SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, and 239

[Release Nos. 33–8814; 34–55980; 39–2446; IC–27878; File No. S7–12–07]

RIN 3235–AJ87

Electronic Filing and Simplification of Form D

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is publishing for comment proposals that would mandate the electronic filing of information required by Securities Act of 1933 Form D. We also are proposing revisions to Form D and to Regulation D in connection with the electronic filing proposals. The revisions would simplify and restructure Form D and update and revise its information requirements. The information required by Form D would be filed with us electronically through a new online filing system that would be accessible from any computer with Internet access. The data filed would be available on our Web site and would be interactive and easily searchable by regulators and members of the public who choose to access it.

DATES: Comments should be submitted on or before September 7, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's *Internet comment form (http://www.sec.gov/rules/proposed.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–12–07 on the subject line; or
- Use the Federal eRulemaking portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on our Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for public inspection and copying in our Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be addressed to Gerald J. Laporte, Chief, Corey A. Jennings, Attorney-Advisor, Office of Small Business Policy, Division of Corporation Finance, or Mark W. Green, Senior Special Counsel (Regulatory Policy), Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628, (202) 551–3460.

SUPPLEMENTARY INFORMATION: We are proposing revisions to Rules 100,[1] 101,[2] 104,[3] 201,[4] and 202 [5] of Regulation S–T,[6] Rules 502 [7] and 503 [8] of Regulation D,[9] and Form D [10] under the Securities Act of 1933 (''Securities Act'').[11]

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I. Background

A. History and Purpose of Form D

Form D serves as the official notice of an offering of securities made without registration under the Securities Act in reliance on an exemption provided by Regulation D.[12] Both public and nonpublic companies file information using this form.

Regulation D was part of a Commission initiative in the early 1980s to provide a more coherent pattern of exemptive relief from the registration requirements of the Securities Act, and particularly to address the capital formation needs of small business.[13] At the time, we intended the Form D filing requirement in Rule 503 of Regulation D to serve an important data collection objective.[14] We expected that the empirical data provided in the Form D filings would enable us to evaluate the effectiveness of Regulation D as a capital raising device and eventually to further tailor our rules to provide appropriate support for both capital formation,

[1] 17 CFR 232.100.
[2] 17 CFR 232.101.
[3] 17 CFR 232.104.
[4] 17 CFR 232.201.
[5] 17 CFR 232.202.
[6] 17 CFR 232.10 *et seq.*
[7] 17 CFR 230.502.
[8] 17 CFR 230.503.
[9] 17 CFR 230.501–508.
[10] 17 CFR 239.500.
[11] 15 U.S.C. 77a *et seq.*

[12] Regulation D contains several separate exemptions for limited offerings. Form D also is to be used by issuers making offerings of securities without registration in reliance on the exemption contained in Section 4(6) of the Securities Act [15 U.S.C. 77d(6)]. Although we primarily discuss Regulation D in this release, the revised Form D also would continue to apply to Section 4(6) offerings. Regardless of the type of offering to which revised Form D would apply, it would be required to be filed electronically.

[13] We adopted Form D and Regulation D in 1982. Release No. 33–6389 (Mar. 8, 1982) [47 FR 11251] (adopting Form D as a replacement for Forms 4(6), 146, 240 and 242). They had been proposed in the previous year. Release No. 33–6339 (Aug. 7, 1981) [46 FR 41791] (proposing Regulation D and Form D).

[14] We stated in the proposing release:

''An important purpose of the notice * * * is to collect empirical data which will provide a basis for further action by the Commission either in terms of amending existing rules and regulations or proposing new ones. * * * Further, the proposed Form would allow the Commission to elicit information necessary in assessing the effectiveness of Regulation D as a capital raising device for small businesses.''

Id.

especially as it relates to small business, and investor protection.[15]

We modified the requirements relating to Form D in 1986, making Form D a uniform notification form that could be filed with state securities regulators.[16] This effort was undertaken with the cooperation of the North American Securities Administrators Association, the organization of state securities regulators, as part of the Commission's efforts to reduce the costs of capital formation for small business and to promote uniformity between federal and state securities regulation. We also eliminated the requirement to amend a Form D filing for an offering every six months during the course of the offering and the requirement to make a final Form D filing within 30 days of the final sale in the offering. We left intact the requirement to file a Form D notification within 15 days after the first sale of securities in an offering, leaving that as the sole current explicit requirement for a Form D filing.[17]

In 1989, we amended the Regulation D exemptions to eliminate the filing of Form D information as a condition to the availability of the exemptions.[18] At that time, we also added Rule 507 to Regulation D to provide an incentive for issuers to make a Form D filing, even though it was no longer a condition to the availability of the exemptions.[19] Specifically, Rule 507 disqualifies an issuer from using a Regulation D exemption in the future if it has been enjoined by a court for violating Rule 503 by failing to file the information required by Form D. Consequently, an issuer has an incentive to make a Form D filing to avoid the possibility that a court would enjoin the issuer for violating Rule 503 and, as a result, disqualify the issuer from using a Regulation D exemption in the future.

In 1996, we proposed to eliminate the Form D filing requirement and replace it with an issuer responsibility to complete a Form D and retain it for a period of time.[20] At the time, our Task Force on Disclosure Simplification had suggested that the Commission consider the continued need for a Form D filing requirement.[21] After reviewing comments on the proposal, we determined that the information collected in Form D filings was still useful to us in conducting economic and other analyses of the private placement market and retained the requirement.[22] In 1998, we solicited public comment on, but did not propose, requiring electronic filing of the Form D notice.[23] Commenters generally favored electronic filing in principle but expressed concern about Form D filers needing to follow the same procedures as then were required generally for filings with the Commission's electronic filing system, called the Electronic Data Gathering, Analysis and Retrieval or ''EDGAR'' system.

In summary, our previous statements on Form D have suggested that, at the federal regulatory level, the Form D filing serves primarily as a notification document that serves two primary purposes:

- Collection of data for use in the Commission's rulemaking efforts; and
- enforcement of the federal securities laws, including enforcement of the exemptions in Regulation D.[24]

The information submitted in Form D filings also is useful for other purposes. The staffs of state securities regulators and NASD, formerly the National Association of Securities Dealers, also use Form D information to enforce federal and state securities laws and the rules of securities self-regulatory organizations. Form D filings also have become a source of disclosure for investors.

Our Web site advises potential investors in Regulation D offerings to check whether the company making the offering has filed a Form D notice and advises that ''[i]f the company has not filed a Form D, this should alert you that the company might not be in compliance with the federal securities laws.'' [25] Our staff suggests that investors considering an investment in a Regulation D offering check the issuer's Form D filing if they are seeking a public source of information about the issuer and the offering. In addition, the information in Form D filings serves as a source of business intelligence for commercial information vendors, as well as for practitioners in the venture capital, private equity, and other industries that rely on Regulation D offerings and for competitors of issuers who file Form D information. Academic researchers use Form D information to conduct empirical research aimed at improving the workings of these industries.[26] Journalists use Form D information to report on capital-raising in these industries.[27]

B. Need To Update Form D and Require Electronic Filing

Currently, much of the information required by Form D appears to be useful and justified in the interests of investor protection and capital formation.[28] It also appears that some useful information that could be required by Form D currently is not required. On the other hand, Form D currently requires some information that may no longer be useful. Our staff receives many inquiries from market participants suggesting that Form D could be clarified and simplified. Moreover, the absence of an electronic system for filing Form D information prevents issuers from filing through efficient modern methods and limits the usefulness of the information collected on Form D. The rules we propose today would address deficiencies in the Form D data collection requirements.[29]

1. Eased Filing Burdens

Our proposed rules are intended to ease the costs and burdens of preparing and filing Form D information. The informational requirements would be streamlined and updated. The instructions would be clarified and simplified. Issuers would file the Form D information electronically through a new online filing system that would be accessible from any computer with Internet access. Issuers would provide the information in data fields by

[15] Release No. 33–6339 (Aug. 7, 1981) [46 FR 41791].

[16] Release 33–6663 (Oct. 2, 1986) [51 FR 36385].

[17] 17 CFR 230.503.

[18] Release No. 33–6825 (Mar. 15, 1989) [54 FR 11369].

[19] *Id.*

[20] Release No. 33–7301 (May 31, 1996) [61 FR 30405].

[21] SEC Task Force on Disclosure Simplification, Final Report 17 (Mar. 5, 1996), available at *http://www.sec.gov/news/studies/smpl.txt.*

[22] Release No. 33–7431, at 5 (July 18, 1997) [62 FR 39755, 39756].

[23] Release No. 33–7541 (May 21, 1998) [63 FR 29168].

[24] Release No. 33–6389 (Mar. 8, 1982) [47 FR 11251]; Release No. 33–7431 (July 18, 1997) [62 FR 39755].

[25] See *http://www.sec.gov/answers/formd.htm.*

[26] For a discussion of how academic researchers are using available data on private investments to improve the workings of the venture capital industry, see A. Ginsberg, *Truth, or Consequences: Academic Researchers Are Helping Policy Makers and Practitioners Understand the Problems Facing the Venture Capital Industry*, Innovation Review 8 (Berkley Center for Entrepreneurial Studies, Fall 2002).

[27] See, e.g., R.J. Terry and B. Hammer, NEA Closes $2.5 Billion Fund, Baltimore Bus. Journal, July 10, 2006.

[28] For example, information provided in response to the requirement to check the applicable specified exemptions from registration claimed by the issuer helps the Commission monitor and evaluate use of the claimed exemptions in order to protect investors and facilitate the development of a private market in which to raise capital.

[29] Additional changes to Regulation D are being proposed in a companion release on Regulation D which, if adopted, would result in exemption disqualification provisions in a new subparagraph (e) of Rule 502 and a new exemption under a revised Rule 507 of Regulation D. On May 23, 2007, the Commission approved for issuance the companion proposing release. The proposed new Form D reflects that proposed exemption.

responding to a series of discrete questions. It is expected that the fields would be checked automatically for appropriate characters and consistency with other fields and the questions would be accompanied by easily accessible links to instructions and other helpful information. We believe these system features, among others, would help facilitate a relatively easy-to-use filing process that would deliver accurate information quickly, reliably, and securely.[30] The Form D filing would continue to be required within 15 days of an issuer's first sale in an offering without Securities Act registration in reliance on one or more of the exemptions provided in Regulation D, and the rules would clarify when amendments are required. Paper filing of Form D would be eliminated. Currently, our rules require issuers to file five paper copies of the Form D with us by mail or physical delivery to Commission headquarters.[31] Our goal is to make filing Form D information as easy as many tasks commonly performed by people using the Internet today.

2. Better Public Availability of Form D Information

Requiring the electronic filing of Form D data would make the information filed more readily available to regulators and members of the public who choose to access it.[32] The information would be available on our Web site and, because the online filing system would automatically capture and tag data items, the data would be interactive and easily searchable. The system would enable users to view the information in an easy-to-read format, download the information into an existing application, or create an application to use the information.

Unlike forms filed with us electronically, paper filings are available from us only in person in our Public Reference Room or by means of a mail request. We charge a nominal fee for copies of Form D filings. Some Form D filings are available at higher cost through private vendors through the Internet and telephone requests.

3. Federal and State Uniformity and Coordination

For over 20 years, Form D has served as a means to promote federal and state uniformity in securities regulation by providing a uniform notification form that can be filed with the Commission and with state securities regulators.[33] The contemplated electronic filing system for Form D information would continue that tradition and could enhance the utility of Form D as a means to promote uniformity between federal and state securities regulation. The system would include an electronic database that could be more easily searched for information needed by both federal and state securities regulators to monitor the exempt securities transaction markets. The system also would permit improved coordination among federal and state regulators, which is essential to efficient and effective capital formation through exempt transactions, especially by smaller companies, and to investor protection. State securities regulators would be able to access the information on our Web site to learn if new Form D information of interest to them has been filed. It is our hope that state securities regulators would permit ''one-stop'' filing with the Commission and rely on Commission filings as satisfying state law filing requirements for offerings covered by a federal Form D filing.[34] This would reduce significantly the costs and burdens of preparing and filing Form D information with the Commission and with state securities regulators. This could represent a substantial savings for small businesses and others filing Form D information.

4. Improved Collection of Data for Commission Enforcement and Rulemaking Efforts

The proposed conversion to electronic filing of Form D information in an interactive data format would result in creation of a database and allow us and others to better aggregate data on the private securities markets and the use of the various Regulation D exemptions. Further, the software we intend to use for the Form D electronic filings would require that filers address each required data field in the form, thus reducing incomplete filings. Because of these and other features, the Form D electronic filing system should assist in our enforcement efforts and ease our ability to make use of filed Form D information. The Form D information database would allow us to evaluate our exemptive schemes on a continuing basis in order to facilitate capital formation in a manner consistent with investor protection. The evaluation could lead to improvements that would result in significant benefits to companies that rely on the Regulation D exemptions, especially smaller companies, as well as benefits to investors.

