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Interactive Data To Improve Financial Reporting; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 232, 239, 240, and 249

[Release Nos. 33–9002; 34–59324; 39–2461; IC–28609; File No. S7–11–08]

RIN 3235–AJ71

Interactive Data To Improve Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting rules requiring companies to provide financial statement information in a form that is intended to improve its usefulness to investors. In this format, financial statement information could be downloaded directly into spreadsheets, analyzed in a variety of ways using commercial off-the-shelf software, and used within investment models in other software formats. The rules will apply to public companies and foreign private issuers that prepare their financial statements in accordance with U.S. generally accepted accounting principles (U.S. GAAP), and foreign private issuers that prepare their financial statements using International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB). Companies will provide their financial statements to the Commission and on their corporate Web sites in interactive data format using the eXtensible Business Reporting Language (XBRL). The interactive data will be provided as an exhibit to periodic and current reports and registration statements, as well as to transition reports for a change in fiscal year. The new rules are intended not only to make financial information easier for investors to analyze, but also to assist in automating regulatory filings and business information processing. Interactive data has the potential to increase the speed, accuracy and usability of financial disclosure, and eventually reduce costs.

DATES: *Effective Date:* April 13, 2009 except § 232.406T, which is effective from April 13, 2009 until October 31, 2014.

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SUPPLEMENTARY INFORMATION: We are adding Rules 405 and 406T to Regulation S–T,[1] and revising Item 601 [2] of Regulation S–K,[3] Rules 11,[4] 201,[5] 202,[6] 305,[7] 401,[8] and 402 [9] of Regulation S–T, Rule 144 [10] under the Securities Act of 1933 (Securities Act),[11] and Rules 12b–25,[12] 13a–14 [13] and 15d–14 [14] under the Securities Exchange Act of 1934 (Exchange Act).[15] We also are revising Forms S–3,[16] S–8,[17] F–3,[18] F–9 [19] and F–10 [20] under the Securities Act and Forms 10–Q,[21] 10–K,[22] 12b–25,[23] 20–F,[24] 40–F [25] and 6–K [26] under the Exchange Act.

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I. Introduction and Background

A. Introduction

On May 30, 2008, we issued a release in which we proposed for public comment amendments requiring companies to provide their financial statements to the Commission and on their corporate Web sites in interactive data format using XBRL.[27] In this release, we are adopting the amendments substantially as proposed, but with the modifications discussed below.

Over the last several decades, developments in technology and electronic data communication have facilitated greater transparency in the form of easier access to, and analysis of, financial reporting and disclosures. Technological developments also have significantly decreased the time and cost of filing disclosure documents with us. Most notably, in 1993 we began to require electronic filing on our Electronic Data Gathering, Analysis and Retrieval System (EDGAR).[28] Since then, widespread use of the Internet has vastly decreased the time and expense of accessing disclosure filed with us.

We continue to update our filing standards and systems as technologies improve. These developments assist us in our goal to promote efficient and transparent capital markets. For

[1] 17 CFR 232.10 *et seq.*
[2] 17 CFR 229.601.
[3] 17 CFR 229.10 *et seq.*
[4] 17 CFR 232.11.
[5] 17 CFR 232.201.
[6] 17 CFR 232.202.
[7] 17 CFR 232.305.
[8] 17 CFR 232.401.
[9] 17 CFR 232.402.
[10] 17 CFR 230.144.
[11] 15 U.S.C. 77a *et seq.*
[12] 17 CFR 240.12b–25.
[13] 17 CFR 240.13a–14.
[14] 17 CFR 240. 15d–14.
[15] 15 U.S.C. 78a *et seq.*
[16] 17 CFR 239.13.
[17] 17 CFR 239.16b.
[18] 17 CFR 239.33.
[19] 17 CFR 239.39.
[20] 17 CFR 239.40.
[21] 17 CFR 249.308a.
[22] 17 CFR 249.310.
[23] 17 CFR 249.322.
[24] 17 CFR 249.220f.
[25] 17 CFR 249.240f.
[26] 17 CFR 249.306.

[27] We proposed the amendments in Release No. 33–8924 (May 30, 2008) [73 FR 32794]. The comment letters we received in response to the proposing release were filed in File Number S7–11–08 and are available at *http://www.sec.gov/comments/s7-11-08/s71108.shtml* or from our Public Reference Room at 100 F Street, NE., Washington, DC 20549.

