mentioned in the Proposing Release, we also hosted roundtable discussions in New York, Washington, DC, and Chicago earlier this year at which investor relations professionals, corporate executives, academics and experienced legal counsel discussed financial disclosure and auditor oversight.[66] Several participants at these roundtables indicated that reporting within the proposed shortened deadlines was feasible.[67] Some participants, however, referred to the comment letters on our 1998 request for comment on accelerating deadlines,[68] and were concerned about the ability of companies, and smaller companies in particular, to report in a shorter timeframe.[69] They thought that accelerating deadlines could cause the quality of reports to diminish.[70] One participant was concerned that shortened deadlines may present more problems for quarterly reports than for annual reports.[71]

3. Final Rules

After careful consideration of the comments received, we are adopting a phased-in approach of accelerated deadlines, with no change in deadlines for the first year and a less extensive ultimate acceleration of the deadline for quarterly reports. Specifically, we are phasing-in accelerated deadlines for accelerated filers according to the following schedule:

For fiscal years ending on or after	Form 10–K deadline (days after fiscal year end)	Form 10–Q deadline (days after fiscal quarter end)
December 15, 2002	90	45
December 15, 2003	75	45
December 15, 2004	60	40
December 15, 2005	60	35

We also are accelerating the due dates for transition reports by accelerated filers on Form 10–K and 10–Q on the same schedule. These conforming changes will ensure that the deadlines for transition reports remain similar to the deadlines for periodic reports.[72] We also are making technical corrections to the codification of financial reporting policies to reflect our amendments.

According to the amendments, if a company with a calendar year fiscal year-end determines it is an accelerated filer as of December 31, 2002 (its first fiscal year ending on or after December 15, 2002), its annual report on Form 10–K for that fiscal year will continue to have a 90 day filing deadline and will be due by March 31, 2003.[73] Each of the Form 10–Q reports for the first three quarters of its 2003 fiscal year will continue to have a 45-day deadline. For example, the Form 10–Q for the company's first fiscal quarter ending March 31, 2003 will continue to be due by May 15, 2003. The Form 10–K for the fiscal year ending December 31, 2003 will have a 75-day deadline and will be due by March 15, 2004. Each of the Form 10–Q reports for the first three quarters in the 2004 fiscal year will have a 40-day deadline. For example, the Form 10–Q for the company's first fiscal quarter ending March 31, 2004 will be due by May 10, 2004. The Form 10–K for the fiscal year ending December 31, 2004 will have a 60-day deadline and will be due by March 1, 2005. Each of the Form 10–Q reports for the first three quarters in the 2005 fiscal year will have a 35-day deadline. For example, the Form 10–Q for the company's first fiscal quarter ending March 31, 2005 will be due by May 5, 2005. All subsequent reports on Form 10–K and 10–Q by the accelerated filer will be subject to a 60 and 35-day deadline, respectively.

In establishing this schedule for accelerated deadlines, we agree with the suggestions of many commenters that appropriate focus should be directed toward report quality.[74] We also agree with investors and other users of financial information that timeliness of information is important. Increased quality and timeliness, with an appropriate balance between the two, assures that investors receive the full and reliable data they deserve at the speed in which they desire it. A phased-in approach of accelerated deadlines allows a greater transition period for companies to adjust their procedures and to develop efficiencies to ensure that the quality and accuracy of reported information will not be sacrificed. Under a phased-in approach, companies will have additional time to plan for and adjust their reporting schedules and processes to ensure that the necessary reviews will not be compromised. Given the recent enactment of the Sarbanes-Oxley Act of 2002, a phased-in approach also allows companies to adjust to significant new changes and requirements in the reporting system. At the same time, a phased-in approach

[62] Compare, for example, the Letters of AFLAC Incorporated; Bank of America; Capital One Financial Corporation; CH Energy Group, Inc.; Clancy Systems International, Inc.; Constellation Energy Group, Inc.; Dollar Tree Stores, Inc.; FEI; Jefferson-Pilot Corporation; Lamar Advertising Company; Phillips Petroleum Company; The Southern Company; UnionBanCal Corporation and U.S. Bancorp with the Letters of American Electric Power; AOL Time Warner Inc.; Clifford Chance Rogers & Wells LLP; Long Aldridge & Norman LLP and United States Steel Corporation.

[63] See, for example, the Letters of the ABA; ACLI; AICPA; BDO Seidman, LLP; Comcast Corporation; Ernst & Young LLP; Grant Thornton LLP; Julia A. Harper; Hibernia Corporation; KPMG LLP; The Pepsi Bottling Group; PepsiCo, Inc.; PG&E Corporation; PricewaterhouseCoopers LLP; Stewart Information Services Corporation; UnumProvident Corporation; and Wild Oats Markets, Inc.

[64] See SEC Press Release No. 2002–59 (May 1, 2002). The summit was held on May 8, 2002. Archived broadcasts of the investor summit are available to the public on our Internet website at *www.sec.gov.*

[65] See, for example, Joseph D. Borg, Bill Mann and Damon Silvers, Remarks at the Investor Summit in Washington, DC (May 8, 2002) (archived broadcast available at *www.sec.gov).*

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

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

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

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

[70] See note 68 above.

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

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

[73] A one-time extension of time to file a particular periodic report is available under certain circumstances under Exchange Act Rule 12b–25 [17 CFR 240.12b–25].

[74] For other proposals where we are specifically addressing the quality and content of information disclosed, see notes 20 and 44 above.

allows investors to begin to experience the benefits of an accelerated flow of information. A phased-in approach also will provide the Commission with an opportunity to understand how each incremental change affects the disclosure process.

A phased-in approach helps to alleviate the immediate impact of any costs and burdens that may be imposed on certain registrants. While several commenters indicated that they could report on an accelerated timeframe today, several major business associations that surveyed their members reported that adjustment to accelerated deadlines would be easier with a longer phase-in period.[75] A longer transition may even help reduce costs as companies will have additional time to develop best practices, long-term processes and efficiencies to prepare reports, as opposed to having to take rushed and possibly inefficient measures to meet a more sudden acceleration.[76] Also, a longer transition period helps to smooth out any possible impact on the availability of third party advisors used by companies to prepare their reports.

A less extensive acceleration of the quarterly report deadline also will alleviate some of the burdens mentioned by commenters. There will be more time than proposed to gather the necessary data and complete the necessary reviews by company officials, the board of directors and outside advisors. One professional association commented that 80% of its survey respondents reported they could more easily meet a 35-day deadline than a 30-day deadline.[77] Further, we believe that by imposing a 40-day deadline before finally reducing it to 35 days, we are striking an adequate compromise between the benefits of reducing deadlines with the potential inconvenience, difficulty and cost that may be incurred by some companies.

We considered, but rejected, the alternative of tying the due date of reports to a company's announcement of earnings. Not all companies issue earnings releases or issue them on an accelerated basis. As a result, linking deadlines to earnings releases may not result in more accelerated reporting of information. We also were concerned that linking report deadlines to earnings announcements could delay earnings announcements, as companies would know that the announcement would trigger the deadline to file reports. While market demand for earnings information could negate this risk, an approach linking deadlines to earnings announcements could have the effect of penalizing companies for early releases of information while rewarding companies that delay their earnings with extended time to file their reports.

Even with a phase-in period, accelerating filing deadlines may create the risk that more companies will file their reports late or need a filing extension. Moreover, if a company is late filing its reports, it will lose availability for short-form registration for at least one year from the date of the late filing. Being late also could render Securities Act Rule 144 temporarily unavailable for security holders' resales of restricted and control securities, and make new filings on Form S–8 temporarily unavailable for resales of employee benefit plan securities.[78] We considered the suggestions of some commenters to extend the filing extension periods in Exchange Act Rule 12b–25 as an additional method to alleviate any transition difficulties to shortened deadlines.[79] However, we think a lengthy phase-in period adequately addresses these concerns. A less dramatic acceleration of deadlines over a set schedule each year will provide companies with advance notice of the changes they will be expected to make and will smooth out some of the possible difficulties raised by commenters. Rule 12b–25 in its existing form still will provide companies that face extenuating circumstances the ability to gain a filing extension of five calendar days for quarterly reports and fifteen calendar days for annual reports.

While our proposals did not directly address the contents of earnings releases, many commenters supported additional efforts by the Commission in this area. Several recommended that earnings or other standardized earnings information be filed with the Commission, such as on Form 8–K.[80] Others thought the Commission should consider issuing or promoting minimum requirements or guidelines for the contents of earnings releases, such as a GAAP reconciliation.[81] While we will continue to explore ways to improve earnings releases, and the Sarbanes-Oxley Act of 2002 requires us to take steps in this area, we believe these are separate initiatives from the need to accelerate periodic report deadlines.[82] We recognize that the information in periodic reports is more extensive than that contained in earnings releases, and that it would be difficult to eliminate any gap between the earnings release and the filing of the report. As mentioned above, however, we believe periodic reports contain valuable information for investors, and comments received from the users of this information uniformly indicated their desire to receive the reports at the earliest time that is consistent with receiving quality information.[83]

B. Definition of ''Accelerated Filer''

1. Proposed Rules

We proposed to accelerate the due dates for annual and quarterly reports only for companies with a common equity public float of $75 million or more, that have been reporting for at least 12 calendar months and that have filed at least one annual report. The public float and reporting history requirements are designed to include the companies that are least likely to find such a change overly burdensome and where investor interest in accelerated filing is likely to be highest. Other companies would continue to file under existing deadlines, including small business issuers that file on Forms 10–KSB and 10–QSB, foreign governments, foreign private issuers that elect to use Form 20–F and companies that do not have a common equity public float. Under the proposed rules,

[75] See, for example, the Letters of the ASCS; the Business Roundtable; and FEI. These and other commenters also mentioned, and we are aware of other anecdotal reports that, many companies already are revising their systems and procedures to prepare for accelerated reporting.

[76] See, for example, the Letters of the ASCS and FEI.

[77] See the Letter of the ASCS. See also Letter of the Business Roundtable.

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

[79] See, for example, the Letters of the ASCS; Cleary, Gottlieb, Steen & Hamilton; CSX Corporation; Deloitte & Touche LLP; Ernst & Young LLP; NAREIT; NYSBA; Pharmacia Corporation; PricewaterhouseCoopers LLP; and Triarc Companies, Inc.

[80] See, for example, the Letters of the ABA; Deloitte & Touche LLP; FEI; Joseph A. Grundfest; Investment Company Institute; Intel Corporation; Merrill Lynch & Co., Inc.; Nucor Corporation; SCANA Corporation; SIA; The Southern Company; TIAA– CREF; and Trover Solutions, Inc.

[81] See, for example, the Letters of Ernst & Young LLP; FEI, Fidelity Management & Research Company; Investment Company Institute; KPMG LLP; NAREC; NAREIT; NIRI; Papa John's International, Inc.; Shearman & Sterling; SIA; and Valmont Industries, Inc.

[82] See, for example, Sections 401(b) and 409 of the Sarbanes-Oxley Act of 2002 [Pub. L. No. 107–204, §§ 401(b) and 409, 116 Stat. 745 (2002)].

[83] See, for example, the Letter of Fidelity Management & Research Company.

a company would determine its public float for purposes of determining whether it would become an accelerated filer as of a date no more than 60 and no less than 30 days before the end of its fiscal year. In addition, as proposed, a company would become an accelerated filer at any time during the year if it met the public float test on a previous determination date and subsequently met the reporting requirements during the year.

2. Comments on the Proposal

Comments were mixed on the proposed definition of accelerated filer. Several commenters believed that all public companies should be required to adhere to the same filing deadlines, regardless of a company's size or experience in preparing filings.[84] These commenters thought it would be confusing to investors and companies to have differing filing deadlines. They also believed that investors in companies with a public float of less than $75 million should expect the same timely access to prompt disclosure as investors in larger companies. They argued that such prompt disclosure may be even more important for smaller companies. Several commenters also thought that while large firms may have more resources, they tend to have more complex and geographically widespread operations, numerous consolidated entities and segments and complicated financial transactions.[85]

Other commenters agreed with the notion of excluding smaller companies.[86] Smaller companies may have operations that are just as complicated as large companies. More importantly, accelerated reporting may be particularly burdensome for smaller companies because they may not have the necessary resources or infrastructure to report on an accelerated basis. Many of these issuers have small staffs and limited technological resources, so the imposition of accelerated deadlines may have a disproportionate impact on these companies. In addition, auditors may be more likely to postpone their reviews of smaller companies' financial statements until they have completed their work for larger clients. There also may not be sufficient market interest in these companies to justify the costs and burdens needed to accelerate a smaller company's reporting processes.[87]

Comments also were somewhat mixed on the use of public float as a method to differentiate between companies.[88] Several commenters questioned the use of public float as a measure indicative of a company's ability to file sooner. According to these commenters, smaller companies with limited operations and personnel could easily develop a significant public float. These commenters offered several alternative measures, including revenues, assets or some measure of trading volume. Other commenters thought the proposed $75 million public float threshold was too low.[89] These commenters recommended a number of alternative thresholds, ranging from $150 million to $10 billion. Several other commenters thought the proposed public float measurement date occurred too late in the fiscal year to give companies sufficient time to modify their systems and prepare for accelerated reporting.[90]

In the Proposing Release, we also requested comment on whether the deadline for annual reports of foreign private issuers on Form 20–F should be shortened. Comments were mixed on this request. Some commenters did not think there was a reason to not also shorten deadlines for foreign filers.[91] Others thought that the issues involving foreign issuers are sufficiently different as to warrant a separate study and rule proposal.[92] A few others thought the deadlines for foreign issuers should not be accelerated at all.[93]

3. Final Rules

After evaluating the comments on this aspect of the proposal, we are adopting the amendments substantially as proposed with some minor clarifications. Under the final rules, accelerated deadlines will apply to a company after it first meets the following conditions as of the end of its fiscal year:

- Its common equity public float was $75 million or more as of the last business day of its most recently completed second fiscal quarter;
- The company has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months;
- The company has previously filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and
- The company is not eligible to use Forms 10–KSB and 10–QSB.