II. Discussion of Proposed Amendments

As noted above, we believe today's proposal would have a positive effect in many areas of interest to the Commission, state securities regulators, investors, and companies that rely on Regulation D exemptions. The proposed revisions generally involve simplifying Form D, easing the burdens of complying with the requirements of the form, and modernizing the information capture process.

For each offering of securities that is made without Securities Act registration in reliance on a claimed exemption under Regulation D, the issuer must file the information required by Form D with the Commission no later than 15 days after the first sale of securities. The form calls for issuers to provide basic identifying information and fundamental information about the offering. Some of the requirements of Form D have become outdated with the passage of time since the Commission adopted them. Further, some of the form's requirements and instructions could be clarified and made less burdensome. The revisions we propose today would address these issues. In addition, the move to electronic filing necessitates several modifications.

A. Proposed Amendments to the Substantive Content of Form D

Currently, Form D requires presentation of preliminary information and other information required by five sections designated ''A'' through ''E.'' The proposed revisions organize the information requirements around 14 numbered ''items'' or categories of information. Instructions at the end of the form would explain the requirements for each item. On the online form, we plan that terms and items at the front of the form would be linked to the instructions at the back of the form which would be immediately available by clicking on a particular

[30] The new online filing system is discussed in further detail in Part III of this release.

[31] 17 CFR 230.503(a). The Commission received 25,239 Form D filings in its most recently ended fiscal year, fiscal year 2006.

[32] Most filings made with us currently are filed through our EDGAR system. We began to make EDGAR filing mandatory in 1993. Initially, a number of forms—including Form D—were excluded from mandated electronic filing. Since the launch of the EDGAR system, we have increased the number of forms that are required to be filed on the EDGAR system, but Form D remains a paper-only filing.

[33] According to a unit of the American Bar Association, 48 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands accept filings on Form D. New York prescribes its own Form 99. Florida does not require any filing for the types of transactions other jurisdictions require to be reported on Form D. See Report on Blue Sky Survey of the NSMIA Subcommittee, Committee on State Regulation of Securities, American Bar Association Business Law Section (Feb. 2006).

[34] The contemplated electronic filing system would not, however, collect any fee a state might charge on behalf of the state.

term or item. In this regard, we propose to add to the General Instructions a sentence that provides that terms used but not defined in the form that are defined in Regulation D or Rule 405 [35] have the meanings given to them in Regulation D and Rule 405. The sentence would make explicit staff interpretive advice regarding Regulation D and, to the extent it defines the term ''promoter,'' Rule 405.

1. Basic Identifying and Contact Information

Item 1 would require basic identifying information, such as the name of the issuer of the securities, any previous names, type of legal entity and the issuer's year and place of incorporation or organization.[36] Item 2 would require issuers to provide place of business and telephone contact information.[37] Item 3 would require information about related persons (executive officers, directors, and promoters).[38] These requirements primarily are carried over from the current Form D, with restructuring to reflect the electronic form of the filing. We would, however, revise the form to provide specifically for the identification of multiple issuers in multiple issuer offerings. Form D currently does not provide for this, leading to confusion as to how multiple issuer offerings should be reported.[39] In addition, the form would ask for the Commission file number, if applicable.

The revised form would include instructions to clarify that post office box numbers and ''care of'' addresses are not acceptable as place of business information. The purpose of this information is to allow securities enforcement authorities to determine the location of the issuer's operations and personnel responsible for the offering. Post office box numbers and ''care of'' addresses do not provide this information. The proposed form would not provide for submission of more than one place of business or telephone number in multiple issuer offerings. Issuers in multiple-issuer transactions typically have the same place of business, and we generally do not need more than one address to contact the responsible personnel for enforcement purposes.

We propose to delete the current requirement that issuers identify owners of 10 percent or more of a class of their equity securities as ''related persons.'' Investors will continue to have access to this information, if it is material, in the private placement memorandum customarily supplied to them or in other information made available through the issuer.[40] We believe we can collect sufficient information to satisfy the regulatory objectives of Form D by requiring only the identification of executive officers, directors, and promoters. Moreover, issuers that are not reporting companies have raised privacy concerns with respect to the requirement to identify 10 percent equity owners who are not executive officers, directors, or promoters when the issuers are private companies, because they do not already have to disclose this information. From time to time issuers have asked us to grant confidential treatment to this information under Securities Act Rule 406,[41] but we have denied such requests consistently because the information currently is required by Form D. We estimate that about 95% of the companies filing Form D notices last year were private companies. With the electronic filing of the Form D information, the widespread availability of such data on our Web site may raise additional privacy concerns of issuers seeking to raise capital through a private offering.

We also propose to delete the requirement that issuers provide the name of the offering, because naming offerings reported on Form D is not as common today as it was before the 1986 tax reforms,[42] when the current Form D requirement was adopted. As such, we understand issuers have found this requirement to be unclear. The proposed form also would omit the current requirement to indicate whether a limited partnership issuer already has been formed or is in formation. We believe sufficient information will be obtained from the requirement to provide an issuer's year of incorporation or organization.

2. Information About Issuer

The form would ask for basic information about the issuer in Items 4 and 5. Issuers would identify their industry group and their revenue range from dropdown menus.[43] The industry group information would replace the current requirement in Form D to provide a description of the issuer's business. We believe simply selecting an industry group classification from a pre-established list is less burdensome for issuers and more useful for the regulatory purposes underlying the Form D filing requirement. The industry group classifications will provide us better, and more easily retrievable, information about industries and offerings where we may have identified policy issues.[44]

Information on revenues was required in Form D before 1986.[45] Because Form D was submitted on paper, however, that information was not able to be efficiently used for rulemaking purposes. We propose to include revenue range information in the Form D filing to help determine the types and sizes of issuers that rely on the Regulation D and Section 4(6) exemptions. For instance, this information would increase

[35] 17 CFR 230.405.

[36] Issuers would specify their legal entity type (e.g., corporation or limited partnership) from a dropdown menu.

[37] Some information of the type that Items 2 and 3 would require might automatically appear in appropriate places when the filer accesses the new online filing system. The system may replicate information provided by the filer in the course of obtaining the codes needed to access the new online filing system or in updating such information. The issuer would be able to make changes to such information.

[38] The instructions to Item 3 would clarify that disclosure would be required of each person who has functioned as a promoter of the issuer within the past five years of the later of the first sale of securities or the date upon which the Form D filing was required to be made.

[39] Currently, in multiple issuer offerings, there is uncertainty as to whether all issuers can be listed in the same Form D or whether each issuer must submit essentially the same Form D. In this situation, the staff currently advises each issuer to submit a separate Form D notice because the forms are retrievable only by reference to the name of one issuer. The proposed changes would clarify the requirements of this item and eliminate the burden on issuers to file what are essentially duplicate forms in order to comply with the requirement to file Form D information. The new online filing system would be designed to support multiple issuer filings. As a result, all issuers easily could be identified in a single filing.

[40] Under some circumstances, an issuer must provide, rather than merely make available, beneficial holder information. For example, an issuer that offers securities to non-accredited investors without registration under the Securities Act in reliance on an exemption provided by Rules 505 [17 CFR 230.505) or 506 [17 CFR 230.506] must provide beneficial holder information under the circumstances specified by Rule 502(b) [17 CFR 230.502(b)].

[41] 17 CFR 230.406.

[42] Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085 (Oct. 22, 1986).

[43] As proposed, the revenue range would be for the most recently completed fiscal year. Where an issuer has been in existence for less than a year, it would identify its revenues to date.

[44] The instruction to Item 4 would provide that an issuer or issuers that could be categorized in more than one industry group should be categorized based on the industry group that most accurately reflects the use of the bulk of the offering proceeds. The instruction also would provide that, for purposes of responding to Item 4, the issuer should ''use the ordinary dictionary and commonly understood meanings of the terms identifying the industry groups.'' If an issuer selected the checkbox for ''Pooled Investment Fund,'' pop-ups would require the issuer also to select from among lower level checkboxes designating a specific type of pooled investment fund and to select between ''yes'' and ''no'' checkboxes as to whether the issuer is registered as an investment company under the Investment Company Act of 1940 (''Investment Company Act'') [15 U.S.C. 80a–1 *et seq.*].

[45] Release No. 33–6663 (Oct. 2, 1986) [51 FR 36385].

significantly the effectiveness of the data collected as a tool for assessing the use of the Regulation D exemptions for small businesses and other different sizes of issuers. The proposed item does, however, provide a ''Decline to Disclose'' option, which might be used if a private company considered its revenue range to be confidential information.

3. Identification of Claimed Exemptions and Exclusions

Item 6 would require the issuer to identify the exemption or exemptions being claimed for the offering, from among Rule 504's [46] paragraphs and subparagraphs, Rule 505, Rule 506, Rule 507 and Section 4(6), as applicable. This requirement, in general, is carried over from the current Form D requirement, but with a reference to proposed Rule 507 [47] and added specificity, requiring the issuer to identify the specific paragraph or subparagraph of any Rule 504 exemption being claimed as well as any specific paragraph of Investment Company Act Section 3(c) [48] which the issuer claims for an exclusion from the definition of ''investment company'' under the Investment Company Act.[49] We propose to require this increased level of specificity and additional type of information because of the need for data to assist our policymaking and rulemaking efforts in various areas. Identification of a claimed exemption or exclusion often is key to analysis of the appropriateness of the claim. State securities regulators also need this information to determine the extent of their jurisdiction over the offering.[50] Unlike current Form D, however, Item 6 would not enable the issuer to check a box to indicate a claim to the Uniform Limited Offering Exemption (ULOE) from state securities law requirements. We are inclined to believe that the ULOE box causes confusion and burdens for companies completing Form Ds without resulting in a significant amount of useful information. Most, if not all, companies claiming a ULOE exemption also will check the Rule 505 box, because Rule 505 is the Commission's companion exemption to the ULOE exemption.[51] Similarly, revised Form D would omit all other references to ULOE and the provisions that, in general, require specified information on a state-by-state basis in an appendix to the form and require specified representations and undertakings. We are inclined to believe that this information is burdensome to provide without sufficient benefits.[52]

4. Indication of Type of Filing

a. Proposed Amendments

We propose to carry over in new Item 7 the current Form D requirement to indicate whether the filing is a new filing or an amendment. Item 7 also would be used to designate the states to which the Form D is directed.[53] Including identification of a filing as new or an amendment is appropriate, because the form permits amendments and issuers may have valid reasons to wish to update or correct information previously provided in a Form D filing through an amendment. In addition, as discussed immediately below, we intend to clarify the circumstances where amendments are required.

b. Amendments to Form D

We recognize that some uncertainty may exist about when, how, and why an amendment to a Form D may or must be filed because those issues are not expressly addressed in the form. While both Rule 503 and the instructions to the current Form D discuss the information that is required when an amendment is filed,[54] neither explicitly requires the filing of an amendment. In certain offerings and situations, however, an issuer may have made a mistake of fact in the filed Form D. Situations also arise where changes occur and the initially filed Form D may not be an accurate expression of the current facts in an ongoing offering. Our staff currently interprets Rule 503 and the Form D instructions to require amendments in ongoing offerings where there has been a material change in information filed about the offering and where basic information previously submitted about the issuer has materially changed.

The staff has received questions regarding offerings of extended duration, and how to determine whether and how to file Form D amendments. For example, when offerings are expected to continue for an extended period, the Commission's staff often is asked to assist issuers in determining how to calculate an offering's aggregate offering price and when an amendment to the Form D should be filed. The staff's practice in this regard has been to advise issuers to use a good faith and reasonable belief standard to calculate the aggregate offering price and to amend the Form D annually.

We propose to revise Rule 503 and the instructions to and description of Form D to require amendments to Form D in the following three instances only:

- To correct a mistake of fact in the previously filed notice (as soon as practicable after discovery of the mistake);
- To reflect a change in the information provided in a previously filed notice (as soon as practicable after the change), except that no amendment would be required to reflect a change that occurs after the offering terminates or a change that occurs in the following only: [55]
  - An issuer's revenues;
  - The amount of securities sold in the offering;
  - The total offering amount, if the change, together with all other changes in that amount since the previously

[46] 17 CFR 230.504.

[47] As previously noted, a companion release proposes a new exemption under a revised Rule 507.

[48] 15 U.S.C. 80a–3(c).

[49] The issuer would be able to select all the exclusions on which it relies. Regulation D provides an exemption from the Securities Act and not an exclusion from the definition of the term ''investment company'' under the Investment Company Act. Some companies that use a Regulation D exemption, however, also are excluded from the definition of investment company under the Investment Company Act.