[28] In 1993, we began to require domestic issuers to file most documents electronically. Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628]. Electronic filing began with a pilot program in 1984. Release No. 33–6539 (June 27, 1984) [49 FR 28044].

example, since 2003 we have required electronic filing of certain ownership reports [29] filed on Forms 3,[30] 4,[31] and 5 [32] in a format that provides interactive data, and recently we adopted similar rules governing the filing of Form D.[33] In addition, recently we have encouraged, and in some cases required, public reporting companies and mutual funds to provide disclosures and communicate with investors using the Internet.[34] Now, as part of our continuing efforts to assist investors who use Commission disclosures, as well as filers of that disclosure, we are adopting rules to require that financial statements be provided in a format that makes the information they contain interactive.

Our adoption of the new rules is consistent with the recently announced plan to replace the EDGAR system with the Interactive Data Electronic Applications (IDEA) system. Based on a completely new architecture being built from the ground up, it will at first supplement and then eventually replace the EDGAR system. IDEA will facilitate the use and analysis of information submitted to the Commission in interactive data format.[35]

The new rules build on our voluntary filer program, started in 2005,[36] that allowed us to evaluate certain uses of interactive data. The Commission has evaluated interactive data from an investor's perspective in several ways, including holding a roundtable focused on investor/analyst needs from interactive data, meeting with various investor focused data service providers to understand the ways in which interactive data could improve their ability to serve investors, and, at the staff level, experimenting with analysis capabilities using the Commission's viewer and other existing XBRL software. The voluntary program allows companies to submit financial statements on a supplemental basis in interactive format as exhibits to specified filings under the Exchange Act and the Investment Company Act of 1940 (Investment Company Act).[37] Companies that participate in the program still are required to file their financial statements in American Standard Code for Information Interchange (ASCII) or HyperText Markup Language (HTML).[38] In 2007, we extended the program to enable mutual funds voluntarily to submit in interactive data format supplemental information contained in the risk/return summary section of their prospectuses.[39] Over 100 companies have participated in the voluntary program. These companies span a wide range of industries and company characteristics, and have a total public float of over $2 trillion.

Interactive data can create new ways for investors, analysts, and others to retrieve and use financial information in documents filed with us. For example, users of financial information will be able to download it directly into spreadsheets, analyze it using commercial off-the-shelf software, or use it within investment models in other software formats. Through interactive data, what is currently static, text-based information can be dynamically searched and analyzed, facilitating the comparison of financial and business performance across companies, reporting periods, and industries.

Interactive data also provide a significant opportunity to automate regulatory filings and business information processing, with the potential to increase the speed, accuracy, and usability of financial disclosure. Such automation could eventually reduce costs. A company that uses a standardized interactive data format at earlier stages of its reporting cycle could reduce the need for repetitive data entry and, therefore, the likelihood of human error. In this way, interactive data may improve the quality of information while reducing its cost.

Also, to the extent investors currently are required to pay for access to annual or quarterly report disclosure that has been extracted and reformatted into an interactive data format by third-party sources, the availability of interactive data in Commission filings will allow investors to avoid additional costs associated with third party sources.

We believe that requiring issuers to file their financial statements using interactive data format will enable investors, analysts, and the Commission staff to capture and analyze that information more quickly and at less cost than is possible using the same financial information provided in a static format. Any investor with a computer and an Internet connection will have the ability to acquire and download interactive financial data that have generally been available only to large institutional users. The new interactive data requirements will not change disclosure requirements under the federal securities laws and regulations, but will add a requirement to include financial statements in a new interactive data format as an exhibit. Thus, the requirement that filers provide financial statements using interactive data will not otherwise alter at all the disclosure or formatting standards of periodic or other reports,[40] registration statements,[41] or transition reports.[42] These filings will continue to be available as they are today for those who prefer to view the traditional text-based document.

We received 79 comment letters relating to the proposing release from domestic and foreign commenters including investor groups, pension funds, corporations, accounting and law firms, vendors and service providers, individuals, and corporate, professional and trade associations. Many commenters generally supported the proposed requirement to submit financial information in interactive data format, but many also expressed concern about specific aspects of the proposed rules including, in particular, the proposed phase-in requirement, detailed tagging of footnotes and liability related to the interactive data file. The final amendments adopt the rules substantially as proposed, with some changes to address issues expressed in the comment letters. We discuss specific comments where applicable throughout this release.

[29] Release No. 33–8230 (May 7, 2003) [68 FR 25788 and 37044 (correction)] (required electronic filing of ownership reports) and Release No. 33–8891 (Feb. 6, 2008) [73 FR 10592] (required electronic filing of Form D [17 CFR 239.500]).

