

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Before the effective date of the rule and form amendments adopted in this release, insiders may file Forms 3, 4 and 5 in paper or electronically and issuers with corporate websites need not post Forms 3, 4 and 5 as to their equity securities on their Web sites. The amendments require insiders to file these forms electronically and issuers with corporate Web sites to post these forms. Because insiders already file these forms in paper, the only additional professional skills insiders will need will be those required to file electronically. Because the website posting requirements apply only to issuers that already have corporate Web sites, we believe these issuers will need no additional professional skills to post these forms on their Web sites. We expect that filing electronically and Web site posting will increase costs incurred by some small entities. However, we expect that many small entity insiders and small entity issuers will not bear the full range of costs resulting from the adoption of these amendments for the reasons described below.

The expected costs of mandated electronic filing consist of both initial and ongoing costs. Initial costs are those associated with obtaining, completing and sending to the Commission a Form ID to obtain filing credentials, and the purchase of compatible computer equipment and software. Initial costs further include those associated with learning about the electronic filing system, placing the filing data in electronic format for the initial electronic filing and subscribing to an Internet service provider. Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and any additional costs arising from each subsequent filing (for example, placing the new filing data in electronic format).¹²⁹

We expect that many small entity insiders will need to incur few, if any, additional costs from electronic filing. Some issuers may help their small entity insiders or submit the small entity insiders' filings on their behalf. To the extent small entity insiders do not receive this assistance, we believe many already will have the necessary computer equipment and Internet access to enable them to file using the templates that will appear on the Commission's Web site. Finally, some small entity insiders already may have

filed Forms ID and gained experience in arranging electronic filing.¹³⁰

Even those small entity issuers that assist their insiders to file electronically, whether to a greater or lesser extent, are not likely to incur additional costs. Small entity issuers already are required to file on EDGAR and generally have the necessary computer equipment and Internet service provider access to enable them to facilitate filing using the templates that will appear on the Commission's Web site.

Small entity issuers should incur relatively few direct costs from the website posting requirement. Because the requirement applies only to those small entity issuers that already have a corporate Web site, small entity issuers will not need to incur the costs associated with creating or maintaining a Web site. In addition, small entity issuers could limit their additional costs associated with posting by hyperlinking to a third-party Web site such as EDGAR.

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 the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of filing or posting requirements;
- The use of performance rather than design standards; and
- An exemption from the electronic filing and Web site posting requirements, or any part of them, for small entities.

We believe that differing compliance or reporting requirements or timetables for small entities (or a partial or complete exemption) would be inconsistent with the will of Congress as reflected in amended section 16(a) and the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and the Commission. We did not receive any response to our solicitation of comment on whether differing compliance or reporting requirements or timetables for small entities would be consistent with

the statutory mandate and described goals. We believe that the adopted electronic filing and web site posting requirements are clear and straightforward. We have attempted to design an electronic filing system for these forms that will be simple for all filers to use. Therefore, it does not seem necessary to develop separate requirements for small entities. We have used design rather than performance standards in connection with the electronic filing and Web site posting requirements because we want investors to know where to find the information, and want both investors and the Commission to be readily able to analyze, store and retrieve the information involved. We also want the information disseminated to be in a comparable form for both large and small issuers. We do not believe that performance standards for small entities would be consistent with the purpose of the statutory amendments.

VIII. Statutory Basis

We are adopting the amendments to Regulation S-T, the Code of Federal Regulations description of Form 144, Rule 16a-3, and Forms 3, 4 and 5, and the removal of Form ET under the authority in section 19(a) of the Securities Act, sections 3(b), 16, 23(a) and 35A of the Exchange Act, section 17(a) of the Public Utility Act, section 319 of the Trust Indenture Act, section 30(h) of the Investment Company Act, and section 3(a) of the Sarbanes-Oxley Act.

Text of Rule Amendments

List of Subjects in 17 CFR Parts 230, 232, 239, 240, 249, 250, 259, 260, 269 and 274

Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth above, we amend title 17, chapter II of the Code of Federal Regulations as follows.

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

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

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

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■ 2. Amend § 230.110 by revising paragraph (b) to read as follows:

§ 230.110 Business hours of the Commission.

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¹²⁹ Other minor costs could include, for example, preparing a filing date adjustment request.

¹³⁰ Approximately 38% of the Forms 3, 4 and 5 filed in March 2003 were filed electronically.