[50] Section 102(a) of the National Securities Markets Improvement Act of 1996 (''NSMIA'') [Pub. L. 104–290, 110 Stat. 3416 (Oct. 11, 1996)] enacted new Section 18 of the Securities Act [15 U.S.C. 77r], which limits the authority of the states to regulate offerings exempt under Commission ''rules or regulations issued under section 4(2)'' of the Act [15 U.S.C. 77d(2)], which includes Rule 506 but not Rules 504 or 505, and offers and sales to ''qualified purchasers'' as defined by the Commission under the Securities Act, which term would include persons specified in proposed Rule 146(c) of our companion release in which revised Rule 507 is proposed.

[51] See Release No. 33–7644 (Feb. 25 , 1999) [64 FR 11090].

[52] We note, however, that Section 18(c)(2)(A) of the Securities Act [15 U.S.C. 77r(c)(2)(A)] generally provides that nothing under Section 18 prohibits ''any State from requiring the filing of any document filed with the Commission [under the Securities Act], together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.''

[53] We propose to permit issuers to designate the states to which the Form D is directed, on the assumption that some states would adopt one-stop filing and allow filings that specify that they are directed to those states to constitute filings with those states.

[54] Rule 503(d) states that amendments to Form D ''need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.'' The instructions to Form D set forth the information required in an amendment as only ''the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B.''

[55] We believe the specified changes should not require an amendment because changes of this type are expected to occur in the course of an offering. It is not necessary to report them for Form D to serve its primary function as a notice of an exempt offering.

filed notice, does not result in an increase of more than 10%;

○ The number of accredited investors who have invested in the offering;

○ The number of non-accredited investors who have invested in the offering (as long as the change does not increase the number to more than 35);

○ In offerings that last more than a year, information on related persons, if the change was due solely to the filling of a vacant position upon the death or departure in the ordinary course of business of the previous occupant of the position; and

• In offerings that last more than a year, annually, between January 1 and February 14, to reflect information about the offering on or before its termination since the later of the filing of the Form D or the filing of the most recent amendment.

Rule 503 also would require an issuer that files an amendment to provide current information in response to all requirements of Form D regardless of why the amendment is filed. We believe it would be relatively easy to provide such current information in most instances due to the form's streamlined information requirements, the likelihood that much of the information would not require change, and the expectation that the new online filing system would make available to the issuer the version of the Form D to be amended to enable the issuer to respond only to the changed items.

5. Information About Offering

Items 8 through 14 would require factual information about the offering itself. Most of the information sought currently is required by Sections B and C of Form D.

Duration of Offering. Item 8 would require the issuer to indicate whether it intends that the offering will last over a year. Such information currently is not specifically required by Form D. The absence of an information requirement of this type has presented compliance questions because regulators may not know whether an offering may span an extended period of time based on the information currently required by Form D.

Type of Securities Offered. Item 9 would carry over the current requirement to specify the type of securities being offered, such as debt or equity, with additional categories of securities added. Some of the additional categories would provide more clarity. The rest of the additional categories would identify types of securities, the specification of which we believe would help facilitate our rulemaking efforts.[56] The issuer would be required to specify all categories that apply to the securities that are the subject of the exemption(s) specified in response to Item 6.[57]

Business Combination Transaction. Form D currently requires that the issuer indicate only whether the offering is an exchange offer. Item 10, however, would require the issuer to indicate whether the offering is being made in connection with a business combination transaction such as a merger, acquisition or exchange offer regardless of the type of offering. We believe that, for purposes of Form D, it is important to identify whether an offering is being made in connection with a business combination transaction, whether structured as an exchange or in some other manner, because such transactions often give rise to policy concerns.

Minimum Investment Amount. Item 11 would carry over the requirement in Form D to specify the minimum investment amount per investor. We are maintaining this requirement because offerings that have low minimum investment amounts have presented particular enforcement challenges in the past.

Sales Compensation. Item 12 generally would carry over but reformat and, as a result, simplify the response to the requirements in Form D related to information on sales compensation. It would, however, add a requirement to provide the CRD number of each recipient named in response to Item 12. A CRD number corresponds to a broker or broker-dealer's record located in the Central Registration Depository, a computer database of brokers and broker-dealers owned jointly by state regulators and NASD. We believe it should be relatively easy for an issuer to obtain the CRD numbers from the brokers and broker-dealers it retains. Requiring disclosure of the CRD numbers would facilitate checking the brokers or broker-dealers' records.[58]

Offering and Sales Amounts. Item 13 would carry over the current requirements to provide the amount of total sales and the total offering amount, but in a restructured, simplified format. Instructions would be added to clarify interpretive issues that have arisen in completing the form, such as how to respond to this requirement if the amount of an offering is undetermined when the Form D filing is made.

Investors. Item 14 would elicit information on whether the issuer intends to sell securities to persons who do not qualify as accredited investors and the number of such persons, as well as the number of accredited investors who already have purchased securities in the offering. The form currently requires this information because it affects how we and state securities evaluate claimed exemptions.

Other Information. We propose to eliminate the items requiring information on use of proceeds and expenses of the offering because they do not yield information necessary for an evaluation of the claimed exemption or for rulemaking efforts. Many, if not most, Form D filings do not provide information that serves the form's purposes, because they specify only that the majority of proceeds will be used for ''general corporate purposes.'' In addition, because of the diversity in use of proceeds in Regulation D offerings, attempting to standardize responses to provide searchable data may be challenging and not worthwhile.

6. Signature and Submission

We propose to combine the federal and state signature requirements currently in Sections D and E of Form D into one signature requirement. This would simplify the filing and make it consistent with other signature requirements of Commission forms. We propose to incorporate into the signature block the consent to service currently in Form U–2, which is required to be filed separately but simultaneously with a Form D by many states. We are mindful in making these changes that the signature block continues to be of significance to state securities regulators. Our intention with these proposed changes is to maintain this usefulness in a manner that is consistent with easing burdens on filers.

The combined signature requirement, in general, would provide that each

[56] The new categories would be ''Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security,'' ''Pooled Investment Fund Interests,'' ''Tennant-in-Common Securities,'' and ''Mineral Property Securities.''

[57] If, for example, an issuer were filing a Form D as to the offering of both immediately exercisable options and their underlying common stock, the issuer would specify the categories ''Option, Warrant or Other Right to Acquire Another Security'' and ''Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security.'' In contrast, if the issuer were filing a Form D as to the offering of options exercisable over a year after purchase but not as to the offering of the underlying common stock, the issuer only would specify the category ''Option, Warrant or Other Right to Acquire Another Security.''

[58] Issuers and investors can check a broker's CRD record by accessing *http://brokercheck.nasd.com* or by calling a state regulator or the NASD's public disclosure hotline at 800–289–9999. See *http://www.nasaa.org/Investor_Education/Investor_Alerts_Tips/292.cfm*.

issuer signing the revised Form D[59] has read the Form D, knows the contents to be true, has duly caused the Form D to be signed on its behalf by the undersigned duly authorized person, and is[60]

- Notifying the Commission and the states in which the Form D is filed of the offering and undertaking to furnish to them, on written request, the information provided by each issuer to offerees;
- Consenting to service of process on individuals holding specified positions; and
- Certifying that it is not disqualified from relying on Regulation D for one of the reasons stated in proposed Rule 502(e).[61]

In undertaking to furnish to the states in which the Form D is filed, on written request, the information provided to offerees, the issuer would not be affecting any limits NSMIA imposes on the ability of these states to require information.[62]

The proposed signature requirement would be more extensive than the current federal signature requirement and would differ in various ways from the current state and Form U–2 signature requirements. The proposed signature requirement would be more extensive than the current state signature requirement, for example, by requiring a consent to service of process. The proposed signature requirement would be less extensive than the current state signature requirement principally because it would not ask whether any party described in Rule 262[63] currently was subject to any of the disqualification provisions of that rule.[64] The principal difference between the proposed signature requirement and the Form U–2 signature requirement is that Form U–2 requires the notarized signature of a corporate officer (or that person's equivalent in the case of other entities) and requires a consent to jurisdiction and venue as well as a consent to service.[65]

Request for Comment

- Would the proposed presentation of the revised Form D, together with linked instructions, be generally understandable, sensible, and helpful to individuals completing the form? Should all terms that need to be defined to facilitate compliance with the form's requirements, such as the term ''promoter,'' appear in Regulation D?
- Should other items of information be required to be submitted in a Form D filing? Would requiring the CUSIP number of securities that have a CUSIP number be appropriate? Would requiring the trading symbol of securities that have a trading symbol be appropriate? Should we provide for the submission of a separate address for each issuer in multiple-issuer offerings to help assure securities regulators can contact the responsible personnel? Should we require issuers to provide information on ten percent or greater holders? Is such information useful to the public and other regulators and does it serve the purposes of the Form D filing requirement? If multiple types of securities are offered, should we require information about each type of security? Should we permit issuers to check an exemption box for ULOE or ''None'' and, if so, why? Should we require or permit issuers to provide the items of information current Form D requires on a state-by-state basis in an appendix to the form? Should we require or permit issuers to describe potential waivers to minimum investment amounts or minimum investment amounts based on the identify of the offeree?[66] Should we require issuers that are pooled investment vehicles to disclose whether their advisers are registered as investment advisers under the Investment Advisers Act of 1940?[67] Should we require such issuers to disclose the number of their knowledgeable employees purchasing in the offering?[68]
- Should we eliminate any items of information that we propose to request in the revised Form D? Should we not require specified information because it does not provide sufficiently useful information or because providing it is unnecessarily burdensome? Should we retain any information requirements from the current Form D that we propose to eliminate? For example, should we retain, because it would provide useful information, the part of the current state signature requirement that asks whether any party described in Rule 262 currently was subject to any of the disqualification provisions of that rule? Should we require information that we have not proposed to require? For example, should we require an issuer to disclose information about the value of its assets such as the range of the value of its total assets or whether the value of its total assets was $5 million or less on the last day of its most recently ended fiscal year?[69] Is requiring a reporting company's Commission file number appropriate or might it be unduly burdensome without resulting in the collection of significant, useful information?
- Are the revised instructions on filing amendments to a Form D filing clear and appropriate? For example, should the proposed requirements to file an amendment to correct a mistake of fact or reflect specified changes be limited to material matters explicitly? Should amendments be required under other circumstances? For example, should an amendment be required to report the termination of an offering that lasts more than a year? Should the obligation to amend for a mistake end at a specified time and, if so, when? For offerings that last more than a year, should an issuer be permitted to wait at least a year since the later of the filing of the Form D or the filing of the most recent amendment if, as proposed, it otherwise would be required to file an annual amendment between January 1 and February 14? Should an issuer that files an amendment be permitted to provide responses only to some items of

[59] Each issuer in a multiple-issuer offering would be required to sign the Form D. If all issuers authorized the same person to sign on their behalf, however, only that person would need to sign.

[60] Both the current federal and state signature requirements expressly provide that the issuer has duly caused the Form D to be signed on its behalf by the undersigned duly authorized person. Only the current state signature requirement, however, expressly provides that the issuer has read the Form D and knows the contents to be true.

[61] As previously noted, a companion release proposes that exemption disqualification provisions appear in a new subparagraph (e) of Rule 502. If the new subparagraph were not adopted, the certification would address the current disqualification provisions in Regulation D, as applicable.

[62] See Section 18 under the Securities Act.

[63] 17 CFR 230.262.

[64] The proposed signature requirement, unlike the current state signature requirement, would omit both an undertaking to provide a Form D to specified state administrators and a representation regarding ULOE. As noted above, however, under the proposed signature requirement, issuers would undertake to furnish to the states in which the Form D is filed, on written request, the information provided by each issuer to offerees. Also as noted above, revised Form D would omit all references to ULOE and the provisions that, in general, require specified information on a state-by-state basis in an appendix to the form and require specified representations and undertakings.

[65] The proposed signature requirement's addressing consent to service but not consent to jurisdiction or venue would be consistent with the signature requirement in Form ADV [17 CFR 279.1],which can satisfy both federal and state filing requirements for investment adviser registration.

[66] For example, an issuer might set a lower minimum investment amount for its management than it would for an offeree with no prior relationship to the issuer.

[67] 15 U.S.C. 80b–1 *et seq.*

[68] We use the term ''knowledgeable employees'' as defined in Rule 3c–5 [17 CFR 270.3c–5] under the Investment Company Act.

[69] An issuer other than an investment company that had total assets of $5 million or less on the last day of its most recently ended fiscal year is, as further described in Part VIII, a small entity under the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78a *et seq.*] and may be under the Securities Act for purposes of the Regulatory Flexibility Act [5 U.S.C. 603]. As a result, our receipt of such information may facilitate our regulatory flexibility analysis in future rulemaking.

proposed Form D? If an issuer were permitted to respond to only some items, to which items should the issuer be required to respond?