[30] 17 CFR 249.103 and 274.202.

[31] 17 CFR 249.104 and 274.203.

[32] 17 CFR 249.105.

[33] 17 CFR 239.500.

[34] *See, e.g.*, Release No. 34–56135 (July 26, 2007) [72 FR 42222]; Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148]; Release No. 34–52056 (July 19, 2005) [70 FR 44722]; Release No. 33–8861 (November 21, 2007) [72 FR 67790]; and Release No. 34–57172 (Jan. 18, 2008) [73 FR 4450].

[35] Press Release No. 2008–179 (Aug. 19, 2008).

[36] Release No. 33–8529 (Feb. 3, 2005) [70 FR 6556].

[37] 15 U.S.C. 80a–1 *et seq.*

[38] HTML is a standardized language commonly used to present text and other information on Web sites.

[39] Release No. 33–8823 (July 11, 2007) [72 FR 39290].

[40] These reports include reports on Forms 8–K and 6–K that either are required to be filed as a result of information regarding specified events or are filed voluntarily to disclose other information.

[41] Unless otherwise stated, when we refer to registration statements, we mean registration statements filed under the Securities Act.

[42] Transition reports generally must be filed when an issuer changes its fiscal closing date. The transition report covers the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year. *See* Rules 13a–10 [17 CFR 240.13a–10] and 15d–10 [17 CFR 240.15d–10]. Unless otherwise stated, when we refer to Exchange Act reports, periodic reports, or ''reports,'' we mean quarterly and annual periodic reports as well as transition reports.

B. Current Filing Technology and Interactive Data

Companies filing electronically are required to file their registration statements, quarterly, annual and current reports, and transition reports in ASCII or HTML format.[43] Also, to a limited degree, our electronic filing system uses other formats for internal processing and document-type identification. For example, our system uses eXtensible Markup Language (XML) to process reports of beneficial ownership of equity securities on Forms 3, 4, and 5 under Section 16(a) of the Exchange Act.[44]

Electronic formats such as HTML, XML, and XBRL are open standards[45] that define or ''tag'' data using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be recognized and processed by a variety of different software applications. In the case of HTML, the standardized tags enable Web browsers to present Web sites' embedded text and information in predictable format. In the case of XBRL, software applications, such as databases, financial reporting systems, and spreadsheets, recognize and process tagged financial information. XBRL was derived from the XML standard. It was developed and continues to be supported by XBRL International, a consortium of approximately 550 organizations representing many elements of the financial reporting community worldwide. XBRL U.S., the international organization's U.S. jurisdiction representative, is a non-profit organization[46] that includes companies, public accounting firms, software developers, filing agents, data aggregators, stock exchanges, regulators, financial services companies, and industry associations.[47] In 2006, the Commission contracted with XBRL U.S. to develop the taxonomy or standard list of tags necessary for financial reporting in interactive format consistent with U.S. GAAP and Commission regulations.[48] In developing the taxonomy, XBRL U.S., which is responsible for the content of the taxonomy, included items required by U.S. GAAP and the Commission's regulations, however they also included other items that are commonly used by companies in their financial statements. In addition to undergoing a public review and comment period, the taxonomy was reviewed by the staff of the Financial Accounting Standards Board (FASB) and the Commission. The FASB staff is involved in the process for creating and reviewing tags for new accounting pronouncements as they are published and in the future the draft tags may even be published with the accounting standard. Currently, the Commission has a contract with XBRL U.S. to develop the standard list of tags for the risk/return summary section of mutual fund prospectuses and the schedule of investments for investment companies.

Financial reporting in interactive format requires a standard list of tags. These tags are similar to definitions in an ordinary dictionary, and they cover a variety of financial concepts that can be read and understood by software applications. For financial statements prepared in accordance with U.S. GAAP, a filer will use the list of tags for U.S. financial statement reporting.[49] This list of tags contains descriptive labels, definitions, authoritative references to U.S. GAAP and Commission regulations where applicable, and other elements, all of which provide the contextual information necessary for interactive data[50] to be recognized and processed by software.[51]

Data tags are applied to financial statements by using commercially available software that guides a preparer to tag information in the financial statements with the appropriate tags in the standard list. Each element in the standard list of tags has a standard label. A company can therefore match the standard labels to each caption in its financial statements. Occasionally, because filers have considerable flexibility in how financial information is reported under U.S. reporting standards, it is possible that a company may wish to use a non-standard financial statement line item that is not included in the standard list of tags. In this situation, a company will create a company-specific element, called an extension.[52] For example, what a company identifies in its traditional format financial statements as ''operating revenues'' may be associated with an element that has ''net revenues'' as the standard label. In this situation, a company will need to change, or extend, the standard label to become ''operating revenues'' when it tags that disclosure with the element.[53] A company may choose to tag its own financial statements using commercially available software, or it may choose instead to outsource the tagging process.

