

electronic section 16 form is likely to arrive sooner where a filing date adjustment is used than it would were it to come in as a confirming copy after a temporary hardship exemption was used.

Filing date adjustments, as would have been true of temporary hardship exemptions, should be few in number given the relative brevity of section 16 forms, the relative ease of electronically filing them through EDGAR's new on-line feature and the strong interest in timely and readily available disclosure of section 16 forms. A failure to obtain timely an identification number or access codes will not justify a filing date adjustment.⁶⁶ Moreover, as is also the case with other forms required to be filed on EDGAR, upon effectiveness of the rules we adopt today, our filing desk will not accept in paper format any Form 3, 4 or 5⁶⁷ except in the highly unlikely event that the filing satisfies the requirements for a continuing hardship exemption under Regulation S-T.⁶⁸ A filing date adjustment will, however, be available in appropriate circumstances.⁶⁹

E. Item 405 of Regulation S-K

Recognizing that insiders may experience temporary difficulties in transitioning to mandated electronic filing, one commenter suggested that we provide issuers limited, temporary relief from disclosing section 16 reporting delinquencies pursuant to Item 405 of Regulations S-K and S-B.⁷⁰ This disclosure is required in the issuer's proxy or information statement,⁷¹ for the annual meeting at which directors are elected, and its Form 10-K⁷², 10-

KSB⁷³ or N-SAR.⁷⁴ We are persuaded that temporary limited relief from Item 405 disclosure is appropriate for a Form 4 that is:

- Filed not later than one business day following the regular due date, and
- Filed during the first 12 months following the effective date of mandated electronic filing.

We believe that this temporary relief will be helpful to issuers and insiders, without removing issuers' incentive to assist insiders with timely filing. Eligibility for this disclosure relief does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates section 16(a).

F. Forms 3, 4 and 5

We are adopting with minor revisions the proposed amendments to Forms 3, 4 and 5 mainly to facilitate the electronic filing provisions, as follows:

1. Amend the introductory section before the General Instructions of Forms 3, 4 and 5 to delete the reference to IRS identification numbers. Consistent with that deletion, we amend each of the forms to delete Item 3 (before Table I), which provides a space for a filer that is an entity, at its option, to include an IRS identification number.⁷⁵ We believe this information is unnecessary in this context. An IRS identification number has not proved useful for tracking because only some filers provide it. Only non-natural person filers have been permitted to provide it and even they could choose whether to do so.

2. Amend the General Instructions to Forms 3, 4 and 5 to:

- Delete the references to the deemed timely filed provision in Rule 16a-3(h);⁷⁶
- Delete the statement that electronic filing is optional;⁷⁷
- Add a statement clarifying that electronic filing is mandatory absent a hardship exemption, referencing Regulation S-T, and describing how to obtain staff assistance in electronic filing;⁷⁸

• Revise the joint filer provisions to cross-reference the signature rule and separate out paper-only requirements;⁷⁹ and

- Add a note providing instructions for filing in paper pursuant to a hardship exemption.⁸⁰

3. Amend General Instruction 6 to Forms 3, 4, and 5 to indicate that if a filer runs out of space on the electronic form, the filer should put the additional information in a footnote, and if there is not enough room in the space provided for a footnote, the footnote should refer to an exhibit to the form⁸¹ that contains the additional information.⁸² Revised General Instruction 6 also adopts a numbering system for exhibits.⁸³

4. Add General Instruction 8 to Form 3 and General Instruction 9 to Forms 4 and 5 explaining how to present information in amendments to previously filed forms.⁸⁴

5. Amend Item 4 of the items before Table I of Form 4 to clarify that it requires the date of the earliest transaction required to be reported.

6. Amend Item 6 of the items before Table I of Form 3 and Item 5 of the items before Table I of Forms 4 and 5 to require an amended form to specify the date the original form was filed.

7. Amend the heading of Form 5 to clarify it by adding at the end "of Securities."

8. Amend Items 4 and 5 of the items before Table I of Form 5 to require that,

⁷⁹ See revised General Instruction 5(b)(v) to Form 3 and revised General Instruction 4(b)(v) to Forms 4 and 5.

⁸⁰ See revised notes to General Instruction 3 of Form 3 and General Instruction 2 of Forms 4 and 5. The adopted note contains the proposed language with two exceptions. The adopted note omits the proposed language relating to temporary hardship exemptions. The adopted note includes a statement that at least one copy must be signed.

⁸¹ Ownership and transaction information must be disclosed to the greatest extent possible in the forms' Tables I and II rather than in footnotes and attachments in order to maximize the value of EDGAR's tagging the data in the tables, and thus facilitate analysis.

⁸² One commenter claimed that this amendment to General Instruction 6 would reduce disclosure and clarity by dispersing information to as many as three different places. We believe the amendment will not reduce disclosure and that filers can maintain clarity through cross-references. Further, we believe that the electronic forms provide adequate space on the forms and in the footnotes for almost all situations. It should be unusual for filers to need to provide additional explanatory material in a separate attachment.

⁸³ See revised General Instruction 6(c) to Forms 3, 4 and 5. The specified amendments to General Instruction 6 relating to exhibits are minor, clarifying amendments not previously proposed. We note that no exhibit, including, for example, a power of attorney, may be filed in paper, absent a hardship exemption, or on a stand-alone basis.

⁸⁴ This amendment as well as the amendments described in items 5, 6, 7, 9, 10, 12 and 13 of this Section II.D, are minor, clarifying amendments not previously proposed.

⁶⁶ See the note to Rule 10 of Regulation S-T [17 CFR 232.10] ("The Commission strongly urges any person or entity about to become subject to the disclosure and filing requirements of the federal securities laws to submit a Form ID [(through which an identification number and access codes are obtained)] well in advance of the first required [(electronic)] filing, * * *, in order to facilitate electronic filing on a timely basis").

⁶⁷ Rule 14 of Regulation S-T [17 CFR 232.14]. Paper filings under hardship exemptions must include the appropriate legend on the cover page so the file desk does not return the filing.

⁶⁸ It is unlikely that a continuing hardship exemption would be granted with respect to Forms 3, 4 or 5 given the nature of the information that appears in these forms and the expected ease of electronic filing.

⁶⁹ The staff generally does not grant filing date adjustments over extended periods of time. If technical difficulties prevent the filing from being made on the due date, it is important to address these difficulties as quickly as possible and request the filing date adjustment promptly after the filing is made.

⁷⁰ 17 CFR 229.405 and 17 CFR 228.405.

⁷¹ 17 CFR 240.14a-101, Item 7.

⁷² 17 CFR 249.310.

⁷³ 17 CFR 249.310b.

⁷⁴ 17 CFR 274.101.

⁷⁵ We have renumbered the items that follow the deleted item. In this release, however, references to pre-Table I form items are to their numbers before renumbering.

⁷⁶ See former General Instruction 2(a) to Form 3, and former General Instruction 1(a) to Forms 4 and 5. These minor changes, not previously proposed, are needed to conform to the previously proposed and now adopted deletion of the deemed timely filed provision from Rule 16a-3(h).

⁷⁷ See former General Instruction 3(a) to Form 3, and former General Instruction 2(a) to Forms 4 and 5.

⁷⁸ See revised General Instruction 3(a) to Form 3 and revised General Instruction 2(a) to Forms 4 and 5. The adopted note omits the proposed language relating to temporary hardship exemptions.