- Should Form D filings for offerings that last more than a year be required to be updated over time? Should the proposed annual update requirement apply to offerings that have not lasted over a year as of the proposed February 14 annual update due date? Should an annual update be required within a specified number of days of the anniversary of an offering rather than by February 14?
- Would the proposed requirement that an issuer identify its industry group(s), in lieu of providing a description of its business, provide data useful to the public and other regulators regarding the types of businesses that rely upon Regulation D?
- Would the proposed addition of Item 5 requiring an issuer to specify its revenue range provide useful data to the public and other regulators regarding the sizes of businesses that rely upon Regulation D? Is it necessary to provide an option to decline to disclose their revenue range for both companies that are and are not reporting companies under the Exchange Act? [70]
- Would the proposed addition in Item 12 of a requirement to provide each broker's CRD number provide useful information to the public and other regulators with minimal burden on the issuer?
- Should proposed Item 13 permit an issuer to state that the amount of total sales and total offering amount are undetermined rather than, as proposed, provide a good faith estimate, where the securities are offered in exchange for property other than cash and the value of the property cannot be determined without unreasonable effort or expense?
- Should we include language in Form D clarifying that an issuer's undertaking in the signature block to furnish information to states in which the Form D is filed does not affect any limits NSMIA imposes on the ability of these states to require information?
- Do the current requirements for information on use of proceeds and expenses in the Form D, which would be eliminated, provide useful information to the public and other regulators?
- Would the proposed combined federal and state signature requirement be adequate to replace the current state signature requirement and make it unnecessary for issuers to file Form U–2?
- Do issuers and others have an interest in ''one-stop'' filing with the Commission, in which states would rely on Commission filings as satisfying state law filing requirements for an offering covered by a Form D filing? Should such a one-stop filing service include the centralized collection of state filing fees? Would issuers be willing to pay a fee to the Commission or to an organization of state regulators for one-stop filing, if the collection of such a fee were properly authorized? How much would issuers be willing to pay for one-stop filing services?

B. Required Electronic Filing of Form D

We propose to amend Regulation S–T,[71] Rule 503 of Regulation D, and Form D to implement a requirement for issuers to file the information required by Form D with us electronically through an online filing system.[72]

Rule 101(c)(6) of Regulation S–T [73] currently requires the information required by Form D to be filed in paper. The proposed amendments would delete the reference to Form D from Rule 101(c)(6) and would revise subparagraph (a)(1) of Rule 101 [74] to add a new subparagraph (xiii) that would add Form D to the rule's list of documents required to be filed electronically.

Rule 100 of Regulation S–T,[75] which specifies the persons or entities subject to the electronic filing requirements of Regulation S–T, expressly includes, among others, Exchange Act reporting companies whose filings (such as Form D) are subject to review by the Division of Corporation Finance. In order to assure that Rule 100 also would apply to non-reporting companies that would file Form D, the proposed amendments would revise paragraph (a) of Rule 100 of Regulation S–T [76] to add a reference to entities that are not Exchange Act reporting companies but whose filings are subject to review by the Division of Corporation Finance.

We also propose to amend Regulation S–T to make hardship exemptions unavailable to Form D filings. The proposed amendments would revise subparagraph (a) of Rules 201 [77] and 202 [78] to exclude Form D from the filings for which hardship exemptions are available. We believe hardship exemptions should not be available for Form D filings because of the relative ease of electronic filing and the limited value of paper filings. In proposing the conversion of the Form D filing from a paper system to an electronic system, we assume that issuers will have access to a computer and the Internet. In the absence of an issuer's having a personal or office computer and Internet access, public libraries around the country often have computer and Internet access that an issuer could use. We therefore do not envision the need for a hardship exemption to permit paper filing.[79]

The proposed amendments would revise Rule 503 of Regulation D and Form D in several ways related to electronic filing. The proposed amendments would delete from Rule 503 references to the paper-based concept of copies in subparagraphs (a) and (b) and a manual signature in subparagraph (b). Subparagraph (a) would continue to specify when a notice on Form D initially must be filed [80] and would be revised to specify also when an amendment to a Form D filing must or could be filed.[81]

Subparagraph (b) would continue to require a signature. Rule 302 of Regulation S–T [82] would specify the manner of signature for Form D as it does for electronic filings generally.[83]

[70] A reporting company is a company that files reports under Section 13(a) [15 U.S.C. 78o] or 15(d) [15 U.S.C. 78m] of the Exchange Act.

[71] Regulation S–T is the Commission's general regulation governing electronic filing.

[72] The online filing system would automatically capture and tag data items and is discussed in further detail in Part III of this release.

[73] 17 CFR 232.101(c)(6).

[74] 17 CFR 232.101(a)(1).

[75] 17 CFR 232.100.

[76] 17 CFR 232.100(a).

[77] 17 CFR 232.201(a).

[78] 17 CFR 232.202(a).

[79] We also propose an amendment to Rule 104(a) of Regulation S–T [17 CFR 232.104(a)] to make it clear that unofficial PDF copy submissions are unavailable to Form D notices. The new online filing system, further described below, is expected to make filed Form D information available on our Web site in an easy-to-read format similar to that which could be provided through an unofficial PDF copy.

[80] As proposed, Rule 503(a)(1) generally would provide that an issuer offering or selling securities in reliance on Rule 504, 505 or 506 must file a Form D for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering. As previously noted, a companion release proposes a new exemption under a revised Rule 507. If that proposal were adopted, Rule 503(a)(1) would be revised to specify Rule 507 as well.

[81] Subparagraph (a) would continue to provide that an issuer must file the Form D no later than 15 calendar days after the first sale of securities in the offering. As currently, an issuer could, however, file the Form D at any time before that if it has determined to make the offering. Also as currently, a mandatory capital commitment call would not constitute a new offering, but would be made under the original offering, so no new Form D filing would be required solely as a result. See Part II.A.4.b of this release for a discussion of when an amendment must or could be filed.

[82] 17 CFR 232.302.

[83] Rule 302 requires, in general, that electronic filings contain typed signatures, that each signer manually sign a signature page or other document confirming the typed signature by the time the filing is made, and that the issuer maintain the manually signed document for five years and make it available to the Commission and its staff upon their request.

The proposed amendments also would add to subparagraph (b) a statement that electronic Form D filing through our new online filing system is mandatory. In addition, the proposed amendments would delete subparagraphs (c), (d), and (e). Subparagraph (c) requires an issuer that makes sales under Rule 505 to provide an undertaking on its Form D to provide specified information to the Commission upon the staff's written request. This paragraph no longer would be necessary because, as noted above, the proposed signature requirement would provide that each issuer signing the Form D would be undertaking to furnish to the Commission and the states specified on the Form D, on written request, the information provided by each issuer to offerees. Subparagraph (d), regarding amendments, no longer would be necessary because subparagraph (a) would address when to file amendments and it is expected that the new online filing system would make available to the issuer the version of the Form D to be amended to enable the issuer to key in only the changes. Subparagraph (e), regarding the date a Form D filing is considered filed, no longer would be necessary because Rule 13 of Regulation S–T [84] would specify the way to determine the filing date for a Form D filing as it does for electronic filings generally.[85] Finally, the proposed amendments similarly would revise the General Instructions of Form D regarding copies required, manual signatures, amendments, mandatory electronic filing and filing date.

Request for Comment:

- Would Form D filers of all sizes have easy access to the Internet?
- Is it necessary or appropriate to provide for a hardship exemption? [86]
- Are the proposed amendments intended to mandate electronic filing of Form D clear and appropriate?

[84] 17 CFR 232.13. Rule 13 generally provides that a filing by direct transmission beginning on or before 5:30 p.m. Eastern time on a business day is deemed filed that day and, if such a filing were to begin after that time, it would be deemed filed on the next business day.

[85] The description of Form D at 17 CFR 239.500 is similar to Rule 503 and would be amended similarly. In this regard, if the proposed new exemption under a revised Rule 507, as proposed in the companion release, is adopted, the form description also would be amended to add revised Rule 507 to the list of Regulation D rules providing exemptions in the same manner as previously discussed above with respect to proposed Rule 503(a)(1).

[86] See Part III of this release for details on the contemplated electronic filing procedure.

C. General Solicitation and General Advertising Issues Presented by Electronic Filing of Form D

Rule 502(c) of Regulation D [87] sets forth the prohibition on general solicitation and general advertising applicable to most Regulation D offerings. Specifically, issuers and persons acting on the issuer's behalf are prohibited from offering or selling securities by any form of general solicitation or general advertising. Information filed using Form D has up to now been available to the general public.[88] The electronic filing and availability of Form D information, however, may present the concern that it is being used as a marketing document to generate interest in offerings because the information would be easily and broadly available. This, in turn, may raise concerns regarding compliance with Regulation D's prohibition on the use of general solicitation and general advertising. To address these compliance concerns, we propose to revise Rule 502(c) to include a safe harbor from the prohibition on ''general solicitation'' and ''general advertising'' for information provided in a Form D filed electronically with the Commission if the information was provided in good faith and the issuer made reasonable efforts to comply with the requirements of Form D. An issuer that complied with the terms of the safe harbor would be assured that the electronic availability of its Form D filing would not, in and of itself, cause the issuer to have violated this prohibition.

Such a safe harbor would not be warranted if it merely shielded activity that is, in fact, intended to generate interest in the offering. Accordingly, we propose to limit the amount of information submitted on the form [89] and limit the application of the safe harbor to where the information has been provided with a good faith and reasonable effort to comply with the requirements of Form D. Electronic Form D would not contain any place where ''free writing'' could occur. When submitting a paper filing, filers may insert information that is not required by the form, but that could be a vehicle for attracting investors. The electronic form would not permit such misuse. Limiting the safe harbor to information provided with a good faith and reasonable effort to comply with the requirements of Form D would be consistent with Preliminary Note 6 [90] to Regulation D, and Rule 508,[91] and the ''notification'' nature of Form D's requirements.

Request for Comment

- How should the Commission address any general solicitation and general advertising issues related to filing Form D information electronically or the widespread availability of such information?
- Do filers anticipate that the proposed omission from Form D of any place to provide information customarily placed in footnotes or otherwise to engage in ''free writing'' would inhibit their ability to file the information required by the form in accordance with applicable requirements? If so, are there particular types of additional information Form D could permit or require that would enable issuers to respond adequately consistent with our goal of not allowing Form D filings to be used as marketing documents that would raise issues of compliance with an applicable ban on general solicitation and general advertising?
- Is the proposed safe harbor from the prohibition on general solicitation and general advertising necessary and appropriate?

III. Electronic Filing Procedure

We propose to mandate electronic filing of the Form D notice through an online filing system expected to be developed, which would be accessible from any computer with Internet access. The information filed would be available on our Web site and, because

[87] 17 CFR 230.502(c).

[88] In 1998, we issued a release soliciting comment on a proposal to require the filing of an exhibit to certain Form D filings on a nonpublic basis. Release No. 33–7541 (May 21, 1998) [63 FR 29168]. We recognized that adoption of the proposal would raise issues under the Freedom of Information Act, 5 U.S.C. 552 *et seq.*, *Id.* [63 FR 29168, 29171]. Some of the proposals made in that release were adopted in 1999, but the nonpublic filing proposal was not acted upon. Release No. 33–7644 (Feb. 25, 1999) [64 FR 11090].

[89] Similarly, current Rule 502(c) includes a safe harbor from the prohibition on general solicitation and general advertising for a notification in compliance with Rule 135c of an unregistered offering by an issuer required to file reports under Section 13 or 15(d) of the Exchange Act. The information allowed to be included in a Rule 135c notification is limited to very basic identifying information about the issuer and the offering.

[90] Preliminary Note 6 to Regulation D provides, in part, that ''Regulation D is not available to any issuer for any transaction or chain of transactions that, although in technical compliance with the these rules, is part of a plan or scheme to evade the registration provisions of the [Securities] Act.''

[91] 17 CFR 230.508. Rule 508 provides, in part, that ''A failure to comply with a term, condition or requirement of [specified rules under Regulation D] will not result in the loss of [an] exemption * * * if the person relying on the exemption shows * * * [a] good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of [such rules].''

the online filing system would automatically capture and tag data items, the data would be interactive and easily searchable. The system would enable users to view the information in an easy-to-read format, download the information into an existing application, or create an application to use the information.[92] As discussed above, our objectives in converting Form D filings to an electronic format include lessening the burden on issuers of filing the Form D notice, enhancing federal and state coordination, increasing the information available regarding the effectiveness of our Securities Act exemptions and increasing the information available to researchers using Form D data to conduct empirical research aimed at improving the efficiency and effectiveness of our private markets. We believe our approach to filing and dissemination formats would make it relatively easy to file, access and analyze Form D information.