The public float and reporting history aspects of this definition are being adopted substantially as proposed. These requirements are based primarily on the current eligibility requirements for registration of primary offerings for cash on Form S–3.[94] These companies can take advantage of short-form registration, including the resultant benefits of incorporation by reference and quick access to the capital markets through ''shelf registration.'' Shortening the periodic reporting deadline for these companies, coupled with our conforming revisions to the financial statement timeliness requirements discussed below, promises that investors will receive information about these companies sooner. This enhances the timeliness of information received for primary purchasers in these offerings in addition to secondary market purchasers. These changes also ensure that investors receive consistent financial information regardless of the particular registration form a company uses. In identifying companies that will be subject to this new requirement, we also thought it would be appropriate to use a pre-existing threshold to reduce regulatory complexity.

While we agree that investors in smaller companies value the timeliness of corporate disclosures, we must balance the market's need for information with the ability of companies to prepare that information without undue burden. The possible detrimental effects of accelerating the reporting process for companies least able to bear the burden of these changes may outweigh the potential advantages

[84] See, for example, the Letters of the ABA; FEI; NYCBA; Caremark Rx, Inc.; Comcast Corporation; The Dow Chemical Company; Monsanto Company; and Troutman Sanders LLP.

[85] See, for example, the Letters of the ABA; American Electric Power; Cleary, Gottlieb, Steen & Hamilton; Grant Thornton, LLP; HealthSouth Corporation; and Union Planters Corporation.

[86] See, for example, the Letters of the AFL–CIO; Corning Incorporated; Crowe, Chizek and Company LLP; KPMG LLP; NAREC; NAREIT; NYSBA; and The Williams Companies, Inc.

[87] See, for example, the Letters of Community Bankshares, Inc; First Capital Bank Holding Corporation; and GrandSouth Bancorporation.

[88] Compare, for example, the Letters of the AFP; KPMG LLP; and Western Wireless Corporation with the Letters of the ABA; AICPA; American Bankers Association; Arris Group, Inc.; BDO Seidman, LLP; Ernst & Young LLP; Foley, Hoag & Eliot LLP; Grant Thornton LLP; Joseph A. Grundfest; NYCBA; NYSBA; PricewaterhouseCoopers LLP; Shearman & Sterling; Southern Union Company; and United States Steel Corporation.

[89] See, for example, the Letters of the AICPA; American Bankers Association; Arris Group, Inc.; Baldwin & Lyons, Inc.; Ernst & Young LLP; HealthSouth Corporation; KPMG LLP; NAREC; NYSBA; Perkins Coie LLP; Triarc Companies, Inc.; and Troutman Sanders LLP.

[90] See, for example, the Letters of the ABA; AICPA; Ernst & Young LLP; KMPG LLP; and Troutman Sanders LLP.

[91] See, for example, the Letters of the AIMR; Brown-Forman Corporation; Chevron Phillips Chemical Company LLP; Comcast Corporation; Deloitte & Touche LLP; The Dow Chemical Company; Markel Corporation; Maverick Capital Ltd.; and SBC Communications Inc.

[92] See, for example, the Letters of the AICPA; Ernst & Young LLP; Institute of Management Accountants; KMPG LLP; and PricewaterhouseCoopers LLP.

[93] See, for example, the Letters of Cleary, Gottlieb, Steen & Hamilton and NYCBA.

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

of acceleration if the quality of information suffers. We do not think that having two sets of reporting deadlines will be confusing. Some registrants, such as foreign private issuers, are already subject to different deadlines. We believe it is more important that companies of the same relative size, including the most actively followed companies, are subject to shortened deadlines. We agree that larger companies may have more complex operations, but they also are more likely than smaller companies to have the infrastructure and resources to report on an accelerated timeframe.

We believe that a public float test serves as a reasonable measure of company size and market interest. While several commenters urged raising the proposed threshold, we believe a longer phase-in period for accelerating deadlines and a less extensive acceleration of the quarterly report deadline militates against the need to raise the threshold. The definition of accelerated filer we are adopting today with a $75 million public float threshold excludes nearly half of all publicly traded companies, as well as all companies eligible for our small business issuer reporting system, all foreign private issuers that file on Form 20–F and all companies that do not have a common equity public float.[95]

A company that does not fall within the ''accelerated filer'' definition as of its first fiscal year ending on or after December 15, 2002 will have to re-evaluate its status at the end of each fiscal year. To address concerns raised by commenters, a company will determine its public float by looking back at the last business day of its most recently completed second fiscal quarter. This allows companies to know further in advance whether they will become an accelerated filer at the end of their fiscal year and allow them to begin making the appropriate preparations.

As explained in the new definition of ''accelerated filer,'' the determination of whether a non-accelerated filer becomes an accelerated filer as of the end of its fiscal year governs the annual report to be filed for that fiscal year, the quarterly reports to be filed for the subsequent fiscal year and annual and quarterly reports to be filed thereafter. Under the final rules, a company would not need to determine whether it would become an accelerated filer other than at the end of its fiscal year. We believe this provides increased notice to a company for planning purposes. It also lessens any potential confusion to investors by a sudden change in deadlines.

For example, if a calendar year-end company meets the public float requirement, but has not filed its first annual report as of December 31, 2002, it does not become an accelerated filer and remains subject to existing deadlines for its 2002 annual report and its 2003 quarterly reports. However, if on December 31, 2003, the company meets the public float test as of the last business day of its second fiscal quarter ending June 30, 2003 and meets the other requirements of the accelerated filer definition, the company becomes an accelerated filer subject to the accelerated deadlines for its 2003 annual report, 2004 quarterly reports and all periodic reports thereafter.

As proposed, once a company becomes an accelerated filer, it remains an accelerated filer subject to shortened deadlines unless and until it subsequently becomes eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports.[96] In that case, the issuer ceases to be an accelerated filer unless and until it again meets the accelerated filer criteria. A few commenters thought that the use of different standards for entering and exiting accelerated filer status would be confusing and potentially unfair compared to companies that never had their public float exceed $75 million, especially for companies that cross the threshold for a certain period of time and then fall back below the threshold but do not otherwise meet the criteria to become a small business issuer.[97] However, it is our view that, once a company meets the accelerated filer threshold, it is reasonable to minimize a company's fluctuation in and out of accelerated filer status while still allowing the company to exit if it becomes so small for so long that it becomes eligible to file its reports as a small business issuer. Accordingly, we are adopting the provisions to exit accelerated filer status as proposed.

Currently, companies are required to disclose on the cover page of their annual report on Form 10–K their public float as of a specified date within 60 days before filing. To assist investors and the Commission in evaluating whether a company is subject to accelerated deadlines, we are revising this requirement. We are requiring every company, regardless of whether it is an accelerated filer, to disclose its public float as computed on the last business day of the company's most recently completed second fiscal quarter. We recognize that this will reduce the currency of this disclosure, but we believe such a change will simplify the burdens companies face by requiring them to calculate only one public float amount. Also, to clarify further a company's filing status, we are requiring each company to check a box on the cover of its quarterly and annual reports to indicate whether it is an accelerated filer.

We are not adopting changes today to the deadline for annual reports by foreign private issuers on Form 20–F. As we mentioned in the Proposing Release, we are continuing to consider this issue and Exchange Act filing requirements generally for foreign issuers. We recognize that with the adoption of today's amendments, the discrepancy between the filing deadlines for larger seasoned U.S. issuers and those for foreign private issuers will increase. We will consider the comments received in our continuing review of the issue.

C. Conforming Amendments

In the Proposing Release, we requested comment on several possible conforming revisions to other Commission rules as a result of the proposals. Our decisions on these requests are discussed in this section.

1. Timeliness Requirements in Other Commission Filings

We mentioned in the Proposing Release that we were considering making conforming revisions to accelerate the timeliness requirements in Regulation S–X for the inclusion of financial statements by accelerated filers in other Commission filings, such as Securities Act and Exchange Act registration statements and proxy and information statements under Section 14 of the Exchange Act. We requested comment on whether these changes should be made. Most of the commenters that responded to this request suggested we should make

[95] We arrived at this estimate by dividing the number of companies in Standard & Poors Research Insight Compustat Database with a market capitalization below $75 million as of November, 2001 (4,622) by the total number of companies in the Compustat Database with a reported market capitalization for that period (9,325). It is our understanding that the data in the Compustat Database is derived principally from larger companies, so our estimate may understate the actual percentage of companies that would be excluded by the proposals. Further, this figure does not include many additional companies that would not be affected by the amendments, including foreign private issuers that file on Form 20–F and issuers that do not have a common equity public float.

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

[97] See, for example, the Letters of the ABA and NAREIT.

conforming changes if we change the periodic report deadlines.[98] We agree.

When the Commission made extensive revisions to its rules, forms and regulations in 1980 to further the integrated disclosure system, it adopted amendments regarding the inclusion of financial information in registration statements and proxy statements that parallel the requirements for financial data in Exchange Act periodic reports.[99] Parallel requirements facilitate the integrated reporting system by simplifying existing rules. They also improve overall disclosure as investors are assured consistent requirements as to the timeliness of information regardless of the document received. If conforming amendments are not made to keep these requirements parallel, a filing could conceivably be filed under the Securities Act with financial information less current than that filed under the Exchange Act. Accordingly, to facilitate uniform requirements, we are adopting amendments to Regulation S–X to conform the timeliness requirements. Under the conforming amendments we are adopting today, financial statements included in a registration statement or proxy statement still will be required to be at least as current as any financial statements filed under the Exchange Act.

We recognize that in making these conforming changes, for some short period of time, accelerated filers may be prevented from going to market.[100] However, it is our view that, when a company is an accelerated filer and is attempting to raise capital in the marketplace after audited financial information would be required to be filed under the Exchange Act, it is reasonable to delay registration until such financial statements become available. We believe this change is in the best interest of the investing public and will not create any additional burden on the large majority of accelerated filers because the required financial information already will be required to have been filed. Also, as in the past, we will consider waivers to the rules where unusual circumstances dictate the need for them.[101]

a. Filings Within 90 Days of Year-End

Currently, a reporting issuer is not required to include audited financial statements for its most recent fiscal year until the 90th day after the end of the fiscal year if it satisfies three conditions:

- The company has filed all required Exchange Act reports;
- The company reasonably, and in good faith, expects income, after taxes but before extraordinary items and a cumulative effect of a change in accounting principle, for its most recent fiscal year; and
- For at least one of the two immediately preceding fiscal years, the company has reported income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle.

Unless all three conditions are met, registration statements filed or declared effective or proxy statements mailed after the 45th day following the fiscal year end must include audited financial statements for the most recent fiscal year end.[102]

We are shortening the 90-day deadline to conform to the phase-in periods for accelerated filers to keep this requirement parallel to the requirement to file an annual report under the Exchange Act. In year one of the phase-in period, the deadline will remain at 90 days. In year two of the phase-in period, the deadline will be reduced to 75 days. For year three and subsequent years, the deadline will be reduced to 60 days.