By the same process, a filer that prepares its financial statements in accordance with IFRS as issued by the IASB[54] will use the IFRS list of tags to

[43] Rule 301 under Regulation S–T [17 CFR 232.301] requires electronic filings to comply with the EDGAR Filer Manual, and Section 5.1 of the Filer Manual requires that electronic filings be in ASCII or HTML format. Rule 104 under Regulation S–T [17 CFR 232.104] permits filers to submit voluntarily as an adjunct to their official filings in ASCII or HTML unofficial PDF copies of filed documents. Unless otherwise stated, we refer to filings in ASCII or HTML as traditional format filings.

[44] 15 U.S.C. 78p(a).

[45] The term ''open standard'' is generally applied to technological specifications that are widely available to the public, royalty-free, at minimal or no cost.

[46] XBRL U.S. is a 501(c)(6) organization. Internal Revenue Code section 501(c)(6) applies to ''Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.'' *See* 26 U.S.C. 501(c)(6).

[47] XBRL U.S. supports efforts to promote interactive financial and business data specific to the U.S., including U.S. GAAP.

[48] That contract has been completed.

[49] Unless stated otherwise, when we refer to the ''list of tags for U.S. financial statement reporting'' we mean the interactive data taxonomy as approved by XBRL U.S. that is based on U.S. GAAP, Commission regulations, and common financial reporting practices used in the preparation of financial statements in the U.S.

[50] The new rules define the interactive data in machine-readable format required to be submitted as the ''interactive data file,'' which will be required with every interactive data submission. *See* § 232.11 of Regulation S–T.

[51] For example, contextual information will identify the entity to which it relates, usually by using the filer's CIK number. A hypothetical filer converting its traditional electronic disclosure of $1,000,000 of net sales would have to create interactive data that identify what the 1,000,000 represents, net sales, and the currency in which it is disclosed, dollars. The contextual information will include other information as necessary; for example, whether it relates to an annual report or quarterly report, the financial reporting period, continuing or discontinued operations, or actual, restated, forecast, pro forma or other type of disclosure.

[52] In other cases, without a relevant and appropriate tag in the list of tags, a company will be required to create an extension in order to provide interactive data that are equivalent to the corresponding portion of the traditional format filing.

[53] Unless otherwise stated, extensions, whether relating to an element or a label, are not part of the standard list of tags.

[54] As used in this release, the phrase ''IFRS as issued by the IASB'' refers to the authoritative text of IFRS, which, according to the Constitution of the International Accounting Standards Committee Foundation (IASCF), is published in English. *See* ''International Financial Reporting Standards, including International Accounting Standards and Interpretations as at 1 January 2007,'' Preface to International Financial Reporting Standards, at paragraph 23. *See http://www.iasb.org/xbrl/index.html.* The IASCF released the 2008 taxonomy (list of tags) on March 31, 2008. *See* IASB Press Release, The IASC Foundation publishes IFRS Taxonomy 2008, (March 31, 2008). Following a 60-day public consultation period, the IASCF published the final list of tags in June 2008. *See* IASB Press Release IASC Foundation publishes IFRS Taxonomy 2008 (June 24, 2008). Recently, the IASC published the IFRS Taxonomy Guide. *See* IASB Press Release, The IASC Foundation

create its interactive data-formatted financial statements.[55] The IFRS list of tags contains descriptive labels, authoritative references to IFRS where applicable, and other elements and concepts that provide the contextual information necessary for interactive data to be recognized and processed by software. The IASCF has developed the IFRS list of tags. To create interactive data using the IFRS list of tags, an issuer generally will need to follow the same mapping, extension and tagging process as will a company that uses the list of tags for U.S. financial statement reporting. As further discussed below, the IASCF is collaborating with XBRL U.S. and other parties to align the U.S. GAAP and IFRS lists of tags to make them more interoperable and comparable. This collaboration involves the development of the appropriate scope for the IFRS list of tags' content and technology architecture and currently totals 2,700 IFRS tags.

Because financial statements in interactive data format are intended to be processed by software applications, the unprocessed data are not readable by humans. Thus, viewers are necessary to convert or ''render'' the interactive data file to human readable format. Some viewers are similar to Web browsers used to read HTML files.