A. Mechanics

We expect that the new online filing system for Form D information would be accessible from any computer with Internet access. An issuer could both submit and amend its Form D filing through this system. The new online system would permit an issuer, in Item 7, to designate the states to which the Form D is directed. The Form D itself would include drop-down menus and other guidance functions to assist in completing the form.

In order to file, we expect that issuers would need the same codes as are required to file on our electronic filing system, EDGAR, today. An issuer that does not already have EDGAR filing codes, and to which the Commission has not previously assigned an identification number, which we call a ''Central Index Key (CIK)'' code, would obtain the codes by filing electronically a Form ID[93] at *www.filermanagement.edgarfiling.sec.gov* and filing, in paper by fax within two business days before or after filing the Form ID, a notarized authenticating document. The authenticating document would be manually signed by the applicant over the applicant's typed signature, include the information contained in the Form ID, confirm the authenticity of the Form ID[94] and, if filed after electronically filing the Form ID, include the accession number assigned to the electronically filed Form ID as a result of its filing.[95] Under the online system, if the Form D filing is made on behalf of multiple issuers, each issuer most likely would be required to have its own CIK code and a confirming code, which we call a ''CIK Confirmation Code (CCC)'' for validation.

To access and file a Form D through the new online system, issuers would begin by having a valid identification number, confirming code and password, which we call a ''Password (PW)'' and logging on to the system. The identification number, confirming code and password, together with a password modification authorization code, which we call a ''Password Modification Authorization Code (PMAC),'' we call ''EDGAR access codes.'' The issuer should have all necessary information available before going online to file.[96] Data entry would be required to be performed quickly enough to avoid time-outs that end the session. A time-out most likely would occur one hour following the user's last activity on the system. Time-outs would be implemented due to cost and technical limitations. The system would not provide a way to save an incomplete form online from session to session.

An issuer most likely would be able to prepare an amendment based on the content of a previously filed form.[97] The system would validate as many fields as possible for data type and required fields while the filer fills in the fields on the screen. Issuers would have an opportunity to correct errors and verify the accuracy of the information before submitting the filing. An online help function likely would be available.[98]

The issuer would be able to download and print the filing before and after submission. Once the filing is submitted, the system would indicate receipt of the filing. In many cases, the system would display a unique number assigned to the submission, which we call an ''accession number'' but, in any event, the accession number would follow in an e-mail notification to the filer. A filer would be able to see the filing on our Web site shortly after filing.

Consistent with our prior goals for the Form D and interaction with the states, upon filing of the Form D notice with the Commission, state securities regulators would be able to identify on our Web site Form D filings that specify their states.[99] Filers generally would specify one or more states in response to proposed Items 1 (jurisdiction of incorporation or organization), 2 (principal place of business and contact information), 3 (related person addresses), 7 (states to which Form D directed) and 12 (addresses of recipients of sales compensation) of Form D. State specification information would be interactive and easily searchable because the new online filing system would automatically capture and tag that information as it would other Form D filing information.

Most Form D filings currently are made by law firms on behalf of issuers.[100] We expect that the

[92] Using this system would result in the Form D information being filed in the standard format of XML. We would disseminate the information in two formats—normal textual and XML tagged.

[93] 17 CFR 239.63, 249.446, 269.7 and 274.402.

[94] An issuer could confirm the authenticity of a Form ID by, for example, stating that ''[name of issuer] hereby confirms the authenticity of the Form ID [filed] [to be filed] on [specify date] containing the information contained in this document.''

[95] 17 CFR 232.10(b). An ''accession number'' is a unique number generated by EDGAR for each electronic submission. Assignment of an accession number does not mean that EDGAR has accepted a submission.

[96] Some information provided by the filer in the course of obtaining EDGAR access codes or updating such information might automatically appear in appropriate places when the filer accesses the new online filing system. As a result, in order to make changes to such information, it might be necessary to do so through an updating process through the main EDGAR system rather than the Form D online filing system. The updating process is a well-established typically online process applicable to EDGAR filers generally that would be relatively easy to complete.

[97] When an issuer files an amendment to a Form D filing, it most likely would access its Form D filing on the online filing system and type over the inaccurate information. In that case, the online filing system would replace the inaccurate information with the new information, save the revised version of the Form D filing in its amended state causing it be an amendment and a new filing, and record the date of amendment. The information in the Form D that was accessed for purposes of the amendment would, however, remain unchanged on the system accessible to the public.

[98] The new online filing system technically would be part of EDGAR but would be similar to the online filing system for Forms 3 [17 CFR 249.103 and 274.202], 4 [17 CFR 249.104 and 274.203], and 5 [17 CFR 249.105] filed under Section 16(a) [15 U.S.C. 78p(a)] of the Exchange Act, in general, by officers, directors and principal security holders of reporting companies that have a class of equity securities registered under Section 12 [15 U.S.C. 781] of the Exchange Act . Form D filers would access the online filing system and, essentially, prepare the filing by responding to questions and filling in blanks. The Form D online filing system, unlike the online filing system for Forms 3, 4 and 5, likely would not, however, provide Form D filers the alternative of preparing their Form D filings before accessing the system and then submitting them through, rather than preparing them on, the online system.

[99] In Release No. 33–6339 (Aug. 18, 1981) [46 FR 41791], the Commission stated the following in its discussion of Rule 503: ''It should be noted that, although the revised filing requirements do not require that the user also file a notice with the state(s) in which the offering is to be sold, it is anticipated that the Commission will routinely furnish copies of the notice forms to the appropriate state commissions.''

[100] Our Division of Corporation Finance conducted a one-month review of Form D filings and determined that, based primarily on the cover letters that accompany most Form D filings, about

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simplification and restructuring of Form D and the conversion of Form D filings to an electronic system may decrease legal fees to make Form D filings and perhaps allow more issuers to file a Form D notice themselves without the assistance of a law firm.

B. Database Capabilities of Electronic Form D Repository

A review of Form D filings by our Division of Corporation Finance uncovered errors and omissions in the information provided.[101] In an effort to enhance the quality of the data collected by the proposed electronic Form D, we anticipate including internal checks in the new online system that would decrease the number of errors and omissions in Form D filings. Such a system would prevent an issuer from submitting Form D information electronically unless all necessary data fields were completed in a manner consistent with the nature of each field [102] and the logical relationships between or among the fields.[103] This would not only promote the integrity of the data collected by the Form D repository, but would also make it easier for issuers to complete or amend their filings.

C. System Implementation

We expect that the new online system would begin receiving mandated filings on a specified date if we were to adopt a final rule mandating electronic filing of Form D information. We are considering a period before that date during which we would permit voluntary electronic filing of Form D information using the new online filing system and form to enable issuers to become familiar with them. This period also would help alert us to any problems in the electronic Form D filing process. Issuers that chose not to file electronically during the transition period could use the current paper form. Although the information in proposed new Form D is somewhat different from that in current paper Form D, we believe a short period when either version of the form could be used may be appropriate.

Request for Comment:

- Do filers of Form D anticipate any burdens of filing electronically that we have not addressed in this release and should consider?
- What information, if any, included on the Form D filing should be unavailable for the public to view online?
- We would like comments regarding the availability of technology required to complete the form online. We also would like comments on any possible additional burdens an electronic filing requirement may place upon issuers that may prevent them from making Form D filings.
- Should any field in the proposed Form D be optional because it may not be applicable to certain issuers or offerings?
- What types of data should the database be able to sort and ascertain about the use of Form D and reliance upon Regulation D?
- Would a voluntary period be needed for electronic Form D filing? Would the need depend upon the length of time between any adoption and effectiveness of mandated electronic filing? If a voluntary period were needed, how long should it last? Would issuers be likely to volunteer during this period?
- Should public companies be phased in to mandated electronic filing of Form D sooner than private companies?
- Where a Form D is filed on behalf of multiple issuers, would it be unduly burdensome to require all of the issuers to have EDGAR access codes and, if they do not already have them, require them to file a Form ID authenticated by a faxed notarized document? Should only one issuer specified in such a filing be required to obtain EDGAR access codes?
- Is the Form ID authenticating process unduly burdensome for the purpose of filing a Form D notice? Would other less burdensome processes provide adequate security measures? Should issuers that only file Form D with the Commission be able to authenticate a Form ID by providing to the Commission a copy of a local business license rather than by faxing the otherwise required notarized authenticating document? Would this be easier for issuers?
- In the future, should public companies be exempted from the Form D filing requirement in Rule 503 and instead be required to file Form D information as part of their periodic annual and quarterly reports? Should these companies be exempted from the Form D filing requirement and instead be required to include that information on a current report on Form 8–K? [104] If these companies were required to include that information as part of their periodic annual and quarterly reports or on a current report on Form 8–K, should the companies also be required to tag the information in a manner consistent with the automatic tagging that would occur as to Form D filings made on the new online system in order to realize the benefits of uniformly tagged Form D information?

IV. General Request for Comment

The Commission is proposing these revisions to Form D and Regulation D to improve the functioning and efficiency of Regulation D. We welcome your comments. We solicit comment, both specific and general, upon each component of the proposals. We request and encourage any interested person to submit comments regarding:

- The proposals that are the subject of this release;
- Additional or different changes relating to Form D; and
- Other matters that may have an effect on the proposals contained in this release.

Comment is solicited from the point of view of both issuers and investors, as well as of capital formation facilitators, such as brokers-dealers, and other regulatory bodies, such as state securities regulators. Any interested person wishing to submit written comments on any aspect of the proposal is requested to do so.

V. Paperwork Reduction Act Analysis

The proposed amendments would affect two forms that contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[105] The titles of the affected information collections are Form D (OMB Control No. 3235–0076) and Form ID (OMB Control No. 3235–0328). The purposes of the proposed amendments are, in general, to clarify, simplify and update the information requirements of Form D and modernize the related information capture process. We are submitting the revisions to the Form ID collection of information to the Office of Management and Budget (''OMB'') for review under 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a

75% of the forms were filed by law firms on behalf of issuers.

[101] Some of the most frequent errors were failures to indicate whether a filing is an amendment or a new filing and claims that do not match the facts described (for example, issuers claiming that an offering is limited to accredited investors and then including information regarding participation of non-accredited investors in the offering).

[102] The system would check, for example, to make sure that number characters were used in responding to the field in proposed Item 13 for the offering and sales amounts.

[103] The system would check, for example, whether the filer has specified Rule 505 or Rule 506 as a claimed exemption in response to proposed Item 6 but also has specified that there have been over 35 non-accredited investor purchasers in response to proposed Item 14. If the filer has done so, a pop-up would warn that only 35 non-accredited investors are permitted in these types of offerings and would require the filer to select ''OK'' before proceeding.

[104] 17 CFR 249.308.

[105] 44 U.S.C. 3501 *et seq.*

person is not required to respond to, a collection of information requirement unless it displays a currently valid control number. Compliance with the collections of information as proposed to be revised would be mandatory. The information required by the collection of information in Form D as proposed to be revised would not be kept confidential by the Commission; the information required by Form ID would be kept non-public, subject to a request under the Freedom of Information Act.[106]

Form D is filed by issuers as a notice of sales without registration under the Securities Act based on claims of exemption under Regulation D and Section 4(6) of the Securities Act.

Form ID is filed by registrants, individuals, third-party filers or their agents to request the assignment of access codes that permit the filing of securities documents on EDGAR.[107] This form enables the Commission to assign an identification number (CIK), confirmation code (CCC), password (PW) and password modification authorization code (PMAC) to each EDGAR filer, each of which is essential to the security of the EDGAR system.

We expect that, if adopted, the proposed amendments would not affect the number of Form D filings made and, on balance, would obligate issuers to report on Form D essentially the same amount of information as they are required to report on Form D today. We therefore believe that the overall information collection burden of Form D would remain approximately the same as it is today.[108]

We estimate that approximately 196,800 respondents file Form ID each year at an estimated burden of .15 hours per response, all of which is borne internally by the respondent for a total annual burden of 29,520 hours. We expect that, if adopted, the proposed amendments would cause an additional 18,600 respondents to file a Form ID each year and, as a result, would cause an additional annual burden of 2790 hours.[109]

We solicit comment on the expected Paperwork Reduction Act effects of the proposed rule amendments, including the following:

- The accuracy of our estimates of the additional burden hours that would result from adoption of the proposed amendments;
- Whether the proposed changes to the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Ways to enhance the quality, utility and clarity of the information to be collected;
- Ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Any effects of the proposed amendments on any other collections of information not previously identified.