One commenter suggested we eliminate the distinctions among registrants that meet the conditions in Rule 3–01(c) of Regulation S–X.[103] We are not changing the 45-day deadline for companies that do not meet the three required conditions. This deadline was not previously linked to an Exchange Act reporting requirement, and we continue to think that this shorter deadline is sufficient. This deadline will continue to require audited financial information more current than that required by the Exchange Act reporting requirements for companies that have not reported, and do not expect to report, income.

b. Filings After 134 Days of Year-End

The existing rules require interim financial information in registration statements filed by registrants after 134 days subsequent to the end of the registrant's fiscal year—the period after audited financial statements for the most recently completed fiscal year are already required to be filed by most registrants on Form 10–K or 10–KSB and on or after the date most registrants are required to have filed interim financial statements for the first quarter on Form 10–Q or 10–QSB. Under the conforming amendments, in year one of the phase-in period, the period will remain at 134 days for accelerated filers. In year two of the phase-in period, the period will be reduced from 134 to 129 days for accelerated filers. When a registration statement is filed or is to be declared effective during this period, updated financial statements will now be required as of an interim date within 130 days of the date of filing. For year three and subsequent years, the period will be reduced to 124 days for accelerated filers. Registration statements filed or to be declared effective during this period will be required to include updated financial statements as of an interim date within 125 days of the date of filing. Here again, the amended rules parallel the requirements for filing interim information under the Exchange Act.

c. Age at Effective Date of Filing

Under the existing rules, where financial statements in a filing are as of a date 135 days or more before the date the filing is expected to become effective, or proposed mailing date in the case of a proxy statement, the financial statements must be updated with a balance sheet as of an interim date within 135 days and with statements of income and cash flows on a comparative basis for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided.[104] Two exceptions exist under the current rule. First, where the registrant meets the conditions in Rule 3–01 of Regulation S–X and the anticipated effective date or proposed mailing date in the case of a proxy statement falls after 45 days but within 90 days of the end of the fiscal year, the filing need not be updated with financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year provided audited financial statements for such fiscal year are not available. Second, where the registrant does not meet the prescribed conditions referred to above and the anticipated effective date or proposed mailing date falls after 45 days but within 90 days of the end of the fiscal year, the filing must include audited financial statements for the most recent fiscal year. Both exceptions are consistent with the rules

[98] See, for example, the Letters of American Electric Power; Comcast Corporation; The Dow Chemical Company; Ernst & Young LLP; Eli Lilly and Company; and HealthSouth Corporation.

[99] See Release No. 33–6234 (Sept. 2, 1980) [45 FR 63682].

[100] For example, after the phase-in period is complete, an accelerated filer would need to include updated financial statements in its registration statements up to 30 days earlier than under the current rules.

[101] See, for example, Rule 3–13 of Regulation S–X [17 CFR 210.3–13].

[102] If the audited financial statements for the most recently completed fiscal year are available or become available before effectiveness or mailing, they must be included in the filing.

[103] See the Letter of Ernst & Young LLP.

[104] See Rule 3–12 of Regulation S–X.

governing financial statements as of the date of filing.

The conforming amendments revise the updating rule to parallel the requirements for filing financial information under the Exchange Act. In year one of the phase-in period, the general updating period will remain at 135 days for accelerated filers. In year two of the phase-in period, the general updating period will be reduced from 135 days to 130 days for accelerated filers. For year three and subsequent years, the period will be reduced to 125 days. For each of the exceptions, the 90 day period will remain at 90 days for year one and then be reduced to 75 days in year two and 60 days in year three and subsequent years for accelerated filers. We will maintain the two existing exceptions in the rule.[105]

d. Unconsolidated Subsidiaries and 50% or Less Owned Persons

Several commenters did not think that the due date in Rule 3–09 of Regulation S–X regarding the inclusion of financial statements of significant equity investees, joint ventures and subsidiaries not consolidated should be accelerated to conform to that of the investor registrant.[106] Accelerating the filing of these financial statements could require a company that does not meet the definition of an accelerated filer to file its financial statements before it would otherwise be required to do so solely because of a minority ownership stake by the investor registrant. In addition, the investor registrant may have difficulty in obtaining these financial statements from these non-wholly owned entities in the appropriate timeframe. This may lead a registrant to either sell its investment, not for business reasons, but in order to remain timely and current in its filing requirements, or cause the investor registrant to be not timely, which could have a number of adverse effects, including the loss of short-form registration.

As part of our conforming amendments, we are amending Rule 3–09 of Regulation S–X to address these concerns. Separate financial statements of subsidiaries not consolidated and 50% or less owned persons required by Rule 3–09 of Regulation S–X will not be accelerated for inclusion in a company's annual report on Form 10–K if the subsidiary or 50% or less owned person is not an accelerated filer. In that instance, the financial statements of the subsidiary or 50% or less owned person can be filed by amendment within the existing time periods. In addition, we are making conforming amendments to still provide companies with additional time to file the required financial statements if the fiscal years of the investor registrant and the subsidiary or 50% or less owned person differ.

2. Time Allowed to Incorporate Form 10–K Information From Definitive Proxy or Information Statements

In the Proposing Release, we did not propose to make a conforming change to the 120-day period companies have to file their definitive proxy or information statements involving the election of directors to allow the incorporation by reference of the information required by Part III of Form 10–K.[107] We requested comment on whether this period should be shortened. While two commenters supported accelerating the filing of definitive proxy or information statements to ensure that investors have timely information,[108] the majority of commenters that responded to our request objected to a conforming change.[109] The objecting commenters thought that a shortened deadline would be overly burdensome. We see no significant reason to shorten the deadline at this time.

Some commenters were concerned that a reduction of the filing deadline for Form 10–K without a corresponding change in the deadline for incorporating the Part III information by reference from the proxy statement would interfere with the ability of some companies to file new short-form registration statements for securities offerings during the period between the Form 10–K filing date and the filing of the proxy statement.[110] This is because these issuers would be required to include the Part III information in the registration statement, either directly or through incorporation by reference from another document, before the proxy statement is filed. As the ability to incorporate the Part III information from the proxy statement is voluntary and is designed for the benefit of registrants, we do not believe this concern warrants either a change to the deadline to incorporate Part III information from the proxy statement or the Form 10–K deadline. Companies will retain the flexibility to choose the alternative that best suits their individual circumstances.

3. Form 10–K Schedules Required by Article 12 of Regulation S–X

We did propose to make a conforming change to the date by which all schedules required by Article 12 of Regulation S–X may be filed as an amendment to the annual report. We proposed to change this date from 120 calendar days to 90 calendar days for accelerated filers to maintain a 30-day period after the due date of the report to file the amendment. We requested comment on this change.

The majority of commenters responding to this request supported this change.[111] Several commenters supported eliminating any delay and requiring these schedules to be filed with the Form 10–K.[112] However, we understand that in some instances additional time may be necessary to prepare these schedules. As a result, we are adopting conforming amendments to maintain a 30-day period after the due date of the report to file the schedules.

4. Financial Statement Filing Requirements in Rule 3–05 of Regulation S–X and Item 7 of Form 8–K

In the Proposing Release, we requested comment on whether we should make conforming revisions to the financial statement filing requirements in Item 7 of Form 8–K and Rule 3–05[113] of Regulation S–X for financial statements of businesses acquired. The commenters who responded to this request uniformly objected to such a change.[114] Many of these commenters believed that the ability to obtain audited financial statements of a significant acquired business generally is unrelated to any

[105] As with the existing rules, the revised updating rule also includes a general provision that if a filing is made near the end of a fiscal year and the audited financial statements for that fiscal year are not included in the original filing, the filing must be updated with those audited financial statements if they become available before the anticipated effective date, or proposed mailing date in the case of a proxy statement.

[106] See, for example, the Letters of the AICPA; Corning Incorporated; Ernst & Young LLP; and KPMG LLP.

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

[108] See the Letters of the AIMR and Maverick Capital Ltd.

[109] See, for example, the Letters of American Electric Power; AFLAC Incorporated; ASCS; The Coca-Cola Company; Comcast Corporation; The Dow Chemical Company; Ernst &Young LLP; Intel Corporation; LeBoeuf, Lamb, Green & MacRae; McGuireWoods LLP; NYSBA; PepsiCo, Inc.; PricewaterhouseCoopers LLP; The Southern Company; and Technitrol, Inc.

[110] See, for example, the Letters of J.P. Morgan Chase & Co. and NYCBA.

[111] See, for example, the Letters of American Electric Power; ASCS; The Dow Chemical Company; Ernst &Young LLP; and United States Steel Corporation. But see the Letter of Triarc Companies, Inc.

[112] See, for example, the Letters of the AIMR; Maverick Capital Ltd.; and PricewaterhouseCoopers LLP.

[113] 17 CFR 210.3–05.

[114] See, for example, the Letters of the AICPA; ASCS; Cleary, Gottlieb, Steen & Hamilton; Deloitte & Touche LLP; Ernst &Young LLP; KPMG LLP; NYCBA; and PricewaterhouseCoopers LLP.

circumstances of the acquirer that cause it to be an accelerated filer for purposes of its own financial statements. We see no significant reason to shorten the deadline at this time, and therefore we are not adopting conforming amendments to these provisions.

D. Website Access to Information

1. Proposed Rules

We proposed to require accelerated filers to provide additional disclosure in their annual reports of where investors can obtain access to company filings. This would have included disclosure regarding the availability of information from the Commission, the company's website address and whether the company makes available free of charge on its website, if it has one, its annual, quarterly and current reports, and all amendments to those reports, as soon as reasonably practicable after, and in any event on the same day as, such material is electronically filed with or furnished to the Commission. If a company chose not to make its filings available on its website in this manner, the proposals would have required it to disclose why it does not do so and where else the public can access these filings immediately upon filing and whether there is a fee for such access. Companies also would have to disclose whether they voluntarily will provide electronic or paper copies of its filings upon request.

Widespread access to timely corporate information promotes the efficient functioning of the secondary markets by enabling investors to make informed investment and voting decisions. Further, ready access to Exchange Act information is critical to short-form registration of securities offerings by seasoned issuers under the Securities Act.[115] This form of registration allows certain information about the company conducting the offering to be incorporated by reference from the company's Exchange Act reports without, in many instances, separate delivery of those reports. One rationale for this method of registration is that the information in the company's Exchange Act reports already has been adequately disseminated and evaluated by the marketplace.

The development of the Internet has revolutionized information production, availability, and dissemination.[116] The increased availability of information has helped to promote transparency, liquidity and efficiency in our capital markets. One of the key benefits of the Internet is that companies can make information available to many investors and the financial markets quickly and in a cost-effective manner. Online access to Internet information also helps to democratize the capital markets by enabling many small investors to access corporate information.[117]

We have taken a number of steps to encourage the dissemination of information electronically via the Internet. For 18 years, we have been continually improving and modernizing electronic access to companies' Exchange Act reports through our EDGAR system, including by providing Internet access to these reports.[118] We now provide electronic access to the public on a real-time basis through our Internet website.[119]

Without regard to EDGAR, an efficient and economical method for companies to make information available about themselves to many investors is through their Internet websites. In addition to other existing sources of company information, such as our website, a company's website is often an obvious place for investors to find information about a company. A company also may use different formats and other approaches to making information available in ways it believes are useful to investors. Most companies, realizing the benefits of this technology for information dissemination, already provide access to their Commission filings through their websites. A study by our Office of Economic Analysis revealed that approximately 83% of companies with a public float of at least $75 million provide some form of access to their Commission filings through their websites, either via a hyperlink with a third-party service providing real-time access to the filings (45%), by posting the filings directly on their websites (29%) or via a hyperlink to our EDGAR database (15%).

Modernizing the disclosure system under the federal securities laws involves recognizing the importance of the Internet in fostering prompt and more widespread dissemination of information.[120] We believe company disclosure should be more readily available to investors on a timely basis in a variety of locations to facilitate investor access to that information. We believe it is important for companies to make investors aware of the different sources that provide access to company information. We applaud those that already provide access to their Commission filings through their websites, and encourage every reporting company to do so.

2. Comments on the Proposal

We received responses from 141 commenters on the proposals for disclosure concerning access to company filings. The vast majority of commenters representing investors, investor groups, companies and professional associations were supportive of the proposals. Sixty commenters supported the requirement as proposed and concurred with our objective to provide investors with information on where they can access company reports.[121] These commenters believed the proposal would aid in encouraging companies to make information available in a variety of locations and hence make corporate information more widely accessible and disseminated. One professional association mentioned that almost 90% of companies in its survey expected to accomplish the objectives of the proposal with ease.[122] The commenter also referred to other studies demonstrating that corporate websites are a significant source of information to investors and the media.

Forty commenters concurred with our objective but offered modifications to

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[115] Short-form registration is available in varying degrees for domestic issuers on Forms S–2 [17 CFR 239.12], S–3, S–4 [17 CFR 239.25] and S–8.

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

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

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

[119] See note 32 above.

[120] Congress has already recognized the importance of utilizing the Internet to disseminate information. For example, Section 403(a) of the Sarbanes-Oxley Act of 2002 [Pub. L. 107–204, Section 403(a), 116 Stat. 745 (2002)] added Section 16(a)(4) of the Exchange Act [15 U.S.C. 78p(a)(4)] requiring companies to provide Section 16(a) filings on their corporate websites. Other countries also have begun to recognize the importance of the Internet to disseminate information. For example, the listing standards for the S.T.A.R. Market segment of the Italian Exchange (Borsa Italiana) require listed companies to post their periodic reports on their websites. See Article 2.2.3, paragraph 3.e) of Regolamento Dei Mercati Organizzati E Gestiti Da Borsa Italiana S.P.A. [Rules of the Markets Organized and Managed by the Italian Exchange] (July 15, 2002).