The Commission's Web site currently provides links to viewers that allow the public to easily read company disclosures submitted using interactive data. These viewers are intended to demonstrate the capability of software to present interactive data in human-readable form and to provide open source software to give developers a free resource they can use as is or build upon. As noted above, software also is able to process interactive data so as to automate and, as a result, facilitate access to and analysis of tagged data. In addition, we are aware of other applications under development that may provide additional and advanced functionality.

C. The Commission's Multiyear Evaluation of Interactive Data and Overview of New Rules

In 2004, we began to assess the benefits of interactive data and its potential to improve the timeliness and accuracy of financial disclosure and analysis of Commission filings.[56] As part of this evaluation, we adopted rules in 2005 that permitted filers, on a voluntary basis, to provide financial disclosure in interactive data format as an exhibit to certain filings on our electronic filing system. The voluntary program has been based on an earlier version of the list of tags for U.S. financial statement reporting, which does not include a full array of standard elements for financial statement footnotes and schedules. After more than two years of increasing participation, 100 companies have chosen to provide interactive data financial reporting.[57]

During this time, we have kept informed of technology advances and other interactive data developments. We note that several U.S. and foreign regulators have begun to incorporate interactive data into their financial reporting systems.[58] In the U.S., the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, and the Office of the Comptroller of the Currency (OCC) require the use of XBRL.[59] Since 2006, approximately 8,200 U.S. financial institutions have been using XBRL to submit quarterly reports to banking regulators.[60] Internationally, countries that require or have instituted voluntary or pilot programs for XBRL financial reporting include Australia, Belgium, Canada, China, Denmark, France, Germany, Ireland, Israel, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Singapore, Spain, Sweden, Thailand and the United Kingdom.[61]

We also have kept informed of relevant advances and developments by hosting roundtables on the topic of interactive data financial reporting,[62] creating the Commission's Office of Interactive Disclosure,[63] and meeting with international securities regulators to discuss, among other items, timetables for implementation of interactive data initiatives for financial reporting.[64] Also, staff of the Commission attended meetings of the Advisory Committee on Improvements to Financial Reporting (CIFiR) in which the committee discussed proposals for financial reporting using interactive data.[65] We also have reviewed written statements and public comments received by CIFiR on its XBRL developed proposal[66] that preceded its XBRL final recommendation.

Building on our experience from the voluntary program, and our participation in the other initiatives described above, we proposed rules to require financial reporting using interactive data, and are now adopting

publishes the IFRS Taxonomy Guide (August 28, 2008).

[55] Unless stated otherwise, when we refer to the ''IFRS list of tags'' we mean the list of tags for financial statements prepared in accordance with IFRS as issued by the IASB.

[56] Press Release No. 2004–97 (July 22, 2004).

[57] A viewer for the voluntary program is available at *http://www.sec.gov/spotlight/xbrl/xbrlwebapp.shtml*. This viewer maintains a running total of companies and filers submitting data as part of the voluntary program. As of January 2, 2009, 125 companies had submitted over 540 interactive data reports.

[58] However, well-developed and widespread application of XBRL to financial reports used by investors is not yet the international norm. According to the commenter EuropeanIssuers, ''XBRL is permitted or required by regulators * * * only * * * for certain reports filed with banking regulators or unconsolidated financial statements filed with the commercial registries [and] XBRL is not currently being used in Europe for financial reporting to investors.'' EuropeanIssuers is a non-profit pan-European organization formed when the European Association of Listed Companies and the Union of Issuers Quoted in Europe combined their organizations in 2008. The organization states that it represents the vast majority of publicly quoted companies in Europe.

[59] Since 2005, the FDIC, Federal Reserve, and the OCC have required the insured institutions that they oversee to file their quarterly Consolidated Reports of Condition and Income (called Call Reports) in interactive data format using XBRL. Call Reports, which include data about an institution's balance sheet and income statement, are used by these federal agencies to assess the financial health and risk profile of the financial institution.

[60] *See* Improved Business Process Through XBRL: A Use Case for Business Reporting, available at *http://www.xbrl.org/us/us/FFIEC%20White%20Paper%2002Feb2006.pdf.*

[61] *See* XBRL International Progress Report (November 2007), available at *http://www.xbrl.org/ProgressReports/2007_11_XBRL_Progress_Report.pdf.*

[62] *See* materials available at *http://www.sec.gov/spotlight/xbrl/xbrl-meetings.shtml.*

[63] Press Release No. 2007–213 (October 9, 2007).