Any member of the public may direct to us any comments concerning these burden estimates and suggestions for reducing the burdens. Persons submitting comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. [S7–12–07]. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. [S7–12–07], and be submitted to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost-Benefit Analysis

A. Background

The proposed amendments, if adopted, would restructure and mandate the electronic filing of the information required by Form D. Currently, much of the information required by Form D appears to be useful and justified in the interests of investor protection and capital formation. It also appears that some useful information that could be required by Form D currently is not required. On the other hand, Form D currently requires some information that may no longer be useful. Our staff receives many inquiries from market participants suggesting that Form D could be clarified and simplified. Moreover, the absence of an electronic system for filing Form D information prevents issuers from filing through efficient modern methods and limits the usefulness of the information collected on Form D. The rules we propose today would address deficiencies in the Form D data collection requirements. We believe the amendments, in general, would provide benefits by clarifying, simplifying and updating the information requirements of Form D and modernizing the related information capture process.

B. Benefits

The proposed amendments should benefit issuers, regulators and members of the public who choose to access Form D information. In particular, the proposed amendments should

- Ease filing burdens;
- Result in better public availability of Form D information;
- Enhance the utility of Form D as a means to promote federal and state uniformity and coordination; and
- Improve collection of data for Commission enforcement and rulemaking efforts.

The proposed amendments should ease filing burdens because filers would find it easier to respond to the revised

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[106] 5 U.S.C. 552. The Commission's regulations that implement that statute are at 17 CFR 200.80 *et seq.*

[107] 17 CFR 239.63, 249.446, 269.7 and 274.402.

[108] We estimate the burden of Form D to be 4.0 hours per response of which one hour is borne internally and three hours are borne externally.

[109] We arrived at our estimate that an additional 18,600 respondents would file a Form ID each year based on the following information and analysis. In 2006, 16,829 companies made 25,239 Form D filings. Of these companies, 15,914 (94.6%) did not report under the Exchange Act and 915 (5.4%) did report under the Exchange Act. The annual number of Forms D filings rose from 17,390 in 2002 to 25,239 in 2006 for an average increase of approximately 2000 Form D filings per year. Assuming the number of Form D filings continues to increase by 2000 filings per year for each of the next three years, the average number of Form D filings in each of the next three years would be about 29,300. Assuming that the ratio of the number of companies that make a Form D filing to the number of Form D filings in 2006 remains constant over the next three years, an average of about 19,600 companies would make Form D filings in each of the next three years. Assuming also that the ratio between the number of non-reporting and reporting companies under the Exchange Act that made Form D filings in 2006 remains constant over the next three years, an average of about 18,600 non-reporting and 1000 reporting companies would make Form D filings in each of the next three years. Assuming further that all non-reporting companies that would make a Form D filing would not already have EDGAR access codes and, as a result, would be required to file a Form ID, the number of companies that would need to file a Form ID as a result of the proposed amendments would on average be about 18,600 per year over the next three years. Because each Form ID filing is estimated to require .15 hours, the total additional burden would, on average, be about 2790 hours per year over the next three years (18,600 Forms ID × .15 hours per Form ID). We consider the average number of Form ID filings expected to be made per year over the next three years because the PRA requires that our estimates represent the average yearly burden over a three-year period.

information requirements of Form D and easier to file the responsive information.[110] It should be easier to respond to the revised information requirements of Form D because they would be clarified, simplified and updated. It should be easier to file the responsive information because issuers could use efficient modern methods of information transfer through electronic filing. Issuers would provide the information in data fields by responding to a series of discrete requests for information. It is expected that the fields would be checked automatically for appropriate characters and consistency with other fields and the questions would be accompanied by easily accessible links to clear instructions and other helpful information. It is intended that these system features, among others, would help to facilitate a relatively easy-to-use filing process that would deliver accurate information quickly, reliably, and securely.

Requiring the electronic filing of Form D data would result in increased public availability of Form D information because it would make the information filed more readily available to regulators and members of the public who choose to access it. The information would be available on our Web site and, because the Form D filing system would automatically capture and tag data items, the data would be interactive and easily searchable. The filing system would enable users to view the information in an easy-to-read format, download the information into an existing application, or create an application to use the information. Unlike information filed with us electronically, paper filings are available from us only in person in our Public Reference Room or by means of a mail request. We charge a nominal fee for copies of Form D filings. Some Form D filings are available at higher cost through private vendors over the Internet and through telephone requests.

The required electronic filing of Form D information could enhance the utility of Form D as a means to promote federal and state uniformity and coordination. For over 20 years, Form D has served as a means to promote federal and state uniformity in securities regulation by providing a uniform notification form that can be filed with the Commission and with state securities regulators. The electronic filing system would include an electronic database that could be more easily searched for information needed by both federal and state securities regulators to monitor the exempt securities transaction markets. The system also would permit improved coordination among federal and state regulators, which is essential to efficient and effective capital formation through exempt transactions, especially by smaller companies, and to investor protection. State securities regulators would be able to access the information on our Web site to learn if new Form D information of interest to them has been filed. It is our hope that state securities regulators would permit ''one-stop'' filing with the Commission and rely on Commission filings as satisfying state law filing requirements for offerings covered by a federal Form D filing. This would reduce significantly the costs and burdens of preparing and filing Form D information with the Commission and with state securities regulators. This could represent a substantial savings for small businesses and others filing Form D information.

The proposed conversion to electronic filing of Form D information in an interactive data format should improve collection of data for Commission enforcement and rulemaking efforts. We expect that electronic filing would result in creation of a database and allow us and others to better aggregate data on the private securities markets and the use of the various Regulation D exemptions. Further, the software we intend to use for the Form D electronic filings would require that filers address each required data field in the form, thus reducing incomplete filings. Because of these and other features, the Form D electronic filing system should assist in our enforcement efforts and ease our ability to make use of filed Form D information. The Form D information database would allow us to evaluate our exemptive schemes on a continuing basis in order to facilitate capital formation in a manner consistent with investor protection. The evaluation could lead to improvements that would result in significant benefits to companies that rely on the Regulation D exemptions, especially smaller companies, as well as benefits to investors.

C. Costs

We expect that, if adopted, the proposed amendments would result in some initial and ongoing costs to issuers. We also expect, however, that many issuers would not bear the full range of costs that would result from the amendments for the reasons described below.

Initial costs are those associated with filing a Form ID in order to obtain the access codes needed to file Form D information electronically and otherwise preparing to make an initial filing of Form D information.[111] In order to file a Form ID, an issuer would need to learn the related electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Commission's EDGAR Filer Management Web site, respond to Form ID's information requirements and fax to the Commission a notarized authenticating document.[112] Similarly, in order otherwise to prepare to make an initial electronic filing of Form D information, an issuer would need to learn about the revised Form D information content and electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Form D filing system and respond to Form D's information requirements.

Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and additional costs arising from each subsequent filing of Form D information.

We expect that the vast majority of issuers would need to incur few, if any, additional costs related to obtaining computer and Internet access. We believe that the vast majority of issuers already would have access to a computer and the Internet.[113]

[110] Although we believe it would be easier to respond to the revised information requirements of Form D, as discussed in Part V regarding the PRA, we believe the overall collection of information burden of Form D would remain approximately the same as it is today.

[111] Issuers that already have EDGAR access codes would not need to file a Form ID. As further discussed in Part V, however, we assume that about 95% of Form D filers would not already have the codes.

[112] As discussed in Part V regarding the PRA , the Commission estimates that approximately 196,800 respondents file Form ID each year at an estimated burden of .15 hours per response, all of which is borne internally by the respondent, for a total annual burden of 29,520 hours. As also discussed in Part V, we expect that, if adopted, the proposed amendments would cause an additional 18,600 respondents to file a Form ID each year and, as a result, cause an additional annual burden of 2790 hours. Assuming a cost of $175 per hour for in-house professional staff, we estimate the current Form ID burden cost at $5,166,000 per year (29,520 hours per year × $175 per hour), the additional Form ID burden cost that would result from adoption of the proposed amendments at $488,250 per year (2790 hours per year × $175 per hour) and the total Form ID burden cost that would result from adding the estimated additional Form ID burden cost to the estimated current Form ID burden cost would be $5,654,250 per year ((29,520 hours per year + 2790 hours per year) = 32,310 hours per year; 32,310 hours per year × $175 per hour = $5,654,250 per year).

[113] A person from an issuer that did not already own a computer with Internet access could, for example, go to a public library to use its computer and obtain Internet access.

D. Requests for Comments

We request comment on all aspects of the cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. We also request that those submitting comments provide empirical data and other factual support for their views to the extent possible.

VII. Consideration of Impact on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [114] 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. Furthermore, Section 2(b) of the Securities Act,[115] Section 3(f) of the Exchange Act,[116] and Section 2(c) of the Investment Company Act [117] require us, when engaged 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.

The proposed amendments, if adopted, would restructure and mandate the electronic filing of the information required by Form D. We believe the amendments, in general, would provide benefits by clarifying, simplifying and updating the information requirements of Form D and modernizing the related information capture process. In particular, as discussed in further detail above, the proposed amendments should:

- Ease filing burdens;
- Result in better public availability of Form D information;
- Enhance the utility of Form D as a means to promote federal and state uniformity and coordination; and
- Improve collection of data for Commission enforcement and rulemaking efforts.

We understand that private sector businesses currently make Form D information available to the public for a fee. Although the ready accessibility of this information at no cost would affect these businesses, we believe that the interactive online system that would be used for Form D information would not discourage the development by private sector businesses of additional features that the new online system would not provide. Consequently, we believe that the proposed amendments would not have a burden on competition that is not necessary or appropriate and might promote competition in providing Form D information through additional features including those related to the tagged data aspect of the system.

Eased filing burdens and better public availability of information resulting from the proposed amendments would promote efficiency. For example, the expected online system would enable issuers to provide Form D information with modern, rapid and accurate methods and would enable users of the system to access Form D information more quickly and easily than through a review of paper documents.

Improved collection of data for Commission enforcement and rulemaking efforts resulting from the proposed amendments would create a Form D information database that would allow us to evaluate our exemptive schemes on a continuing basis in order to facilitate capital formation in a manner consistent with investor protection and the evaluation could lead to improvements that would promote our capital markets. Similarly, the enhanced utility of Form D as a means to promote federal and state uniformity and coordination resulting from the proposed amendments could lead to improved coordination which would promote capital formation.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition and capital formation. Finally, we request commenters to provide empirical data and other factual support for their views if possible.

VIII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments regarding the content and mandated electronic filing of information required by Form D.

A. Reasons for, and Objectives of, the Proposed Action

The main purpose of the proposed amendments is to address deficiencies in the Form D data collection process. Currently, much of the information required by Form D appears to be useful and justified in the interests of investor protection and capital formation. It also appears that some useful information that could be required by Form D currently is not required. On the other hand, Form D currently requires some information that may no longer be useful. Our staff receives many inquiries from market participants suggesting that Form D could be clarified and simplified. Moreover, the absence of an electronic system for filing Form D information prevents issuers from filing through efficient modern methods and limits the usefulness of the information collected on Form D. We believe the amendments, in general, would address the deficiencies in the Form D data collection process by clarifying, simplifying and updating the information requirements of Form D and modernizing the related information capture process.

B. Legal Basis

We are proposing the amendments under the authority in Sections 2(a), 3(b), 4(2), 19(a), 19(d) and 28 of the Securities Act,[118] Sections 3(b), 23(a) and 35A of the Exchange Act,[119] Section 319(a) of the Trust Indenture Act,[120] and Section 38 of the Investment Company Act.[121]

C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect issuers that are small entities. Exchange Act Rule 0–10(a) [122] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year.[123] Investment Company Act Rule 0–10(a) defines an investment company as a ''small business'' or ''small organization'' for purposes of the

[114] 15 U.S.C. 78w(a)(2).

[115] 15 U.S.C. 77b(b).

[116] 15 U.S.C. 78c(f).

[117] 15 U.S.C. 80a–2(c).

[118] 15 U.S.C. 77b(a), 77c(b), 77d(2), 77s(a), 77s(d) and 77z–3.

[119] 15 U.S.C. 78c(b), 78w(a) and 78*ll*.

[120] 15 U.S.C. 77sss(a).

[121] 15 U.S.C. 80a–37.

[122] 17 CFR 240.0–10(a).

[123] Securities Act Rule 157(a) [17 CFR 230.157(a)] generally defines an issuer, other than an investment company, to be a ''small business'' or ''small entity'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year and it is conducting or proposing to conduct a securities offering of $5 million or less. For purposes of our analysis of issuers other than investment companies in this Part VIII of the release, however, we use the Exchange Act definition of ''small business'' or ''small entity'' because that definition includes more issuers than does the Securities Act definition and, as a result, assures that the definition we use would not itself lead to an understatement of the impact of the proposed amendments on small entities.

Regulatory Flexibility Act if it, together with other investment companies in the same group of related investment companies, had net assets of $50 million or less as of the end of its most recent fiscal year.[124] The proposed amendments would apply to all issuers that file Form D.