[121] See, for example, the Letters of the AFP; AIA; AIMR; The Allstate Corporation; AOL Time Warner Inc.; Armstrong World Industries, Inc.; BDO Seidman, LLP; the Business Roundtable; CCBN; CII; Jason Cook; Deloitte & Touche LLP; Delphi Corporation; Dollar Tree Stores, Inc.; The Dow Chemical Company; EDGAR Online; Eli Lilly and Company; Grant Thornton LLP; Investment Company Institute; Jefferson-Pilot Corporation; NIRI; Pharmacia Corporation; Principal Financial Group, Inc.; SunTrust Banks, Inc.; TIAA–CREF; UnionBanCal Corporation; UnumProvident Corporation; and XTO Energy Inc.

[122] See the Letter of the NIRI.

the proposal, such as recommending that we allow additional time for companies to post the reports on their websites and suggesting that a permanent statement regarding availability of the company's filings on a web page referring to EDGAR or a standing hyperlink to EDGAR should suffice.[123] Twenty other commenters offered similar suggestions to modify the proposal.[124] Some of the commenters requested interpretive clarifications for complying with the proposals.[125]

Twenty-one commenters questioned the utility of the proposal, especially considering the existence of the Commission's EDGAR website and the Commission's recent announcement that its website now provides real-time access to filings.[126] Some of these commenters thought the proposal unnecessarily duplicated the Commission's EDGAR system.[127] One commenter did not agree that a variety of electronic sources provides any more widespread access to information than a single source.[128] Ten companies suggested that the desired improvement the Commission seeks in instant accessibility of information could be best accomplished by modernizing the EDGAR system, including by making filings immediately available to the public on its website, which we have now done.[129]

3. Final Rules

After evaluating the comments received, we are adopting the proposals with minor revisions. These amendments require accelerated filers to disclose in their annual reports on Form 10–K the following:[130]

- The company's website address, if it has one;
- Whether the company makes available free of charge on or through its website, if it has one, its annual report on Form 10–K, quarterly reports on Form 10–Q, current reports on Form 8–K, and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the Commission;
- If the company does not make its filings available in this manner, the reasons it does not do so (including, where applicable, that it does not have an Internet website);[131] and
- If the company does not make its filings available in this manner, whether the company voluntarily will provide electronic or paper copies of its filings free of charge upon request.

Accelerated filers must begin complying with the new disclosure requirement starting with their annual reports on Form 10–K to be filed for fiscal years ending on or after December 15, 2002.

In response to comment, we have eliminated the proposed requirement that registrants disclose that filings are available on our website and in our public reference room as unnecessary. We have also eliminated the proposed disclosure relating to where else the public can access company filings immediately upon filing if the company does not provide real-time website access as real-time access to filings is now available through our Web site.

We understand that companies provide website access to their Exchange Act reports in a variety of ways, including by establishing a hyperlink to its Exchange Act reports via a third-party service in lieu of maintaining the reports themselves.[132] For purposes of the disclosure element for website access to reports, hyperlinking to a third-party service is acceptable so long as the reports are made available in the appropriate time frame and access to the reports is free of charge to the user. To clarify that hyperlinking to a third party website is acceptable, we have slightly modified the proposed language to specify that a company can provide access on or through its website. A company should hyperlink directly to its reports (or to a list of its reports) instead of just to the home page or general search page of the third-party service.[133] We note that many companies already provide this level of specificity in their hyperlinks as a matter of best practice.

As we now provide real-time access to Exchange Act reports through our website, hyperlinking directly to a company's reports (or to a list of its reports) on our EDGAR website will allow a company to state that it provides website access to its reports as soon as reasonably practicable after those reports are filed. This will help to decrease further any incremental burdens or costs caused by the new requirement. Despite the availability of these reports through our website, we concluded that disclosure regarding company website access is still desirable as one of our objectives is to encourage the availability of information in a variety of locations and foster best practices for making that information broadly accessible. Hyperlinking through EDGAR will now allow a company to state in all cases that it provides website access as soon as reasonably practicable.[134]

In reference to comments concerned about technical and other obstacles that might lead to violating the ''same day'' requirement, we have eliminated that requirement. However, we interpret the ''as soon as reasonably practicable'' standard to mean that the report would be available, barring unforeseen circumstances, on the same day as filing. We could revisit this requirement if posting on the same day does not generally occur.

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[123] See, for example, the Letters of the ACCA; American Electric Power; AFLAC Incorporated; Amerada Hess Corporation; the American Bankers Association; Capital One Financial Corporation; The Chubb Corporation; CIGNA Corporation; Cleary, Gottlieb, Steen & Hamilton; Dell Computer Corporation; Ernst &Young LLP; FEI; Halliburton Company; Merrill Lynch & Co., Inc.; NAREC; PepsiCo, Inc.; PG&E Corporation; and UniSource Energy Corporation.

[124] See, for example, the Letters of the ABA; J.P. Morgan Chase & Co.; McDonald's, Inc.; Mellon Financial Corporation; NAREIT; PricewaterhouseCoopers LLP; and Sullivan & Cromwell.

[125] See, for example, the Letters of the ABA; Capital One Financial Corporation; and Reed Smith LLP.

[126] See, for example, the Letters of American Financial Group, Inc.; Allegheny Energy, Inc.; Aztar Corporation; Caremark Rx, Inc.; Chevron Phillips Chemical Company LLP; Compass Bankshares, Inc.; Community Bankshares, Inc.; Edison Electric Institute; First Capital Bank Holding Corporation; GrandSouth Bancorporation; International Bancshares Corporation; J.C. Penney Company, Inc.; M&T Bank Corporation; Marathon Oil Corporation; MDU Resources, Inc.; Pinnacle West Capital Corporation; and Sinclair Broadcast Group, Inc.

[127] See, for example, the Letters of Allegheny Energy, Inc.; Compass Bankshares, Inc.; Commercial Federal Corporation; Edison Electric Institute; and Pinnacle West Capital Corporation.

[128] See the Letter of Compass Bankshares, Inc.

[129] See, for example, the Letters of American Financial Group, Inc.; Caremark Rx, Inc.; Community Bankshares, Inc.; First Capital Bank Holding Corporation; GrandSouth Bancorporation; International Bancshares Corporation; J.C. Penney Company, Inc.; M&T Bank Corporation; Marathon Oil Corporation; and MDU Resources, Inc.

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

[131] This requirement relates to the company's experience during the period covered by the report, or since the effective date of the amendments if a company has not completed a full fiscal year before its next annual report is due.

[132] In Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843] (the ''2000 Release''), we provided interpretive guidance on the possible effects of hyperlinking to a third party website. See the 2000 Release, at n.48 and the accompanying text.

[133] Companies could present the viewer with an intermediate screen stating that the visitor is leaving the company's website. Also, a disclaimer of responsibility for the accuracy of the third party service will not make the website posting ineffective for purposes of the disclosure requirement.

[134] Several companies already hyperlink to our EDGAR website to provide website access to their reports. As a result of adding real-time EDGAR filing data to our website, new searches located on new webpages are now available on our website that provide access to this real-time data. For companies that currently hyperlink to our website, they will need to revise their hyperlink scripts if they have not already done so to refer to the new search pages providing real-time data. The older search pages will be eliminated in the near future.

Whether a company provides access to its Exchange Act reports either directly or through a third-party service, we recognize that some companies display the reports in electronic formats (for example, PDF) other than the official electronic format used to transmit the filing to our EDGAR system. In fact, we encourage companies to do so if alternative formats enhance readability and accessibility of the reports, so long as all of the information in the reports remains retrievable. However, the use of a particular medium to access the reports should not be so burdensome that the intended recipients cannot effectively access the information provided.[135]

The website access contemplated by the amendments includes access to all exhibits and supplemental schedules electronically filed with the reports or amendments. Information incorporated by reference is not required to be separately posted, although we encourage companies to do so if it will aid investor access to the information.

While the amendments do not cover how long a company's report must be made available on or through its website, we encourage companies to provide ongoing website access to their reports. At a minimum, we suggest companies provide website access to their previous reports for at least a 12 month period. It would be desirable for companies to provide access to their previous reports on an appropriately archived portion of their website over an even longer timeframe. Finally, we encourage companies to provide website access to all of their filings with the Commission, including their filings under the proxy rules and their Securities Act filings.

Regarding the requirement that a company disclose its website address in its annual report on Form 10–K, some commenters were concerned as to whether including the website address in the filing constitutes incorporation by reference of any website information into the filing.[136] If a company is complying with this disclosure item in its annual report on Form 10-K, the inclusion of the company's website address will not, by itself, include or incorporate by reference the information on the site into the company's Commission filing, unless the company otherwise acts to incorporate the information by reference.[137]

We understand that a company may have multiple Web sites that it uses for various purposes, such as investor relations, product information and business-to-business activities. We interpret the requirement to disclose the company's website address to mean the website the company normally uses for its investor relations functions.

The revisions we adopt today create new disclosure obligations that are designed to create duties only under Sections 13(a) and 15(d) of the Exchange Act. The new disclosure is not an antifraud rule, and it is not designed to create new duties under the antifraud provisions of the federal securities laws or in private rights of action or to alter any existing liability provisions. The new disclosure also does not separately create or otherwise affect a company's duty to update its prior statements.

As proposed, we are initially limiting the amendments to accelerated filers. Commenters were nearly unanimous in thinking that we should extend the amendments to all filers, including smaller issuers and foreign issuers.[138] According to these commenters, the utility of information about report access is likely to be just as great or even greater for these issuers compared to the minimal incremental cost that may be associated with the proposals. We will continue to study this issue and consider extending the requirement to all reporting companies after evaluating our initial experience with the requirement by accelerated filers.

III. Paperwork Reduction Act

The amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[139] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted these requirements to the Office of Management and Budget (''OMB'') for review.[140] Subsequently, OMB approved the proposed information collection requirements.

The titles for the collection of information are ''Form 10–K'' and ''Form 10–Q.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

Form 10–Q (OMB Control No. 3235–0070) prescribes information that a registrant must disclose quarterly to the market about its business. Preparing and filing a quarterly report on Form 10–Q is a collection of information.

We currently estimate that Form 10–K results in a total annual compliance burden of 12,105,360 hours and an annual cost of $1,210,536,000. The burden was calculated by multiplying the estimated number of respondents filing Form 10–K annually (9,384) by the estimated average number of hours each entity spends completing the form (1,720 hours). We estimate that 75% of the burden is carried by the respondent internally ($9{,}384 \times 1{,}720 \times 0.75 = 12{,}105{,}360$), and we estimate that 25% of the burden is carried by outside advisors retained by the respondent at an average cost of $300 per hour ($9{,}384 \times 1{,}720 \times 0.25 \times \$300 = \$1{,}210{,}536{,}000$).[141] The portion of the burden carried by outside advisors is reflected as a cost.

We currently estimate that Form 10–Q results in a total annual compliance burden of 2,728,092 hours and an annual cost of $272,809,200. The burden was calculated by multiplying the estimated number of reports on Form 10–Q filed annually (26,746) by the estimated average number of hours each entity spends completing the form (136 hours). We estimate that 75% of the burden is prepared by the respondent ($26{,}746 \times 136 \times 0.75 = 2{,}728{,}092$). We estimate that 25% of the burden is prepared by outside advisors retained by the respondent at an average cost of $300 per hour ($26{,}746 \times 136 \times 0.25 \times \$300 = \$272{,}809{,}200$). This

[135] See, for example, Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458], at n. 24 and the accompanying text.

[136] See, for example, the Letters of the ABA; ASCS; Caremark Rx, Inc.; NYCBA; NYSBA; PricewaterhouseCoopers LLP; and Sullivan & Cromwell.

[137] In the 2000 Release, we provided interpretive guidance on the effect of including a website address in other situations. See the 2000 Release, note 132 above, at n.41 and the accompanying text. We are not changing that guidance for those other situations.

[138] See, for example, the Letters of the ABA; ASCS; Comcast Corporation; Deloitte & Touche LLP; The Dow Chemical Company; Institute of Management Accountants; PricewaterhouseCoopers LLP; and TIAA–CREF.

[139] 44 U.S.C. 3501 *et seq.*

[140] Publication and submission were in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[141] Our allocation of the burden for Form 10–K and Form 10–Q is a departure from the Proposing Release and our past PRA submissions for Exchange Act periodic reports, for which we estimated that the company carried 25% of the burden internally and 75% of the burden was carried by outside professionals retained by the company. See also Release No. 33–3098 (May 10, 2002) [67 FR 35620]. We believe that this new allocation more accurately reflects current practice for annual and quarterly reports.

portion of the burden is reflected as a cost.