[64] Press Release No. 2007–227 (November 9, 2007).

[65] For example, CIFiR conducted an open meeting on March 14, 2008 in which it heard reactions from an invited panel of participants to CIFiR's developed proposal regarding required filing of financial information using interactive data. An archived Web cast of the meeting is available at *http://sec.gov/about/offices/oca/cifir.shtml*. The March 14, 2008 panelists presented their views and engaged with CIFiR members regarding issues relating to requiring interactive data tagged financial statements, including tag list and technological developments, implications for large and small public companies, needs of investors, necessity of assurance and verification of such tagged financial statements, and legal implications arising from such tagging. Also, CIFiR has provided to the Commission a Final Report that recommends that the Commission, over the long term, require the filing of financial information using interactive data once specified conditions are satisfied. See Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission (Aug. 1, 2008) (Final Report), available at *http://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf*. CIFiR's recommendation is discussed more fully in Part II.B.2 below.

[66] *See* Progress Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission (Feb. 14, 2008) (Progress Report), available at *http://www.sec.gov/rules/other/2008/33-8896.pdf*. The XBRL developed proposal appears in chapter 4 of the Progress Report. Written statements of panelists at the March 14, 2008 meeting and public comments received on the Progress Report are available at *http://sec.gov/comments/265-24/265-24.shtml*.

those rules with the modifications discussed below. The rules will apply to domestic and foreign public companies that prepare their financial statements in accordance with U.S. GAAP, and foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB. Filers will be required to include an exhibit containing interactive data with their Securities Act registration statements, quarterly, if applicable, and annual reports, and transition reports, as well as reports on Forms 8–K [67] or 6–K that contain specified financial statements.[68] Filers also will be required to provide it on their company Web sites.[69] We believe requiring the submission and posting of interactive data has the potential to provide advantages for the investing public by making financial data more accessible, timely, inexpensive and easier to analyze.

By enabling filers to further automate their financial processes, interactive data may eventually help filers improve the timeliness of, and speed at which they generate, financial information, while reducing the cost of filing and potentially increasing the accuracy of the information. For example, with standardized interactive data tags, registration statements and periodic and current reports may require less time for information gathering and review. Also, standardized interactive data tagging may enhance the ability of an issuer's in-house financial professionals to identify and correct errors in the issuer's registration statements and periodic and current reports filed in traditional electronic format. Filers also may gain benefits not directly related to public financial disclosures. For example, filers that use interactive data may be able to consolidate enterprise financial information more quickly and potentially more reliably across operating units with different accounting systems. However, we recognize that at the outset, filers will most likely prepare their interactive data as an additional step after their financial statements have been prepared.

D. Summary of Adopted Amendments

The principal elements of the new rules are as follows:

- Domestic and foreign large accelerated filers [70] that use U.S. GAAP and have a worldwide public common equity float above $5 billion [71] as of the end of the second fiscal quarter of their most recently completed fiscal year [72] will provide to the Commission a new exhibit.[73] The exhibit will be required with such filers' Securities Act registration statements, quarterly, if applicable, and annual reports, and transition reports, as well as reports on Form 8–K or Form 6–K that contain revised or updated financial statements.[74] The exhibit will contain the financial statements [75] and any applicable financial statement schedules in interactive data format. The requirement will apply beginning with a periodic report on Form 10–Q, Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2009.
- All other domestic and foreign large accelerated filers using U.S. GAAP will be subject to the same interactive data reporting requirements the following year, beginning with a periodic report on Form 10–Q, Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2010.
- All remaining filers using U.S. GAAP, including smaller reporting companies,[76] and all foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB,[77] will be subject to the same interactive data reporting requirements beginning with a periodic report on Form 10–Q, Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2011.
- Filers that first become subject to the requirement to submit interactive data after year three (*i.e.*, companies that become subject to our reporting requirements after the phase-in is complete), will first be required to

[67] 17 CFR 249.308.

[68] The specified financial statements are discussed in detail in n. 74.

[69] The new rules will not include any investment company that is registered under the Investment Company Act or any ''business development company,'' as defined in Section 2(a)(48) of that Act [15 U.S.C. 80a–2(a)(48)]. Business development companies are a category of closed-end investment companies that are not required to register under that Act. The new rules also will not include any entity that reports under the Exchange Act and prepares its financial statements in accordance with Article 6 of Regulation S–X [17 CFR 210.6–01 *et seq.*]. The new rules will not apply to these entities because the standard list of tags for investment management is under development.