As previously noted, in 2006, 16,829 issuers filed a Form D. We believe that many of these issuers are small entities but we currently we do not collect information on total assets to determine if they are small entities for purposes of this analysis.[125]

D. Reporting, Recordkeeping and Other Compliance Requirements

Currently, issuers must file Form D information in paper. The proposed amendments would require all issuers, including small entities, to submit somewhat different Form D information online using the Internet. These issuers also would need to file a Form ID electronically to obtain the access codes needed to use the Form D filing system if they did not already have the codes.[126] The only additional professional skills required would be those required to file electronically.[127]

We expect that filing electronically would increase initial and ongoing costs incurred by some small entities. We also expect, however, that many small entities would not bear the full range of costs that would result from the amendments for the reasons described below.

Initial costs are those associated with filing a Form ID in order to obtain the access codes needed to file Form D information electronically and otherwise preparing to make an initial filing of Form D information. In order to file a Form ID, an issuer would need to learn the related electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Commission's EDGAR Filer Management Web site, respond to Form ID's information requirements and fax to the Commission a notarized authenticating document.[128] Similarly, in order otherwise to prepare to make an initial electronic filing of Form D information, an issuer would need to learn about the revised Form D information content and electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Form D filing system and respond to Form D's information requirements.

Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and additional costs arising from each subsequent filing of Form D information.

We expect that the vast majority of small entities would need to incur few, if any, additional costs related to obtaining computer and Internet access. We believe that the vast majority of small entities already would have access to a computer and the Internet.[129]

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, or overlap or conflict with, other federal rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered several alternatives, including the following:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Further clarifying, consolidating or simplifying the proposed requirements;
- Using performance rather than design standards; and
- Providing an exemption from the proposed requirements, or any part of them, for small entities.

We believe that, as to small entities, differing compliance, reporting or timetable requirements, a partial or complete exemption from the proposed requirements or the use of performance rather than design standards would be inappropriate because these approaches would detract from the completeness and uniformity of the Form D database and, as a result, reduce the expected benefits of better public availability of Form D information, enhanced utility of Form D as a means to promote federal and state uniformity and improved collection of data for Commission enforcement and rulemaking efforts. Further, we believe the proposed Form D filing system would be relatively easy to use.[130] We solicit comment, however, on whether differing compliance, reporting or timetable requirements, a partial or complete exemption, or the use of performance rather than design standards would be consistent with our described main goal of addressing deficiencies in the Form D data collection process.[131]

We considered further clarifying, consolidating or simplifying the proposed Form D information and electronic filing requirements. During 2003, the Commission's Office of Small Business Policy (''OSBP'') reviewed the types of errors, omissions, and misstatements more commonly found in Form D filings, as well as the types of questions typically received through phone calls from the public associated with the form. We also have considered the electronic filing requirements related to Exchange Act Forms 3, 4 and 5, the manner in which their online filing system has operated and the suitability of that system as a model for the expected online system for Form D information. Based in part on OSBP's review and our consideration of the electronic filing of Forms 3, 4 and 5, we believe that the proposed Form D information and electronic filing requirements are clear and straightforward (although, we seek comment on this).

G. Solicitation of Comment

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities as discussed in this analysis; and

[124] 17 CFR 270.0–10(a).

[125] We do, however, solicit comment in Part II on whether proposed Form D should require an issuer to disclose whether the value of its total assets was $5 million or less on the last day of its most recently ended fiscal year.

[126] As further discussed in Part V, however, we assume that about 95% of Form D filers would not already have the codes.

[127] Although we believe it would be easier to respond to the revised information requirements of Form D, as discussed in Part V, we believe the overall collection of information burden of the form would remain approximately the same.

[128] As discussed in Part V, the Commission has estimated the collection of information burden of Form ID as .15 hours per response, all of which is borne internally by the respondent.

[129] A person from a small entity that did not already own a computer with Internet access could, for example, go to a public library to use its computer and obtain Internet access.

[130] As discussed in Part III.C, we are considering a period during which we would permit voluntary electronic filing of Form D information using the new electronic filing system and form to enable issuers to become familiar with them. Small entities would be able to take advantage of any such period.

[131] In this regard, in Part III of this release, we solicit comment on the availability of technology to complete Form D online and whether public companies should be phased in to mandated electronic Form D filing sooner than private companies (presumably, many of the small entities that would file Form D would be private companies).

• How to quantify the impact of the proposed amendments.

We ask those submitting comments to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[132] a rule is ''major'' if it has resulted, or is likely to result in:

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment or innovation.

In connection with this analysis, we solicit comment and empirical data on:

• The potential effect of the proposals on the U.S. economy on an annual basis;

• Any potential increase in costs or prices for consumers or individual industries resulting from the proposals; and

• Any potential effect of the proposals on competition, investment or innovation.

X. Statutory Basis and Text of Proposed Amendments

We are proposing the amendments to Rules 100, 101, 104, 201, and 202 of Regulation S–T, Securities Act Rules 502 and 503 and the description and content of Securities Act Form D under the authority in sections 2(a), 3(b), 4(2), 19(a), 19(d), and 28 of the Securities Act,[133] sections 3(b), 23(a), and 35A of the Exchange Act,[134] section 319(a) of the Trust Indenture Act,[135] and section 38 of the Investment Company Act.[136]

List of Subjects in 17 CFR Parts 230, 232 and 239

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

For the reasons set out in the preamble, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

[132] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[133] 15 U.S.C. 77b(a), 77c(b), 77d(2), 77s(a), 77s(d), and 77z–3.

[134] 15 U.S.C. 78c(b), 78w(a), and 78*ll.*

[135] 15 U.S.C. 77sss(a).

[136] 15 U.S.C. 80a–37.

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

1. The general 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, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.502 by revising paragraph (c) to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(c) *Limitation on manner of offering.* Except as provided in § 230.504(b)(1), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising; *Provided, however,* that publication by an issuer of a notice in accordance with § 230.135c or filing with the Commission by an issuer of a notice of sales on Form D (17 CFR 239.500) in which the issuer has made a good faith and reasonable attempt to comply with the requirements of such form, shall not be deemed to constitute general solicitation or general advertising for purposes of this section; *Provided further,* that, if the requirements of § 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.

* * * * *

3. Revise § 230.503 to read as follows:

§ 230.503 Filing of notice of sales.

(a) *When notice of sales on Form D must be filed.* (1) An issuer offering or selling securities in reliance on § 230.504, § 230.505, or § 230.506 must file with the Commission a notice of sales on Form D (17 CFR 239.500) for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(i) To correct a mistake of fact in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake;

(ii) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs in the following only:

(A) An issuer's revenues,

(B) The amount of securities sold in the offering,

(C) The total offering amount, if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%,

(D) The number of accredited investors who have invested in the offering,

(E) The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35, or

(F) In offerings that last more than a year, information on related persons if the change was due solely to the filling of a vacant position upon the death or departure in the ordinary course of business of the previous occupant of the position; and

(iii) In offerings that last more than a year, annually, between January 1 and February 14, to reflect information about the offering on or before its termination since the later of the filing of the notice of sales on Form D or the most recent amendment to the notice of sales on Form D.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(b) *How notice of sales on Form D must be filed and signed.* (1) A notice of sales on Form D must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part 232).

(2) Every notice of sales on Form D must be signed by a person duly authorized by the issuer.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

4. The general authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 80a–8, 80a–29, 80a–30, and 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

5. Amend § 232.100 by revising paragraph (a) to read as follows:

§ 232.100 Persons and entities subject to mandated electronic filing.

(a) Registrants and other entities whose filings are subject to review by the Division of Corporation Finance;

* * * * *

6. Amend § 232.101 by:

a. Removing the word ''and'' at the end of paragraph (a)(1)(xi);

b. Removing the period and adding ''and'' at the end of paragraph (a)(1)(xii);

c. Adding paragraph (a)(1)(xiii); and

d. Removing '', Regulation D (§§ 230.501–230.506 of this chapter)'' from paragraph (c)(6).

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiii) Form D (§ 239.500 of this chapter).

* * * * *

7. Amend § 232.104 by revising paragraph (a) to read as follows:

§ 232.104 Unofficial PDF copies included in an electronic submission.

(a) An electronic submission, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter) or a Form D (§ 239.500 of this chapter), may include one unofficial PDF copy of each electronic document contained within that submission, tagged in the format required by the EDGAR Filer Manual.

* * * * *

8. Amend § 232.201 by revising paragraph (a) introductory text to read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter) or a Form D (§ 239.500 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

9. Amend § 232.202 by revising paragraph (a) introductory text to read as follows:

§ 232.202 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings, other than a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter) or a Form D (§ 239.500 of this chapter), otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

10. The general authority citation for Part 239 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78j, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

11. Revise § 239.500 to read as follows:

§ 239.500 Form D, notice of sales of securities under Regulation D and section 4(6) of the Securities Act of 1933.

(a) *When notice of sales on Form D must be filed.* (1) An issuer offering or selling securities in reliance on § 230.504, § 230.505, or § 230.506 of this chapter or section 4(6) of the Securities Act of 1933 must file with the Commission a notice of sales on Form D (17 CFR 239.500) for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(i) To correct a mistake of fact in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake;

(ii) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs in the following only:

(A) An issuer's revenues,

(B) The amount of securities sold in the offering,

(C) The total offering amount, if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%,

(D) The number of accredited investors who have invested in the offering,

(E) The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35, or

(F) In offerings that last more than a year, information on related persons if the change was due solely to the filling of a vacant position upon the death or departure in the ordinary course of business of the previous occupant of the position; and

(iii) In offerings that last more than a year, annually, between January 1 and February 14, to reflect information about the offering on or before its termination date since the later of the filing of the notice of sales on Form D or the most recent amendment to the notice of sales on Form D.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(b) *How notice of sales on Form D must be filed and signed.* (1) A notice of sales on Form D must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part 232).

(2) Every notice of sales on Form D must be signed by a person duly authorized by the issuer.

12. Revise Form D (referenced in § 239.500) to read as follows:

Note. The text of Form D does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–P

Form D Notice of Exempt Offering of Securities

Form D

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM D

NOTICE OF EXEMPT OFFERING OF SECURITIES

Intentional misstatements or omissions of fact constitute federal criminal violations. See 18 U.S.C. 1001.

You must follow the accompanying instructions in submitting this notice.

---

1. Issuer's Identity

Name of Issuer _____

Previous Name(s) _____ ☐ None

Jurisdiction of Incorporation/Organization (dropdown)

Entity Type (dropdown)

Year of Incorporation/Organization (dropdown giving last five years and "Before 2002")

SEC File No. _____ ☐ None

Add Issuer

(for each additional issuer, a signature block will appear)

2. Principal Place of Business and Contact Information

Street Address _____

City _____ **State/Province** __ (dropdown)

Zip/Postal Code _____ **Country** ☐ **U.S.** ☐ **Canada** ☐ **Other** (dropdown of countries if answer is "Other" than U.S. or Canada) _____

Telephone Number _____

3. Related Persons

Full Name	Relationship	Address
_____	[ ] Executive Officer [ ] Director [ ] Promoter	_____

Add Related Person

4. **Industry Group (dropdown)**

5. **Revenue Range**
[ ] No Revenues
[ ] $1 - $1,000,000
[ ] $1,000,001 - $5,000,000
[ ] $5,000,001 - $25,000,000
[ ] $25,000,001 - $100,000,000
[ ] Over $100,000,000
[ ] Decline to Disclose
[ ] Not Applicable

6. **Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)**

[ ] Rule 504(b)(1) (not (i), (ii) or (iii))	[ ] Rule 506
[ ] Rule 504(b)(1)(i)	[ ] Rule 507
[ ] Rule 504(b)(1)(ii)	[ ] Securities Act Section 4(6)
[ ] Rule 504(b)(1)(iii)	[ ] Investment Company Act Section 3(c)[1]
[ ] Rule 505	

7. **Type of Filing/Notice Recipient(s)**
[ ] New Notice Directed to [Insert dropdown checkbox list allowing filers to select "SEC," "All States" or any number of individual States, with any selected item resulting in another dropdown requiring filer to provide "Date of First Sale" or select "First Sale Yet to Occur"]
[ ] Amendment Directed to [Insert dropdown checkbox list allowing filer to select "SEC," "All States" or any number of individual States]

8. **Duration of Offering**
Does the issuer intend this offering to last more than one year? ☐ Yes ☐ No

9. **Type(s) of Securities Offered (select all that apply)**
[ ] Equity
[ ] Debt
[ ] Option, Warrant or Other Right to Acquire Another Security
[ ] Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security

[1] If the filer selects the Investment Company Act Section 3(c) checkbox, a pop-up will require the filer to select all claimed exclusions from the definition of "investment company" from among checkboxes labeled Section 3(c)(1) through Section 3(c)(14) (except for Section 3(c)(8)).