A. Summary of Amendments

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

B. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the Proposing Release. We received responses from two companies addressing the Commission's overall estimates for preparing reports.[142] Both commenters questioned our original estimate of the allocation of the burden between the company (25% of the burden) and outside professionals retained by the company (75% of the burden). Both believed the estimate for the amount of work prepared in-house should be much higher.[143] Subsequent to the Proposing Release, we have changed our estimates of the allocation of the burden between the company and outside advisors to 75% for in-house work and 25% for outside advisors.[144] We recognize that not all companies may utilize in-house resources to the extent mentioned by the commenters, but we believe the new allocation more accurately reflects current practice for annual and quarterly reports.

One of the commenters believed the Commission's estimate of the average number of hours each entity spends completing Form 10–Q (136 hours) is too low.[145] The commenter also believed that the Commission's estimate of the average number of hours each entity spends completing the Form 10–K (1,720 hours) was more accurate. We have not concluded that our estimates should be changed as a result of this comment, although we will continue to monitor registrant response to our burden hour estimates.

In addition to the concerns raised by commenters, we have made several modifications to the proposals, although the modifications do not affect our estimate of the incremental burden of the amendments. The amendments will change the calculation date for determining the disclosure of a company's common equity public float that appears on the cover page of its Form 10–K. In addition, companies will be required to check a box on their Form 10–K and 10–Q indicating whether they are an accelerated filer. We believe these changes are minimal and do not affect the total amount of burden hours for preparing the forms.

In addition, we have made several changes to the proposal for disclosure concerning access to company reports in response to comments on the substance of the proposal and to avoid unnecessarily lengthening reports. These changes include revising or eliminating some of the proposed disclosure elements. We do not believe these changes will significantly change our previous estimates of the burden on registrants from this new disclosure item.

C. Revisions to Reporting and Cost Burden Estimates

We estimate that approximately 59% of Form 10–K and Form 10–Q respondents, or 5,494 respondents, will satisfy our proposed definition of accelerated filer, and thus will be subject to accelerated deadlines and the requirement to make the enhanced disclosure in their Form 10–K regarding website access to their Exchange Act reports.[146]

For our amendments regarding filing deadlines, the amount of information required to be included in Exchange Act reports will remain the same. Accordingly, solely for purposes of the Paperwork Reduction Act, our estimate is that the amount of time necessary to prepare the reports, and hence, the total amount of burden hours, will not change.

As proposed, we estimate that the preparation of the required disclosure regarding information access in a respondent's Form 10–K will add 0.50 burden hours to each annual report on Form 10–K. Thus, we estimate this aspect of the amendments will add an additional 2,747 burden hours to the current Form 10–K (0.50 hours $\times$ 5,494 respondents). We estimate that 75% of the burden is carried by the respondent ($0.50 \times 5{,}494 \times 0.75 = 2{,}060$).[147] We estimate that 25% of the burden is prepared by outside advisors retained by the respondent at an average cost of $300 per hour ($0.50 \times 5{,}494 \times 0.25 \times \$300 = \$206{,}025$). This portion of the burden is reflected as a cost.

As a result, we estimate the total annual compliance burden for Form 10–K after our revisions to be 12,107,420 hours and an annual cost of $1,210,742,025, an increase of 2,060 hours and $206,025 in cost. Compliance with the disclosure requirement will be mandatory. There will be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential. We do not believe that the imposition of this disclosure requirement will alter significantly the number of respondents that file on Form 10–K.

IV. Cost-Benefit Analysis

The amendments are part of our initiative to modernize and improve the regulatory system for periodic disclosure under the Exchange Act. We are sensitive to the costs and benefits that result from our rules. In this section, we examine the benefits and costs of our amendments.

[142] See the Letters of PPL Corporation and Southern Union Company.

[143] One commenter believed the estimate should be 90% for in-house work and 10% for outside professionals. See the Letter of PPL Corporation. The other commenter mentioned it prepares over 95% of its reports by in-house personnel. See the Letter of Southern Union Company.

[144] See note 141 above.

[145] The commenter provided an estimate of 400 hours. See the Letter of PPL Corporation.

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

[147] As discussed in note 141 above, this allocation of the burden is a departure from the Proposing Release, for which we estimated that the respondent carried 25% of the burden internally and 75% of the burden was carried by outside advisors retained by the respondent. We believe that this new allocation more accurately reflects current practice for annual and quarterly reports.

The rule and form changes will enhance the timeliness and availability of disclosure to investors in two ways:

- Shorten the due dates of quarterly and annual reports (and transition reports) for domestic reporting companies that meet certain public float and reporting history requirements;[148] and
- Require companies to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether companies provide access to their Exchange Act reports on their Internet websites.

A. Acceleration of Quarterly and Annual Report Due Dates

1. Benefits

The due dates for quarterly and annual reports by domestic issuers have not changed in over 30 years, despite enormous advances in information technology and productivity. We believe that periodic reports contain valuable information for investors. Shortening the due dates for quarterly, annual and transition reports will provide many benefits. Most importantly, it will accelerate the delivery of information to investors and the capital markets, enabling them to make more informed investment and valuation decisions more quickly.[149] This helps the capital markets function more efficiently, which implies more efficient valuation and pricing. While quarterly and annual reports at present generally reflect historical information, a lengthy delay before that information becomes available makes the information less valuable to investors.

The more extensive information in periodic reports is evaluated by investors and particularly analysts and institutional investors as a baseline for the incremental disclosures made by a company. These reports also contain more detailed information that is essential to conduct comparative analyses, as this information is often not contained in earnings releases or other incremental disclosures. Moreover, the information in Exchange Act reports, due to its required nature and the liability to which it is subject, provides a verification function against other statements made by the company in press releases and other public announcements. Investors and other users of the reports can judge previous informal statements by the company against the more extensive and mandated disclosure provided in the reports that have been reviewed by independent public accountants and other advisors. Accelerating the availability of this information will enable this verification to occur at an earlier point in time. Accelerating the availability of these reports also may increase the relevance of these reports, as the timeliness of information has considerable value to investors and the markets. Moreover, seasoned issuers incorporate information from their Exchange Act reports in their Securities Act registration statements. Hence, investors buying in these public offerings, particularly in on-going shelf offerings, also may benefit from more timely disclosure.

Many companies now routinely release quarterly and annual results well before they file their formal reports with us. These earnings announcements reflect the importance of financial information and investors' demand for it at the earliest possible time. Assuming that companies are collecting and evaluating information before they issue these announcements, the availability of this information also suggests that much of the process involved in preparing the financial information contained in periodic reports is substantially complete. However, these earnings announcements are generally less complete in their disclosure than quarterly or annual reports, and they can emphasize information that is less prominent in quarterly or annual reports. Investors often must wait for the periodic reports to receive financial statements and the accompanying notes prepared in accordance with generally accepted accounting principles, MD&A and other vitally important financial disclosures. These additional disclosures increase transparency for investors.

We also are making conforming amendments to accelerate the timeliness requirements in Regulation S–X for the inclusion of financial statements by accelerated filers in other Commission filings, such as Securities Act and Exchange Act registration statements and proxy and information statements under Section 14 of the Exchange Act. When the Commission made extensive revisions to its rules, forms and regulations in 1980 to further the integrated disclosure system, it adopted amendments regarding the inclusion of financial information in registration statements and proxy statements that parallel the requirements for financial data in Exchange Act periodic reports. Parallel requirements facilitate the integrated reporting system by simplifying existing rules. They also improve overall disclosure as investors are assured consistent requirements as to the timeliness of information regardless of the document received. If conforming amendments are not made to keep these requirements parallel, a filing could conceivably be made under the Securities Act with financial information less current than that filed under the Exchange Act. Accordingly, to facilitate uniform requirements, we are adopting amendments to Regulation S–X to conform the timeliness requirements. Under the conforming amendments we are adopting today, financial statements included in a registration statement or proxy statement still will be required to be at least as current as any financial statements filed under the Exchange Act.

Many commenters representing investors, users of financial information and several companies concurred with our assessment of the benefits of the proposals. These commenters believed that shortening deadlines will improve the delivery and flow of reliable information to investors and capital markets and assist in the efficient operation of the markets. These commenters emphasized the importance of the extensive information in periodic reports and investors' demand for it at the earliest possible time. Several other companies, accounting firms and professional associations agreed in concept that shortening due dates would improve the flow of information, but believed the due dates should reflect concerns about the quality of information to be filed.

A small minority of companies, law firms and business organizations, however, believed that existing deadlines and market practices are sufficient to satisfy investors' needs and believed we over-emphasized the importance of periodic reports. These commenters did not think a significant benefit would result from shortening deadlines, but also generally did not attempt to address the question of possible benefits from the perspective of users of the reports. While we recognize that investors and the markets rely on information from a variety of sources in formulating their investment decisions, we agree with the near unanimous view of commenters representing the users of

[148] We also are making conforming amendments to the timeliness requirements for the inclusion of financial information in proxy statements, information statements and Securities Act and Exchange Act registration statements.

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

reports that the financial and other information in periodic reports is important to them, and that accelerating the delivery of the reports will provide benefits to investors and the markets.

2. Costs

The amendments will increase costs to some affected reporting companies, although companies may, and some already do, report within the new deadlines voluntarily. Specifically, the amendments may increase the costs of preparing reports because although companies already must prepare the reports, some may have to delay other projects or use additional resources, including in-house personnel, outside legal counsel and outside auditors to prepare the information in a shorter timeframe. Some companies may need to make additional capital investments, such as in additional information systems, to prepare their reports in a shorter timeframe.

While a few commenters believed that the original proposals would not have a significant adverse effect on the cost of preparing reports, most who addressed the subject mentioned that the original proposals would result in some increased costs. Many outlined their process of preparing reports to demonstrate the difficulties of accelerating the process. The particular steps and timing varied depending on the individual company, and not all companies appear to be at the same level of technological sophistication and staffing for preparing reports. Two professional associations noted that there are no current best practices for preparing reports.[150] As a result, the few cost estimates received varied widely, and many commenters were unable to provide estimates. One company believed it was not possible to put a dollar value on such costs, as it depends on the quality and flexibility of each registrant's present systems, processes and staff.[151] According to one professional association that surveyed its members, 52% of its survey respondents reported that they expected costs to increase in order to comply with the original proposals.[152] Forty-five percent of respondents indicated they would have to hire additional staff, and 27% of respondents indicated they would have to buy or develop additional systems. Other commenters were concerned that accelerating deadlines would result in increased audit fees, particularly for companies with a calendar fiscal year-end, given a compression in the amount of time available for auditors to complete their work for these companies.

The amendments may have indirect effects as well. While some companies commented that they could or already comply with the proposal without undue burden, the group that objected to the proposal raised several common concerns over the extent of acceleration and transition period proposed. The most common concern was that the proposed deadlines would negatively affect the quality and accuracy of reports. According to one professional association, two-thirds of its survey respondents expected a reduction in the precision of reported information under the original proposals.[153] We are not changing the liability standards for reports, nor are we decreasing the amount of information required. Investors and the capital markets may suffer if quality or accuracy diminished, causing the markets to function less efficiently and investment decisions to be impaired.

Another common concern was that the proposed deadlines would impair the ability of management, external auditors, boards of directors and especially audit committees to scrutinize and review filings properly and give appropriate consideration to the form, substance and priority of disclosures, especially MD&A disclosures and financial statement footnotes. These commenters feared that disclosures could be reduced or become more boilerplate if companies have less time to prepare and review them. The commenters believed that accelerating deadlines in the manner proposed would also undermine the governance and review mechanisms that have been put in place to ensure quality. Several other commenters mentioned additional concerns over the proposals, such as an increased need to use estimates or an increased risk of amendments or restatements because of rushed preparation. Several commenters were especially concerned about accelerating deadlines now given recent events with Arthur Andersen LLP.

We have limited direct data on which to base cost estimates of the amendments. However, we reviewed cost estimates provided by respondents to a survey conducted by the American Society of Corporate Secretaries. These estimates were based on the original proposal. We attempted to determine if the survey results were related to issuer characteristics. The cost estimates did not appear to be related to market capitalization, revenues, industry or number of reporting segments of the underlying company. Based on 46 companies with over $75 million in public float that provided estimates, 17% reported that they did not expect any additional costs from the proposals. 43.4% expected initial costs to prepare for the proposals. These estimates ranged from $12,500 to $5,000,000, with a median value of $125,000. 50% expected on-going annual costs to comply with the proposals. These estimates ranged from $27,500 to $250,000, with a median value of $90,000. 11% of respondents expected both initial and on-going costs to comply with the proposals. Assuming these estimates are representative of all affected companies, we estimate that initial costs of the original proposal for all affected companies would range from $29,862,500 to $11,945,000,000, with a median value of $298,625,000.[154] Aggregate on-going, annual costs of the original proposal for all affected companies would range from $75,524,500 to $686,750,000, with a median value of $247,230,000.