[70] Exchange Act Rule 12b–2 [17 CFR 240.12b–2] generally defines ''large accelerated filer'' as an issuer that has common equity held by unaffiliated persons with a value of at least $700 million, has been subject to the Exchange Act's periodic reporting requirements for at least 12 months, has filed at least one annual report, and is not eligible to use the disclosure requirements available to smaller reporting companies for its periodic reports.

[71] The $5 billion cutoff will establish a category of approximately 500 filers that will be subject to the interactive data requirements in the first year.

[72] The proposing release at n. 89 stated our intention that the float measurement date be consistent with the measurement date for determining large accelerated filer status. Throughout the proposing release, however, we inadvertently characterized the measurement date as the end of the most recently completed second fiscal quarter rather than the end of the second fiscal quarter of the most recently completed fiscal year. We now characterize the measurement date in the latter manner to conform it to our stated intention.

[73] Interactive data will be required as an exhibit to a Securities Act registration statement that contains financial statements, such as a Form S–1 [17 CFR 239.11], but not required in connection with an initial public offering. Interactive data will not be required as an exhibit to a Securities Act registration statement that does not contain financial statements, such as a Form S–3 or other form filed by an issuer that is eligible to and does incorporate by reference all required financial statements from its periodic reports. Also, interactive data will not be required as an exhibit to an Exchange Act registration statement.

[74] In connection with registration statements where historical financial statements are incorporated by reference, issuers often file under cover of Form 8–K or 6–K their revised audited annual financial statements when their previously filed annual financial statements are required to be revised, pursuant to applicable accounting standards, to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments, or a change in accounting principle. Also, foreign private issuers occasionally may file current interim financial statements pursuant to the nine-month updating requirement of Item 8.A.5 of Form 20–F under cover of Form 6–K which are incorporated by reference into a registration statement. In these circumstances, the interactive data exhibit will be required to be included in the Form 8–K or 6–K to accompany the traditional format financial statements to which they relate. Interactive data exhibits related to financial statements that have been restated to correct an accounting error will be required to be included in any amended registration statement or periodic report or transition report that contains the restated traditional format financial statements. The requirement to submit restated financial statements in interactive data format in such an instance would depend on whether the original filing contained financial statements for fiscal periods regarding which the filer was subject to the interactive data requirements. For instance, for those filers in the first phase-in period, the financial statements being restated would only have to be submitted in interactive data format if they were originally for fiscal periods ending on or after June 15, 2009.

[75] When we refer to financial statements, we mean the face of the financial statements and accompanying footnotes. The face of the financial statements refers to the statement of financial position (balance sheet), income statement, statement of comprehensive income, statement of cash flows, and statement of owners' equity, as required by Commission regulations. References to the financial statements as required for interactive data reporting include any required schedules to the financial statements, unless we expressly state otherwise.

[76] Item 10(f)(1) of Regulation S–K [17 CFR 229.10(f)(1)], Rule 405 under the Securities Act [17 CFR 230.405] and Rule 12b–2 under the Exchange Act [17 CFR 240.12b–2] define the term ''smaller reporting company,'' in general, as a company that has common equity securities held by non-affiliates with a market value of less than $75 million or, if that value cannot be calculated, had less than $50 million in revenue in the prior fiscal year.

[77] The amendments will not require or permit foreign private issuers that prepare their financial statements in accordance with a variation of IFRS as issued by the IASB to provide interactive data.

submit an interactive data file for their first periodic report on Form 10–Q or first annual report on Form 20–F or Form 40–F, as applicable.

• The amendments will not alter the requirements to provide financial statements and any required financial statement schedules with the traditional format filings.

• Financial statements in interactive data format will be provided as exhibits identified in Item 601(b) of Regulation S–K and Forms F–9, F–10, 20–F, 6–K and 40–F.[78]

• Financial statement footnotes and financial statement schedules initially will be tagged individually as a block of text. After a year of such tagging, a filer also will be required to tag the detailed quantitative disclosures within the footnotes and schedules and will be permitted, but not required, to the extent they choose, to tag each narrative disclosure.

• The amendments will require the financial information and document and entity identifier elements, such as the form type, company name, and public float, to be tagged according to Regulation S–T and the EDGAR Filer Manual.[79]

• Interactive data exhibits will be required at the same time as the rest of the related report or Securities Act registration statement, except for the following two circumstances. The initial interactive data exhibit of a filer will be required within 30 days after the earlier of the due date or filing date of the related report or registration statement, as applicable. In year two, a filer will have a similar 30 day grace period for its first interactive data exhibit that includes detailed tagging of its footnotes and schedules.

