

when addressing the date as to which the form is filed, a day be specified in addition to, as previously required, a month and year. Adding a day requirement will result in a full date that will ease processing and searches.

9. Amend Item 4 of the items before Table I of Form 5 to clarify that it requires the issuer's fiscal year end date.

10. Amend Form 5 by adding, in the space immediately below Table I and immediately above the sentence regarding multiple reporting persons, a reminder regarding separate line reporting of different securities classes and forms of ownership.

11. Amend the heading of column 9 of Table II of Form 5 to clarify that the reference to "year" is a reference to the issuer's fiscal year, which will make the heading consistent with the heading of column 5 of Table I of Form 5.

12. Amend the heading of column 10 of Table II of Form 5 to add the word "form" to clarify that the column requires disclosure of ownership form (*i.e.*, direct or indirect) and conform the heading with its counterparts in Table I of Form 5 and Tables I and II of Forms 3 and 4.<sup>85</sup>

13. Remove the reference to Social Security Numbers from the description of Securities Act Form 144.<sup>86</sup> This was inadvertently retained in previous rulemaking.<sup>87</sup>

#### G. Form ET

We are making one change to the EDGAR system and the rules that affects all filings, not just section 16(a) reports. Electronic filers have been permitted to make electronic submissions either as direct transmissions, via dial-up modem or Internet, or on magnetic cartridge.<sup>88</sup> However, the number of filers using magnetic cartridges is minimal. In the current calendar year, no filer has used magnetic cartridge transmission. During 2002, one filer filed one magnetic cartridge containing a single form. The filer apparently used the magnetic cartridge approach solely to avoid a temporary problem with direct transmission. Therefore, as proposed, we are eliminating<sup>89</sup> magnetic

cartridges as a transmission medium and Form ET,<sup>90</sup> the transmittal form that must accompany all magnetic cartridge submissions.<sup>91</sup>

#### H. Filing Hours

Rule 13(a) of Regulation S-T addresses electronic submission acceptance. Currently, persons can file by direct electronic transmission between the hours of 8 a.m. and 10 p.m., Washington, DC time on weekdays that are not federal holidays. An accepted filing for which transmission begins before 5:30 p.m. Eastern time is deemed filed on the same day. Generally, an accepted filing that begins after 5:30 p.m. is deemed filed on the next business day.<sup>92</sup> However, a post-effective amendment or registration statement filed to increase the number of securities registered as permitted by Securities Act Rule 462(b)<sup>93</sup> is deemed filed on the same business day (as long as it is received before 10 p.m.).<sup>94</sup>

In the Proposing Release, we requested comment on amending Rule 13(a) to treat an accepted Form 3, 4 or 5 filing in the same manner as a Rule 462(b) filing for purposes of the deemed filing date. More commenters addressed filing hours than anything else. Eleven commenters supported the extension to 10 p.m. Two of those commenters also expressed support for an extension to midnight. Finally, four commenters expressed support for the ability to file 24 hours a day.

The commenters supporting a Rule 462(b) type extension to 10 p.m. or midnight generally took the view that

- The extension would ease administrative burdens, especially for filers that are natural persons or located in the western part of the U.S., particularly in light of the rapid Form 4 filing deadline; and
- Form dissemination still would occur no later than before the market opens the next business day, as is currently true for forms filed after market close but before 5:30 p.m. on a business day.

250.21], and Trust Indenture Act Rule 0-5 [17 CFR 260.0-5]. We also are adopting amendments we did not propose to revise a subauthority cite for part 239 of Chapter 17 of the Code of Federal Regulations to reflect the deletion of Form ET and to add a previously omitted cite to the United States Code.

<sup>90</sup> 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.

<sup>91</sup> The one commenter to address magnetic cartridge transmission and Form ET favored their elimination.

<sup>92</sup> Rule 13(a)(2) of Regulation S-T [17 CFR 232.13(a)(2)].

<sup>93</sup> 17 CFR 230.462(b).

<sup>94</sup> Rule 13(a)(3) of Regulation S-T [17 CFR 232.13(a)(3)].

Commenters supporting 24-hour-a-day filing cited essentially the same views. In addition, two commenters stated their belief that the Commission would not need to be open 24 hours a day because forms filed when the Commission was closed could be held in a queue until re-opening. One commenter added its belief that the Commission should be able to perform maintenance and back-up without disrupting 24 hour-a-day filing.

We agree that extended filing hours would ease filers' administrative burdens, without impairing prompt public availability of the filed information. Accordingly, we have amended Rule 13(a) to provide that any Form 3, 4 or 5 submitted by direct transmission on or before 10 p.m. Eastern time is deemed filed on the same business day.<sup>95</sup> However, filer support hours will not be correspondingly extended, so filer support will remain available only until 7 p.m. Eastern time. We encourage filers to submit their filings as early in the day as practicable, notwithstanding the 10 p.m. deadline, to avoid the risk that last-minute difficulties will result in a late filing.

The EDGAR system will be programmed to provide that a form filed between 5:30 p.m. and 10 p.m. Eastern time is assigned a filing date on the same business day and disseminated that evening. We expect this programming to be completed around the end of July 2003. Until then, EDGAR will continue to assign the next business day to these filings as their filing date and disseminate them on the next business day. However, from the effective date of the amendments until the programming is completed, we will apply amended Rule 13(a) to consider a Form 3, 4 or 5 to be timely filed based on the time of receipt displayed on our Web site. A form with a time of receipt on or before 10 p.m. will be deemed to be filed on the date of receipt.

#### III. The New Electronic Filing System

The Proposing Release discussed our plans for a new on-line filing system to make it easier to file Forms 3, 4 and 5 and easier to locate and search for the data in these forms. In March 2003, the Commission made the new system available for testing. In its initial version, insiders and those who acted on their behalf were able to access our Web site to fill out and submit test forms. On May 5, 2003, EDGAR Release 8.5 became effective and the new system went live and began to provide the method for insiders to file

<sup>95</sup> 17 CFR 232.13(a)(4).

<sup>85</sup> We did not adopt the proposed amendment, appearing in the proposed regulatory text only, to modify the heading of Table II of Form 5 because the current heading of the form already reads as proposed.

<sup>86</sup> See 17 CFR 239.144, as amended.

<sup>87</sup> Release No. 33-7424 (July 1, 1997) [62 FR 35,338].

<sup>88</sup> See current Rules 12(b) and 12(c) of Regulation S-T [17 CFR 232.12(b) and 232.12(c)].

<sup>89</sup> See related amendments we are adopting, as proposed, to Securities Act Rule 110 [17 CFR 230.110], Rule 12 of Regulation S-T [17 CFR 232.12 and 232.103], Exchange Act Rule 0-2 [17b CFR 240.0-2], Public Utility Act Rule 21 [17 CFR