These estimates may overstate the actual costs from the amendments we are adopting today, however, as we are making several accommodations to address commenters' concerns and to ease compliance, including:

- A gradual phase-in of the new deadlines over three years, with no change in deadlines for the first year;
- A less extensive ultimate acceleration of quarterly reports than proposed;
- Revisions to the definition of accelerated filer to give companies more advance notice and time to prepare for accelerated deadlines; and
- Conforming amendments that allow certain financial statements of subsidiaries to be filed by later amendment if the subsidiary is not an accelerated filer.

A phased-in approach helps to alleviate the immediate impact of any costs and burdens that may be imposed on certain registrants. While several commenters indicated that they could report on an accelerated timeframe today, several major business associations that surveyed their members reported that adjustment to accelerated deadlines would be easier with a phase-in period.[155] A longer transition may even help reduce costs as companies will have additional time to

[150] See the Letters of the ASCS and the Business Roundtable.

[151] See the Letter of American Electric Power.

[152] See the Letter of the ASCS.

[153] *Id.*

[154] This estimate is based on our estimate of the probable number of affected reporting companies determined for purposes of the Paperwork Reduction Act (5,494).

[155] See, for example, the Letters of the ASCS; the Business Roundtable; and FEI.

develop best practices, long-term processes and efficiencies to prepare reports, as opposed to having to take rushed and possibly inefficient measures to meet a more sudden acceleration. Also, a longer transition period helps to smooth out any possible impact on the availability of third party advisors used by companies to prepare their reports.

A less extensive acceleration of the quarterly report deadline also will alleviate some of the burdens mentioned by commenters. There will be more time than proposed to gather the necessary data and complete the necessary reviews by company officials, the board of directors and outside advisors. One professional association commented that 80% of its survey respondents reported they could more easily meet a 35-day deadline than a 30-day deadline.[156] Further, we believe that by imposing a 40-day deadline before finally reducing it to 35 days, we are striking an adequate compromise between the benefits of reducing deadlines with the potential inconvenience, difficulty and cost that may be incurred by some companies.

Regarding our conforming changes to the timeliness requirements in other Commission filings, we recognize that for some short period of time, accelerated filers may be prevented from going to market. However, it is our view that, when a company is an accelerated filer and is attempting to raise capital in the marketplace after audited financial information would be required to be filed under the Exchange Act, it is reasonable to delay registration until such financial statements become available. We believe this change is in the best interest of the investing public and will not create any additional burden on the large majority of accelerated filers because the required financial information already will be required to have been filed. Also, as in the past, we will consider waivers to the rules where unusual circumstances dictate the need for them.

We considered several regulatory alternatives in formulating the final amendments. We considered, but rejected, the alternative of tying the due date of reports to a company's announcement of earnings. Not all companies issue earnings releases or issue them on an accelerated basis. As a result, linking deadlines to earnings releases may not result in more accelerated reporting of information. We also were concerned that linking report deadlines to earnings announcements could delay earnings announcements, as companies would know that the announcement would trigger the deadline to file reports. While market demand for earnings information could negate this risk, an approach linking deadlines to earnings announcements could have the effect of penalizing companies for early releases of information while rewarding companies that delay their earnings with extended time to file their reports.

Even with a phase-in period, accelerating filing deadlines may create the risk that more companies will file their reports late or need a filing extension. Moreover, if a company is late filing its reports, it will lose availability for short-form registration for at least one year from the date of the late filing. Being late also could render Securities Act Rule 144 temporarily unavailable for security holders' resales of restricted and control securities, and make new filings on Form S–8 temporarily unavailable for resales of employee benefit plan securities. We considered the suggestions of some commenters to extend the filing extension periods in Exchange Act Rule 12b-25 as an additional method to alleviate any transition difficulties to shortened deadlines. However, we think a lengthy phase-in period adequately addresses these concerns. A less dramatic acceleration of deadlines over a set schedule each year will provide companies with advance notice of the changes they will be expected to make and will smooth out some of the possible difficulties raised by commenters. Rule 12b–25 in its existing form still will provide companies that face extenuating circumstances the ability to gain a filing extension.

While our proposals did not directly address the contents of earnings releases, many commenters supported additional efforts by the Commission in this area. Several recommended that earnings or other standardized earnings information be filed with the Commission, such as on Form 8–K. Others thought the Commission should consider issuing or promoting minimum requirements or guidelines for the contents of earnings releases, such as a GAAP reconciliation. While we will continue to explore ways to improve earnings releases, and the Sarbanes-Oxley Act of 2002 requires us to take steps in this area, we believe these are separate initiatives from the need to accelerate periodic report deadlines. As mentioned above, we believe periodic reports contain valuable information for investors, and comments received from the users of this information uniformly indicated their desire to receive the reports at the earliest time that is consistent with receiving quality information.

We also considered shorter and longer phase-in periods and deadlines. While several commenters indicated they could report on an accelerated timeframe today, several major business associations that surveyed their members reported that adjustment to accelerated deadlines would be easier with a phase-in period. Also, while comments were mixed, the majority of commenters addressing the issue believed it would be more difficult to accelerate the quarterly report than the annual report. Accordingly, the quarterly deadline will only be reduced to a 35-day deadline at the end of the phase-in period, which is five days longer than originally proposed. We think any concerns over possible confusion over changing deadlines during the phase-in period will be temporary and justified by the benefits of giving companies additional time to adjust their reporting schedules.

We considered shortening filing deadlines for all companies. Comments were mixed over excluding smaller issuers. Although we believe investors in less large or unseasoned companies may want and benefit from more timely disclosures just as much as investors in larger, listed companies, we are concerned that this may impose undue burden and expense on these companies. Smaller companies are likely to be more sensitive to any increased costs in preparing their reports. These entities may not have the infrastructure and resources available or necessary to prepare their reports on a shorter timeframe. Accordingly, we are only shortening the filing deadlines for companies with a minimum public float or reporting history as proposed. Of course, smaller companies may file their reports earlier voluntarily.

Comments also were mixed on the proposed $75 million public float threshold. We considered several different thresholds for shortening deadlines, including thresholds based on revenue, measures of trading volume and listing status. However, based on our past experience, we believe the public float test currently used in Form S–3 is consistent with our purposes. We believe that a public float test serves as a reasonable measure of company size and market interest. While several commenters urged raising the threshold, we believe a longer phase-in period and a less extensive acceleration of the quarterly report deadline militates against the need to raise the threshold. The definition of accelerated filer we are adopting today excludes nearly half of

[156] See the Letter of the ASCS. See also Letter of the Business Roundtable.

all publicly traded companies, as well as all companies eligible for our small business issuer reporting system, all foreign private issuers that file on Form 20–F and all companies that do not have a common equity public float. Selecting a $75 million public float threshold also is consistent with our conforming amendments to the timeliness requirements for other Commission filings. By using the same threshold as in Form S–3, investors are assured of receiving the most up-to-date information regardless of the particular registration form a company chooses.

B. Web Site Access to Information

1. Benefits

Widespread access to timely company information promotes the efficient functioning of the capital markets. Also, ready access to Exchange Act information is critical to short-form registration of securities offerings. Many aspects of our disclosure system were adopted well before the revolutions in information technology brought about by the Internet. In modernizing and improving our disclosure system, we recognize the benefits of the Internet in promoting more widespread dissemination of information. An efficient and cost effective method for companies to make information available about themselves is through their Internet website. In addition to other existing sources of company information, such as our website, a company's web site is one obvious place for many investors to find information about a company. A company also may use different formats and other approaches to making information available in ways it believes are useful to investors. We believe company disclosure should be more readily available to investors on a timely basis in a variety of locations to facilitate investor access to that information. We believe it is important for investors to know of additional sources where they can access company information.

Providing this disclosure and encouraging companies to post their Exchange Act reports on their websites will provide many benefits, and the vast majority of commenters concurred and were supportive of the proposals. The amendments protect investors by alerting them to sources where they can obtain direct and easy access to the information they should have to make informed investment and valuation decisions. The amendments will help promote consistent, direct, timely and more widespread access of information to investors and the markets, and further the proper functioning of the integrated disclosure and short-form registration system. An efficiently functioning registration system facilitates capital formation. Not all reporting companies now make their Exchange Act filings available through their websites, and not all the ones that do make information available provide access in real-time. The amendments encourage uniform best practices to aid in an investor's search for timely information, thereby potentially reducing the costs to gather such information.

2. Costs

The amendments may increase the costs to some affected companies, although we seek to minimize those costs. Companies will be required to include minimal additional disclosure in their annual report on Form 10–K. We estimate this will result in a total cost of $463,525 for all affected companies.[157] The disclosure requirement only will apply to companies that meet specified public float and reporting history requirements, which will help to minimize the impact on companies potentially less able to bear additional costs. The amendments also will not require a company to provide website access, although we encourage all companies to do so.

Commenters were nearly unanimous in their belief that the proposal would result in no or minimal additional costs and would not be unduly burdensome to implement, particularly since it is limited only to accelerated filers.[158] One professional association mentioned that the majority of its survey respondents expected that the proposal would incur no additional costs.[159] Another professional association mentioned that almost 90% of companies in its survey expected to accomplish the objectives of the proposal with ease.[160]

Also, as we now provide real-time access to Exchange Act reports through our website, hyperlinking directly to our EDGAR website will allow a company to state that it provides website access in the required timeframe. This will help to decrease further any incremental burdens or costs caused by the amendments. Some commenters thought the proposal was duplicative of EDGAR, particularly considering that we now provide real-time Internet access to reports. Despite the availability of reports through our website, we concluded that disclosure regarding company website access is still desirable as one of our objectives is to encourage the availability of information in a variety of locations and foster best practices for making that information broadly accessible. In response to comments concerned about the technical and other obstacles that might lead to violating the proposed ''same day'' requirement, we have eliminated that requirement.

We considered several additional regulatory alternatives. Many companies already voluntarily provide at least some access to their filings on their websites, but not all provide access to all of their filings or in real-time. We considered requiring website access to company reports as an additional eligibility requirement for short-form registration. However, we were concerned that the potential loss of form eligibility from non-compliance with the requirement would be overly burdensome on companies. We are considering the suggestions by many commenters to extend the disclosure requirement to non-accelerated filers.

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

Section 23(a)(2) of the Exchange Act[161] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We have considered the amendments in light of the standards in Section 23(a)(2).

The amendments are intended to improve the timeliness and accessibility of Exchange Act reports to investors and the financial markets. We anticipate these amendments will enhance the proper functioning of the capital markets. This increases the competitiveness of companies participating in the U.S. capital markets. The amendments will affect certain companies and not others, so the impacts of the proposal may not be equally distributed. Also, if not all competitors in a given industry are subject to accelerated deadlines,

[157] The estimate is based on the burden hour estimates calculated under the Paperwork Reduction Act. For purposes of the Paperwork Reduction Act, we estimate that the additional disclosure will result in 2,060 internal burden hours and $206,025 in external costs. Assuming a cost of $125/hour for in-house professional staff, the total cost for the internal burden hours would be $257,500. Hence the aggregate cost estimate is $463,525 ($257,500 + $206,025).

[158] See, for example, the Letters of the ASCS; Dow Chemical Company; Hibernia Corporation; PricewaterhouseCoopers LLP; and TIAA–CREF.

[159] See the Letter of the ASCS.

[160] See the Letter of the NIRI.

[161] 15 U.S.C. 78w(a)(2).

information about some competitors may be disclosed ahead of other competitors (for example, the filing of material contracts).[162] This could potentially give some competitors an informational advantage. If the amendments to shorten filing deadlines increased the number of companies who filed their reports late, this could reduce the number of companies eligible for short-form and delayed shelf registration. For our amendments relating to website access, companies that will be subject to accelerated deadlines may incur increased costs from providing additional disclosure that will not be incurred by companies not subject to these deadlines. However, we believe these costs are not significant.

We requested comment on any anti-competitive effects of the proposals. A few commenters suggested that the proposals to accelerate filing deadlines might have some effects on competition. For example, one law firm thought that differing reporting deadlines for accelerated and non-accelerated filers could adversely affect competition.[163] Non-accelerated filers would enjoy a competitive advantage against accelerated filers who are forced to incur the incremental costs imposed by accelerated deadlines. While we recognize that the impacts of the amendments will not be equally distributed, we also must balance the market's need for information with the ability of companies to report on an accelerated timeframe without undue burden. Not all companies, particularly small and unseasoned companies, may have the resources and infrastructure in place to prepare their reports on a shorter timeframe without undue burden or expense. While any dividing line we ultimately choose could have a possible disproportionate affect at the margin, we believe separating small and large companies balances the needs of investors against the constraints facing smaller issuers. In doing so, the amendments could actually encourage competition because they are designed to avoid imposing onerous burdens and expenses on those companies that are least able to bear them. We will continue to study whether acceleration of deadlines for a broader class of issuers is appropriate.