[ ] Pooled Investment Fund Interests
[ ] Tenant-in-Common Securities
[ ] Mineral Property Securities
[ ] Other (Describe: _____)

10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer? ☐ Yes ☐ No

11. Minimum Investment

Minimum investment accepted from any investor $_____

12. Sales Compensation

Individual Recipient	CRD Number	Associated Broker or Dealer	Street Address	State(s) of Solicitation
				(dropdown)

Add Recipient

13. Offering and Sales Amounts

Total Offering Amount $_____ or [ ] Indefinite
Total Amount Sold $_____
Total Remaining to be Sold $[auto subtract]_____ or [ ] Indefinite

14. Investors

[ ] Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors and enter the number of such non-accredited investors who already have invested in the offering: _____[2]

Enter the number of accredited investors who already have invested: _____

Signature and Submission

Terms of Submission: Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

Printable Version

[Material in this box will be placed in scrollbox online.]
In submitting this notice, each issuer named above is :

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.

[2] If the filer selects Rule 505 or Rule 506 in Item 6 above and enters a number above 35 in this field, a pop-up will warn that only 35 non-accredited investors are permitted in this type of offering and require the filer to select "OK" before proceeding.

- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that the issuer is not disqualified from relying on any Regulation D exemption it has identified in Item 6 above for one of the reasons stated in Rule 502(e).

Each issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Signature

Signature: _____ Title: _____ Date:_____

By clicking on SUBMIT below, you are agreeing to the Terms of Submission above.

SUBMIT

OMB Approval
OMB No. 3235-0076
Expires:_____ __, 20
Estimated Average Burden Hours per Response:_4.00

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Instructions for Submitting Notice

General Instructions

- **Who must file:**
  - Each issuer of securities that sells its securities in reliance on an exemption provided in Regulation D or Section 4(6) of the Securities Act of 1933 must file this notice containing the information requested with the U.S. Securities and Exchange Commission (SEC) and with the state(s) requiring it. If more than one issuer has sold its securities in the same transaction, all issuers should be identified in one filing with the SEC, but some states may require a separate filing for each issuer or security sold.
- **When to file:**
  - An issuer must file a new notice with the SEC for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering. An issuer may file the notice at any time before that if it has determined to make the offering. An issuer must file a new notice with each state that requires it at the time set by the state. For state filing requirements, go to www.NASAA.org. A mandatory capital commitment call does not constitute a new offering, but is made under the original offering, so no new Form D filing is required.
  - An issuer may file an amendment to a previously filed notice at any time.
  - An issuer must file an amendment to a previously filed notice for an offering:
    - to correct a mistake of fact in the previously filed notice, as soon as practicable after discovery of the mistake;
    - to reflect a change in the information provided in the previously filed notice, except as provided below, as soon as practicable after the change; and
    - in offerings that last more than a year, annually, between January 1 and February 14, to reflect information about the offering on or before its termination since the later of the filing of the Form D or the latest amendment to the Form D.
- **When filing is not required:** An issuer is not required to file an amendment to a previously filed notice to reflect a change in an offering that occurs after the offering terminates or a change that occurs in the following only:
  - an issuer's revenues,
  - the amount of securities sold in the offering,
  - the total offering amount, if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%,
  - the number of accredited investors who have invested in the offering,
  - the number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35, or
  - in offerings that last more than a year, information on related persons if the change was due solely to the filling of a vacant position upon the death or departure in the ordinary course of business of the previous occupant of the position.

- **Amendment Content:** An issuer that files an amendment to a previously filed Form D must provide current information in response to all items of Form D regardless of why the amendment is filed.
- **How to File:** Issuers must file this notice with the SEC using the process made available at [insert linked Web address for filing]. For state filing requirements, go to www.NASAA.org.
- **Filing Fee:** There is no federal filing fee. For information on state filing fees, go to www.NASAA.org .
- **Confirmation of Filing:** The SEC will send an e-mail message confirming receipt of this notice to the e-mail address associated with the password used to submit the notice.
- **Definitions of Terms:** Terms used but not defined in this form that are defined in Regulation D or Rule 405 under the Securities Act of 1933, 17 C.F.R. §§ 230.501 et seq. and 230.405, have the meanings given to them in Regulation D and Rule 405.

Item-by-Item Instructions

1. **Issuer's Identity.** Identify each legal entity issuing any securities being reported as being offered by entering its full name, any previous name used within the past five years, its jurisdiction and year of incorporation or other organization, its type of legal entity, and its SEC file number if a reporting company under the Securities Exchange Act of 1934. If more than one entity is issuing the securities, identify a primary issuer in the fields shown and add additional issuers by clicking on "Add Issuer."

2. **Principal Place of Business and Contact Information.** Enter a full street address of the issuer's principal place of business. Post office box numbers and "In care of" addresses are not acceptable. Enter a contact telephone number for the issuer. Where more than one issuer is named, enter information only for one primary issuer.

3. **Related Persons.** Enter the full name and address of each person having the specified relationships with any issuer and identify each relationship:
   - Each executive officer and director of the issuer and person performing similar functions for the issuer, such as general and managing partners of partnerships and managing members of limited liability companies; and
   - Each person who has functioned as a promoter of the issuer within the past five years of the later of the first sale of securities or the date upon which the Form D filing was required to be made.

4. **Industry Group.** Select the issuer's industry group. If the issuer or issuers can be categorized in more than one industry group, select the industry group that most accurately reflects the use of the bulk of the proceeds of the offering. For purposes of this filing, use the ordinary dictionary and commonly understood meanings of the terms identifying the industry group.

5. **Revenue Range.** Enter the revenue range of the issuer or of all the issuers for the most recently completed fiscal year available, or, if not in existence for a fiscal year, revenue range to date. Domestic SEC reporting companies should state revenues in accordance with Regulation S-X under the Securities Exchange Act of 1934. Domestic non-

reporting companies should state revenues in accordance with U.S. Generally Accepted Accounting Principles (GAAP). Foreign issuers should calculate revenues in U.S. dollars and state them in accordance with U.S. Generally Accepted Accounting Principles, home country GAAP or International Financial Reporting Standards. If the issuer(s) declines to disclose its revenue range, enter "Decline to Disclose." If the business is intended to produce revenue but did not, enter "No Revenues." If the business is not intended to produce revenue (for example, the business seeks asset appreciation), enter "Not Applicable."

6. **Federal Exemption(s) and Exclusion(s) Claimed.** Select the appropriate checkbox(es) to designate the provision(s) being claimed to exempt the offering and resulting sales from the federal registration requirements under the Securities Act of 1933 and, if applicable, to exclude the issuer from the definition of "investment company" under the Investment Company Act of 1940. Select "Rule 504(b)(1) (not (i), (ii) or (iii))" only if the issuer is relying on the exemption in the introductory sentence of Rule 504 for offers and sales that satisfy all the terms and conditions of Rules 501 and 502(a), (c) and (d).

7. **Type of Filing/Choosing Notice Recipient**. Indicate whether the issuer is filing a new notice and/or an amendment to a notice that was filed previously. Also select the appropriate checkbox(es) to choose whether you are directing the notice to the SEC only or to the SEC and the State(s) you select. If this is a new notice to the SEC or any recipient State, enter the date of the first sale of securities in the offering with respect to that recipient or indicate that the first sale has "Yet to Occur" in the pop-up checkbox(es) that appear. The person submitting this notice is responsible for confirming State requirements [link to NASAA Web site] to determine whether choosing to direct this notice to a State by selecting a checkbox in this item satisfies any applicable filing requirements of that State and whether a separate State filing or payment of a State filing fee is required.

8. **Duration of Offering.** Indicate whether the issuer intends the offering to last for more than one year.

9. **Type(s) of Securities Offered.** Select the appropriate checkbox(es) for each of the types of securities offered the offering of which is the subject of one or more exemptions specified in Item 6 and as to which this Form D is filed (if, however, such a security is debt convertible into another security, the issuer should check the box(es) for "Debt" and any other appropriate types of securities except for "Equity"). If, for example, an issuer specified an exemption in Item 6 and filed this Form D as to the offering of both immediately exercisable options and their underlying common stock, the issuer should check the boxes for "Option, Warrant or Other Right to Acquire Another Security" and "Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security." If, however, the issuer specified an exemption in Item 6 and filed this Form D as to the offering of options exercisable over a year after purchase but not the offering of the underlying common stock, the issuer should check only the box for "Option, Warrant or Other Right to Acquire Another Security." For purposes of this filing, use the ordinary dictionary and commonly understood meanings of these categories. For instance, equity securities would be securities that represent proportional ownership in an issuer, such as ordinary common and preferred stock of corporations and partnership and limited

liability company interests; debt securities would be securities representing money loaned to an issuer that must be repaid to the investor at a later date; pooled investment fund interests would be securities that represent ownership interests in a pooled or collective investment vehicle; tenant-in-common securities would be securities that include an undivided fractional interest in real property other than a mineral property; and mineral property securities would be securities that include an undivided interest in an oil, gas or other mineral property.

10. **Business Combination Transaction.** Indicate whether or not the offering is being made in connection with a business combination, such as a merger, acquisition, exchange offer or other transaction of the type described in paragraph (a)(1), (2) or (3) of Rule 145 under the Securities Act of 1933. Do not include an exchange (tender) offer for a class of the issuer's own securities.

11. **Minimum Investment.** Enter the minimum dollar amount of investment that will be accepted from any investor. If the offering provides a minimum investment amount that can be waived, provide the lowest amount below which a waiver will not be granted for any person. If there is no minimum investment amount, enter "0."

12. **Sales Compensation.** Enter the requested information for each individual who has been or will be paid directly or indirectly any commission or other similar compensation in connection with sales of securities in the offering, including finders. In addition, in the last column, enter the State(s) in which the individual has solicited or intends to solicit investors. If more than five individuals to be listed are associated persons of the same broker or dealer, enter only the name of the broker or dealer, its street address, and the State(s) in which its associated persons have solicited or intend to solicit investors.

13. **Offering and Sales Amounts**. Enter the dollar amount of securities being offered under a claim of federal exemption identified in Item 6 above. Also enter the dollar amount of securities sold in the offering as of the filing date. Select the "Indefinite" box if the amount being offered is undetermined or cannot be calculated at the present time, such as if the offering includes securities to be acquired upon the exercise or exchange of other securities or property and the exercise price or exchange value is not currently known or knowable. If an amount is definite but difficult to calculate without unreasonable effort or expense, provide a good faith estimate. The total offering and sold amounts should include all cash and other consideration to be received for the securities, including cash to be paid in the future under mandatory capital commitments. In offerings for consideration other than cash, the amounts entered should be based on the issuer's good faith valuation of the consideration.

14. **Investors.** Indicate whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors as defined in Rule 501(a) and provide the number of such investors who have already invested in the offering and the number of accredited investors who have already invested.

Signature and Submission. An individual who is a duly authorized representative of each issuer identified must sign, date and submit this notice for the issuer. The capacity in which the individual signed should be set forth in the "Title" space.

Entity Type (for Item 1)

[ ] Corporation
[ ] Limited Partnership
[ ] Limited Liability Company
[ ] General Partnership
[ ] Business Trust
[ ] Other (Specify)

Industry Groups (for Item 4)

[ ] Agriculture

Banking & Financial Services

[ ] Commercial Banking
[ ] Insurance
[ ] Investing
[ ] Investment Banking
[ ] Pooled Investment Fund*
    [ ] Hedge Fund
    [ ] Private Equity Fund
    [ ] Venture Capital Fund
    [ ] Other Investment Fund
[ ] Other

Business Services

[ ] Accounting & Consulting
[ ] Advertising
[ ] Employee Benefits & Compensation
[ ] Environmental Services
[ ] Human Resources
[ ] Legal Services
[ ] Marketing
[ ] Public Relations
[ ] Other

Energy

[ ] Electric Utilities
[ ] Energy Conservation
[ ] Oil & Gas
[ ] Other

* If the Pooled Investment Fund checkbox is selected, pop-ups also will require the filer to select one of the lower level checkboxes designating a specific type of investment fund and select a "yes" or "no" checkbox as to whether the filer is registered as an investment company under the Investment Company Act of 1940.

Health Care

[ ] Biotechnology
[ ] Health Insurance
[ ] Hospitals & Physicians
[ ] Pharmaceuticals
[ ] Other

[ ] Manufacturing

Real Estate

[ ] Commercial
[ ] Construction
[ ] REITS & Finance
[ ] Residential
[ ] Other

[ ] Retailing

[ ] Restaurants

Technology

[ ] Computers
[ ] Telecommunications
[ ] Other

Travel

[ ] Airlines & Airports
[ ] Lodging & Conventions
[ ] Tourism & Travel Services
[ ] Other

[ ] Other

Dated: June 29, 2007.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

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