Several other commenters believed we should not exclude foreign private issuers from our definition of accelerated filer.[164] These commenters believe foreign filers should be subject to the same rules to create a level playing field for all companies that access the U.S. capital markets. Other commenters thought that the issues involving foreign issuers are sufficiently different as to warrant separate study and rule proposals.[165] We agree with the latter group. We do recognize that with the amendments we adopt today, the discrepancy between the filing deadlines for larger seasoned U.S. issuers and those for foreign private issuers will increase. Foreign issuers are subject to similar obligations as to the information to be reported. There are some categories of information, for example executive compensation, where requirements for foreign issuers are less onerous. Foreign issuers that do not prepare their financial statements in accordance with U.S. GAAP, however, must go through the additional step of preparing a reconciliation of their financial statements to U.S. GAAP. These companies also may have additional home country reporting requirements. We are continuing to consider this issue and Exchange Act filing requirements generally for foreign issuers. However, given that a current filing lag already exists, we do not believe the relative increase in the lag created by the amendments is significant enough to warrant a delay in their adoption. To the extent any anti-competitive effect may arise from the increase in this lag, we believe any such burden would be necessary and appropriate for the protection of investors.

Section 2(b) of the Securities Act [166] and Section 3(f) of the Exchange Act [167] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. We have considered the amendments in light of the standards in these provisions.

The amendments will enhance our reporting requirements in light of technological advances. The purpose of the amendments is to promote greater timeliness and accessibility of this information so that investors can more easily make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. As noted above, however, the proposals could have certain indirect negative effects, such as discouraging or precluding some companies near the threshold from using short-form registration, which could adversely impact their ability to raise capital.

We also are adopting conforming amendments to the timeliness requirements for the inclusion of financial statements in proxy statements, information statements and Securities Act and Exchange Act registration statements. We recognize that in making these conforming changes, for some short period of time, accelerated filers may be prevented from going to market. However, it is our view that, when a company is an accelerated filer and is attempting to raise capital in the marketplace after audited financial information would be required to be filed under the Exchange Act, it is reasonable to delay registration until such financial statements become available. We believe this change is in the best interest of the investing public and will not create any additional burden on the large majority of accelerated filers because the required financial information already will be required to have been filed. Also, as in the past, we will consider waivers to the rules where unusual circumstances dictate the need for them.

We requested comment on how the proposals would affect efficiency, competition and capital formation. Many commenters representing investors, investor organizations as well as some companies believed that shortening deadlines will improve the delivery and flow of reliable information to investors and capital markets and assist in the efficient operation of the markets. A larger group of commenters representing primarily companies, business associations, law firms and accounting firms objected to the extent of acceleration and transition period proposed because, in their view, preparing reports in the proposed time frame could result in less accurate filings, which could stifle efficiency. Some commenters also were concerned that the proposed deadlines may increase the number of late filings. In addition to adverse market reaction, filing late could cause companies to lose eligibility to use short-form registration statements for at least one year, which could raise the cost of capital.

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

[163] See, for example, the Letter of Troutman Sanders LLP.

[164] See, for example, the Letters of Chevron Phillips Chemical Company LLP; Eastman Kodak Company; and Maverick Capital Ltd.

[165] See, for example, the Letters of the AICPA; Ernst & Young LLP; Institute of Management Accountants; KPMG LLP; and PricewaterhouseCoopers LLP.

[166] 17 U.S.C. 77b(b).

[167] 15 U.S.C. 78c(f).

In response to these concerns, we are phasing-in deadlines over a three-year period and adopting a less extensive acceleration of the quarterly report deadline. A phased-in approach of accelerated deadlines allows a greater transition period for companies to adjust their procedures and develop efficiencies to ensure that the quality and accuracy of reported information will not be sacrificed. With a less extensive acceleration of the quarterly report deadline, there will be more time than proposed to gather the necessary data and complete the necessary reviews by company officials, the board of directors and outside advisors. Also, Exchange Rule 12b–25 in its existing form still will provide companies that face extenuating circumstances the ability to gain a filing extension.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.[168] This FRFA relates to amendments to the rules and forms under the Securities Act and the Exchange Act to:

- Shorten the due dates of quarterly and annual reports (and transition reports) for domestic reporting companies that meet certain public float and reporting history requirements;[169] and
- Require companies to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether companies provide access to their Exchange Act reports on their Internet websites.

A. Need for the Amendments

The amendments have two primary objectives. First, we are accelerating the disclosure of information to investors and the capital markets by shortening the due dates of quarterly and annual periodic reports and transition reports for domestic reporting companies that meet certain minimum public float and reporting history requirements. These due dates have not changed in over 30 years, despite advances in information technology and productivity and increases in the pace of and need for communications in the capital markets. Accelerating the delivery of information to the capital markets will help enhance the efficient functioning of those markets. The more extensive information in periodic reports is evaluated by investors and particularly analysts and institutional investors as a baseline for the incremental disclosures made by a company, and these reports also contain more detailed information that is essential to conduct comparative financial analyses. Many companies routinely release quarterly and annual financial results before they file their formal reports with us. However, these earnings announcements are generally less complete in their disclosure than periodic reports, and they can emphasize information that is less prominent than in the reports. Shortening the deadlines will shorten this information gap, thereby increasing the relevance of those reports. Investors buying in public offerings of issuers that incorporate their Exchange Act reports in their Securities Act registration statements also will benefit from more timely disclosure.

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

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis, or IRFA, appeared in the Proposing Release.[170] We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposals. We received no comment letters responding to that request.

C. Small Entities Subject to the Amendments

The amendments will affect certain small entities that are required to file quarterly and annual periodic reports and transition reports under the Exchange Act, but only if those small entities meet the definition of an ''accelerated filer'' that we are adopting today. For purposes of the Regulatory Flexibility Act, Exchange Act Rule 0–10(a)[171] defines the term ''small business'' to be an issuer, other than an investment company, that, on the last day of its most recent fiscal year, has total assets of $5 million or less. The Securities Act defines a ''small business'' issuer, other than investment companies, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less and is engaged in or proposes to engage in an offering of securities of $5 million or less.[172]

We estimate that there are approximately 2,500 companies, other than investment companies, subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act that have assets of $5 million or less. The amendments to shorten the deadlines for annual and quarterly periodic and transition reports and the amendments regarding access to Exchange Act reports will apply to these small entities if they have a public float of $75 million or more, have been subject to the Exchange Act's reporting requirements for at least one year, have filed at least one annual report and are not eligible for our small business issuer reporting system. We have no way to determine exactly how many small entities meet these requirements, although it is likely that only a very small number of these entities will meet the public float requirement. In addition, small entities are not affected if they are eligible to use our small business issuer reporting system.

According to the Standard & Poors Research Insight Compustat Database, of the 711 reporting companies listed with assets of $5 million or less, 10, or 1.4%, had a market capitalization greater than $75 million.[173] Assuming that this sample is representative of all small entities, the public float requirement

[168] 5 U.S.C. 603.

[169] We also are making conforming amendments to the timeliness requirements for the inclusion of financial information in proxy statements, information statements and Securities Act and Exchange Act registration statements.

[170] See the Proposing Release at Section VI.

[171] 17 CFR 240.0–10(a).

[172] 17 CFR 230.157.

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

will have the effect of almost completely excluding all small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

For reporting companies that meet the public float and reporting history requirements, we are phasing-in shortened due dates for annual reports on Form 10–K and quarterly reports on Form 10–Q over three years. The Form 10–K deadline will be reduced over three years from the current deadline of 90 days after the end of the company's fiscal year to 60 days after the end of the company's fiscal year. The Form 10–Q deadline will be reduced over three years from the current deadline of 45 days after the end of the company's first three fiscal quarters to 35 days after the end of the first three fiscal quarters. We are making similar changes to transition reports these companies must file when they change their fiscal year and the timeliness requirements for financial information that must be included in other Commission filings such as proxy statements, information statements and Securities Act and Exchange Act registration statements. We are not changing the filing deadlines for other companies, including small business issuers eligible to rely on our small business reporting system, at this time.

While the amount of information required to be included in Exchange Act reports, and hence the amount of time necessary to prepare them, will remain the same, affected companies may be required to use additional resources, including in-house personnel, in preparing their reports on a shorter timeframe. Small entities that meet the public float and reporting history requirements may incur additional costs in seeking the help of outside experts, particularly outside legal counsel and auditors, or in making any necessary technological investments to speed their reporting process.

Companies that are late in filing their reports will lose eligibility for short-form registration for at least one year, and Securities Act Rule 144 and new filings on Form S–8 will be temporarily unavailable during the period of noncompliance.[174] On the margin, affected small entities that are unable, or cannot afford, to prepare their reports on a shorter timeframe may be discouraged from remaining public companies or accessing the public markets. This may adversely affect their ability to raise capital.

We also are requiring accelerated filers to disclose in their annual reports on Form 10–K where investors can obtain access to company filings, including whether the company provides access to its Exchange Act reports free of charge on its Internet website as soon as reasonably practicable after those reports are electronically filed with or furnished to the Commission. If a company does not provide such access, it must also disclose why it does not do so. In formulating these amendments, we have sought to minimize its costs, particularly on small entities. The requirement will apply only to companies that met the public float and reporting history requirements. Companies will not be required to establish an Internet website for purposes of this requirement if they did not otherwise have one. Also, a company can elect not to provide website access to their reports as long as it disclosed that it has elected not to do so and the reasons it has elected not to do so. Accordingly, these elements of the amendments, coupled with the fact that almost all small entities will be effectively excluded from the proposal, lead us to believe that the requirement will not have a disproportionate effect on small entities.

E. Agency Action to Minimize Effect on Small Entities

As required by the Regulatory Flexibility Act, we have considered alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered several alternatives, including:

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

Our amendments to shorten the filing deadlines will apply only to entities that meet minimum public float and reporting history requirements, which should serve to exclude almost all small entities. As a result, different timetables will apply for almost all small entities. We strive to strike a balance between timely delivery of information to investors and giving companies enough time to prepare their reports. We considered the alternative of only shortening the filing deadlines for companies whose securities are listed on the NYSE or AMEX or quoted on Nasdaq National Market System or Small Cap Market. However, we believe investors in companies that are not as large or listed but nevertheless meet the public float or reporting history requirements may want and benefit from more timely disclosures just as much as investors in larger, listed companies. Accordingly, we rejected exempting small entities in their entirety from the coverage of the amendments.

In addition, we are not aware of how to further clarify, consolidate or simply these proposals for small entities. In this regard, we already are limiting the shortened deadlines to entities that meet minimum public float and reporting history requirements. We do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context. Because specified information in Exchange Act reports must be reported in a timely manner to be useful, design standards are necessary to achieve the objectives of the amendments. Accelerating the delivery of mandated information is one of the goals of the amendments.

Our amendments regarding disclosure of website access to company reports are designed to enhance the accessibility and dissemination of information to investors. These amendments also will apply only to entities that meet minimum public float and reporting history requirements, which should serve to exclude almost all small entities. We believe our amendments strike a balance between providing investor access to information and giving companies alternatives in providing this access. Different compliance or reporting requirements for affected small entities or exemptions for all affected small entities are not considered warranted at this time because it is just as important that information be adequately disseminated and easily available for affected small entities as it is for large entities, if not more so. We have made a number of changes to the proposal that we believe decrease further the impact on all issuers, including small entities. First, we have narrowed the scope of disclosure required. Second, we now provide real-time access to EDGAR filings through our website for free, which allows companies an easy and low cost method to provide real-time access if they choose to do so. The

[174] One-time extensions of due dates are available under certain circumstances under Exchange Act Rule 12b–25. Also, companies that are not timely will not meet the timeliness requirements for their proxy statements, information statements and Securities Act and Exchange Act registration statements.

expected low costs of complying with the proposal, as well as the effect of the public float requirement in lessening the impact on small entities, also contributed to our decision not to exclude small entities in their entirety.

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

VII. Update to Codification of Financial Reporting Policies

The Commission amends the ''Codification of Financial Reporting Policies'' announced in Financial Reporting Release No. 1 (April 15, 1982) as follows:

1. By amending Section 102.05.(2) to read as follows:

(2) Conforming the Filing Requirements of Transition Reports to the Current Requirements for Forms 10–Q and 10–K

To conform to the current filing periods for reports on Forms 10–K and 10–Q, the filing period for transition reports on Form 10–K is 90, 75 or 60 days for accelerated filers, as applicable depending on the issuer's fiscal year specified in Rules 13a–10 and 15d–10, and 90 days for other issuers after the close of the transition period or the date of the determination to change the fiscal year, whichever is later, and for transition reports on Form 10–Q, the filing period is 45, 40 or 35 days for accelerated filers, as applicable depending on the issuer's fiscal year specified in Rules 13a–10 and 15d–10, or 45 days for other issuers after the later of these two events.

2. By amending Section 102.05. to add the following preliminary note to the ''Appendix'' to Section 102.05.:

Preliminary Note: The following examples are applicable if the issuer is not an accelerated filer. If the issuer is an accelerated filer, substitute 75 or 60 days, as applicable depending on the issuer's fiscal year specified in Rules 13a–10 and 15d–10, for 90 days in the examples for transition reports on Form 10–K, and substitute 40 or 35 days, as applicable depending on the issuer's fiscal year specified in Rules 13a–10 and 15d–10, for 45 days in the examples for transition reports on Form 10–Q.

3. By amending Section 302.01.a. to:

a. Replace the phrase ''after 45 days but within 90 days of the end of the registrant's fiscal year'' with the phrase ''after 45 days but within 90, 75 or 60 days of the end of the registrant's fiscal year for accelerated filers, as applicable depending on the registrant's fiscal year (or after 45 days but within 90 days of the end of the registrant's fiscal year for other registrants)'' in the second paragraph of Section 302.01.a.; and

b. Replace the phrase ''after 45 days but within 90 days of the end of its fiscal year (*i.e.*, February 16 to March 31 for calendar year companies)'' with the phrase ''after 45 days but within 90, 75 or 60 days of the end of its fiscal year if the registrant is an accelerated filer, as applicable depending on the company's fiscal year (*i.e.*, February 16 to March 31, 15 or 1 for calendar year companies) (or after 45 days but within 90 days of the end of its fiscal year for other registrants (*i.e.*, February 16 to March 31 for calendar year companies))'' in the first sentence of the fourth paragraph of Section 302.01.a.

4. By amending Section 302.01.b. to:

a. Replace the phrase ''134 days subsequent to the end of a registrant's fiscal year'' with the phrase ''134, 129 or 124 days subsequent to the end of a registrant's fiscal year if the registrant is an accelerated filer, as applicable depending on the registrant's fiscal year (or 134 days subsequent to the end of a registrant's fiscal year for other registrants)'' in the first sentence of Section 302.01.b.;

b. Replace the phrase ''135 days of the date of the filing'' with the phrase ''135, 130 or 125 days of the date of the filing if the registrant is an accelerated filer, as applicable depending on the registrant's fiscal year (or 135 days of the date of the filing for other registrants)'' in the second sentence of Section 302.01.b.; and

c. Removing the words ''135 day'' in the footnote to the fourth sentence of Section 302.01.b.

5. By amending Section 302.01.c. to:

a. Replace the phrase ''135 days or more'' with the phrase ''135, 130 or 125 days or more, if the registrant is an accelerated filer, as applicable depending on the registrant's fiscal year (or 135 days or more for other registrants)'' in the first paragraph of Section 302.01.c.;

b. Replace the phrase ''as of an interim date within 135 days'' with the phrase ''as of an interim date within 135, 130 or 125 days, if the registrant is an accelerated filer, as applicable depending on the registrant's fiscal year (or 135 days for other registrants)'' in the first paragraph of Section 302.01.c.; and

c. Replace the phrase ''after 45 days but within 90 days of the end of the fiscal year'' with the phrase ''after 45 days but within 90, 75 or 60 days of the end of the fiscal year if the registrant is an accelerated filer, as applicable depending on the registrant's fiscal year (or after 45 days but within 90 days of the end of the fiscal year for other registrants)'' in the second and third sentences of the second paragraph of Section 302.01.c.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register** or Code of Federal Regulations.

VIII. Statutory Authority and Text of Rule Amendments

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

Text of Rule Amendments

List of Subjects in 17 CFR Parts 210, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

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

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), 80b–3, 80b–11 unless otherwise noted.

2. Section 210.3–01 is amended by:

a. Removing the phrase ''90 days of the end of the registrant's fiscal year'' and adding, in its place, the phrase ''the number of days of the end of the registrant's fiscal year specified in paragraph (i) of this section'' in the introductory text of paragraph (c) and paragraph (d); and b. Revising paragraph (e) and adding paragraph (i) to read as follows:

§ 210.3–01 Consolidated balance sheets.

* * * * *

(e) For filings made after the number of days specified in paragraph (i) of this section, the filing shall also include a balance sheet as of an interim date within the following number of days of the date of filing:

(1) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(i) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(ii) 130 days for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(iii) 125 days for fiscal years ending on or after December 15, 2005; and

(2) 135 days for all other registrants.

* * * * *

(i)(1) For purposes of paragraph (c) and (d) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(A) 90 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 60 days for fiscal years ending on or after December 15, 2004; and

(ii) 90 days for all other registrants.

(2) For purposes of paragraph (e) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(A) 134 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(B) 129 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(C) 124 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2005; and

(ii) 134 days subsequent to the end of the registrant's most recent fiscal year for all other registrants.

3. Section 210.3–09 is amended by:

a. Removing the authority citation following § 210.3–09;

b. Removing the phrase ''§ 210.1–02(v)'' and adding, in its place, the phrase ''§ 210.1–02(w)'' in the first sentence of paragraph (a); and

c. Revising the last sentence of paragraph (b) and adding paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) to read as follows:

§ 210.3–09 Separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

* * * * *

(b) * * * For purposes of a filing on Form 10–K (§ 249.310 of this chapter):

(1) If the registrant is an accelerated filer (as defined in § 240.12b–2 of this chapter) but the 50 percent or less owned person is not an accelerated filer, the required financial statements may be filed as an amendment to the report within 90 days, or within six months if the 50 percent or less owned person is a foreign business, after the end of the registrant's fiscal year.

(2) If the fiscal year of any 50 percent or less owned person ends within the *registrant's number of filing days* before the date of the filing, or if the fiscal year ends after the date of the filing, the required financial statements may be filed as an amendment to the report within the *subsidiary's number of filing days*, or within six months if the 50 percent or less owned person is a foreign business, after the end of such subsidiary's or person's fiscal year.

(3) The term *registrant's number of filing days* means:

(i) If the registrant is an accelerated filer:

(A) 90 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 60 days for fiscal years ending on or after December 15, 2004; and

(ii) If the registrant is not an accelerated filer, 90 days.

(4) The term *subsidiary's number of filing days* means:

(i) If the 50 percent or less owned person is an accelerated filer:

(A) 90 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 60 days for fiscal years ending on or after December 15, 2004; and

(ii) If the 50 percent or less owned person is not an accelerated filer, 90 days.

* * * * *

4. Section 210.3–12 is amended by:

a. Removing the phrase ''135 days'' and adding, in its place, the phrase ''the number of days specified in paragraph (g) of this section'' in both instances where it appears in the first sentence of paragraph (a);

b. Removing the phrase ''90 days subsequent to the end of the fiscal year'' and adding, in its place, the phrase ''the number of days subsequent to the end of the fiscal year specified in paragraph (g) of this section'' in the first sentence of paragraph (b); and

c. Adding paragraph (g) to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(g)(1)For purposes of paragraph (a) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(A) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(B) 130 days for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(C) 125 days for fiscal years ending on or after December 15, 2005; and

(ii) 135 days for all other registrants.

(2) For purposes of paragraph (b) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(A) 90 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 60 days for fiscal years ending on or after December 15, 2004; and

(ii) 90 days for all other registrants.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

5. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

* * * * *

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

§ 229.101 (Item 101) Description of business.

* * * * *

(e) *Available information.* Disclose the information in paragraphs (e)(1), (e)(2) and (e)(3) of this section in any registration statement you file under the Securities Act (15 U.S.C. 77a *et seq.*), and disclose the information in paragraphs (e)(3) and (e)(4) of this section if you are an accelerated filer (as defined in § 240.12b–2 of this chapter)

filing an annual report on Form 10–K (§ 249.310 of this chapter):

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

(2) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

(3) You are encouraged to give your Internet address, if available, except that if you are an accelerated filer filing your annual report on Form 10–K, you must disclose your Internet address, if you have one.

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

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

(iii) If you do not make your filings available in this manner, whether you voluntarily will provide electronic or paper copies of your filings free of charge upon request.

* * * * *

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

7. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

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

§ 240.12b–2 Definitions.

* * * * *

Accelerated filer. (1) The term ''accelerated filer'' means an issuer after it first meets the following conditions as of the end of its fiscal year:

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

(ii) The issuer has been subject to the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) for a period of at least twelve calendar months;

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

(iv) The issuer is not eligible to use Forms 10–KSB and 10–QSB (§ 249.310b and § 249.308b) for its annual and quarterly reports.

Note to paragraph (1): The aggregate market value of the issuer's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity, as of the last business day of the issuer's most recently completed second fiscal quarter.

(2) *Entering and Exiting Accelerated Filer Status.* (i) The determination for whether a non-accelerated filer becomes an accelerated filer as of the end of the issuer's fiscal year governs the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports to be filed thereafter while the issuer remains an accelerated filer.

(ii) Once an issuer becomes an accelerated filer, it will remain an accelerated filer unless the issuer becomes eligible to use Forms 10–KSB and 10–QSB for its annual and quarterly reports. In that case, the issuer will not become an accelerated filer again unless it subsequently meets the conditions in paragraph (1) of this definition.

* * * * *

9. Section 240.13a–10 is amended by:

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

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

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

§ 240.13a–10 Transition reports.

* * * * *

(j)(1) For transition reports to be filed on the form appropriate for annual reports of the issuer, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2):

(A) 90 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 60 days for fiscal years ending on or after December 15, 2004; and

(ii) 90 days for all other issuers; and

(2) For transition reports to be filed on Form 10–Q or Form 10–QSB (§ 249.308a or § 249.308b of this chapter), the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2):

(A) 45 days for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(B) 40 days for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(C) 35 days for fiscal years ending on or after December 15, 2005; and

(ii) 45 days for all other issuers.

* * * * *

10. Section 240.15d–10 is amended by:

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

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

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

§ 240.15d–10 Transition reports.

* * * * *

(j)(1) For transition reports to be filed on the form appropriate for annual reports of the issuer, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2):

(A) 90 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 75 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 60 days for fiscal years ending on or after December 15, 2004; and

(ii) 90 days for all other issuers; and

(2) For transition reports to be filed on Form 10–Q or Form 10–QSB (§ 249.308a or § 249.308b of this chapter), the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2):

(A) 45 days for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(B) 40 days for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(C) 35 days for fiscal years ending on or after December 15, 2005; and

(ii) 45 days for all other issuers.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

* * * * *

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

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

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

(1) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(i) 45 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(ii) 40 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(iii) 35 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2005; and

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

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

13. Form 10–Q (referenced in § 249.308a) is amended by revising General Instruction A.1. and by adding a paragraph before the title ''Applicable Only to Issuers Involved in Bankruptcy Proceedings During the Preceding Five Years:'' on the cover page to read as follows:

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

Form 10–Q

General Instructions

A. Rule as to Use of Form 10–Q.

1. Form 10–Q shall be used for quarterly reports under Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)), filed pursuant to Rule 13a–13 (17 CFR 240.13a–13) or Rule 15d–13 (17 CFR 240.15d–13). A quarterly report on this form pursuant to Rule 13a–13 or Rule 15d–13 shall be filed within the following period after the end of each of the first three fiscal quarters of each fiscal year, but no report need be filed for the fourth quarter of any fiscal year:

a. For accelerated filers (as defined in 17 CFR 240.12b–2):

(i) 45 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2002 and before December 15, 2004;

(ii) 40 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2004 and before December 15, 2005; and

(iii) 35 days after the end of the fiscal quarter for fiscal years ending on or after December 15, 2005; and

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

* * * * *

FORM 10–Q

* * * * *

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b–2 of the Exchange Act). Yes ____ No ____

APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

* * * * *

14. Section 249.310 is revised to read as follows:

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

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

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

(1) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(i) 90 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(ii) 75 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(iii) 60 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2004; and

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

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

(d) Notwithstanding paragraphs (b) and (c) of this section, all schedules required by Article 12 of Regulation S–X (§§ 210.12–01–210.12–29 of this chapter) may, at the option of the registrant, be filed as an amendment to the report not later than 30 days after the applicable due date of the report.

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

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

Form 10–K

* * * * *

General Instructions

A. Rule as to Use of Form 10–K.

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

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

(a) For accelerated filers (as defined in 17 CFR 240.12b–2):

(i) 90 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(ii) 75 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(iii) 60 days after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2004; and

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

(3) Transition reports on this Form shall be filed in accordance with the requirements set forth in Rule 13a–10 (17 CFR 240.13a–10) or Rule 15d–10 (17 CFR 240.15d–10) applicable when the registrant changes its fiscal year end.

(4) Notwithstanding paragraphs (2) and (3) of this General Instruction A., all schedules required by Article 12 of Regulation S–X (17 CFR 210.12–01–210.12–29) may, at the option of the registrant, be filed as an amendment to the report not later than 30 days after the applicable due date of the report.

* * * * *

FORM 10–K

* * * * *

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b–2 of the Act). Yes ____ No ____

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter.

* * * * *

Dated: September 5, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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