• A filer required to provide financial statements in interactive data format to the Commission also will be required to post those financial statements in interactive data format on its corporate Web site not later than the end of the calendar day it filed or was required to file the related registration statement or report with the Commission, whichever is earlier.[80]

• Filers that do not provide or post required interactive data on the date required will be deemed not current with their Exchange Act reports and, as a result, will not be eligible to use the short Form S–3, F–3, or S–8, or elect under Form S–4 or F–4 to provide information at a level prescribed by Form S–3 or F–3. Similarly, such filers will not be deemed to have available adequate current public information for purposes of the resale exemption safe harbor provided by Rule 144.[81] A filer that is deemed not current solely as a result of not providing or posting an interactive data exhibit when required will be deemed current upon providing or posting the interactive data. Therefore it will regain current status for purposes of short form registration statement eligibility, and determining adequate current public information under Rule 144. As such, it will not lose its status as having ''timely'' filed its Exchange Act reports solely as a result of the delay in providing interactive data.[82]

• Companies that are not required to provide interactive data until a later time will have the option to do so earlier and may provide interactive data at their discretion until required by the amendments. Such a company may also tag footnotes individually as a block of text until required to tag the detailed quantitative disclosures within the footnotes and schedules, but otherwise must follow the same requirements as those mandated and can only use a grace period for its initial submission and the initial detail-tagged-footnote submission, whether submitted voluntarily or as required by the amendments.

• Companies may cease voluntary submissions at any time and need not tag their financial data at a pace other than at which the rules otherwise would require.

• The voluntary program rules will be modified to permit investment companies to participate, but to exclude non-investment company participation. As a result, the voluntary program will continue for the financial statements of investment companies that are registered under the Investment Company Act, and business development companies and other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X.[83]

• An interactive data file generally will be subject to the federal securities laws in a modified manner similar to that of the voluntary program if the filer submits the interactive data file within 24 months of the time the filer first is required to submit interactive data files but no later than October 31, 2014. During the time a filer's interactive data files are treated in this modified manner, they will be

○ Deemed not filed for purposes of specified liability provisions; and

○ Protected from liability for failure to comply with the tagging requirements if the interactive data file failed to meet those requirements but the failure occurred despite the filer's good faith effort and the filer corrected the failure promptly after becoming aware of it.[84]

• Also similar to the voluntary program, interactive data files will be excluded from the officer certification requirements under Rules 13a–14 and 15d–14 of the Exchange Act.

The principal changes from the proposing release include:

• Modified treatment of liability for the interactive data files under the federal securities laws only will be available for interactive data files that a filer submits within 24 months of the time the filer first is required to submit interactive data files and no later than October 31, 2014.

• The phase-in schedule has been changed from the proposal. The filers that will be phased in during year one will first be required to submit an interactive data file for a periodic report on Form 10–Q, Form 20–F or Form 40–F containing financial statements for a fiscal period ended on or after June 15, 2009. Filers that are phased in during years two and three will be treated in a similar manner. Filers that first become subject to the requirement to submit interactive data after year three will first be required to submit an interactive data

[78] The adopted interactive data requirements would not apply to asset-backed filings because issuer financial statements are generally not required or provided in filings made pursuant to *Regulation AB (17 CFR 229.1100 et seq.*).

[79] New Rule 405 of Regulation S–T will directly set forth the basic tagging requirements and indirectly set forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual. Consistent with new Rule 405, the Filer Manual will contain the technical tagging requirements.

[80] The day the registration statement or report is submitted electronically to the Commission may not be the business day on which it was deemed officially filed. For example, a filing submitted after 5:30 p.m. generally is not deemed officially filed until the following business day. Under the new rules, the Web posting will be required at any time on the same calendar day that the related registration statement or report is deemed officially filed or required to be filed, whichever is earlier.

[81] 17 CFR 230.144.

[82] Filers that do not provide or post required interactive data on the date required with respect to a Securities Act filing will be deemed not current with their Exchange Act reports.

[83] On December 17, 2008, the Commission voted to adopt rules requiring interactive data for the risk/return summary section of mutual fund prospectuses. See Press Release No. 2008–300 (December 18, 2008). *See* also Release No. 33–8929 (June 10, 2008) [73 FR 35442] (mutual fund proposing release).

[84] Although the interactive data formatted version of the financial statements will be provided in a separate exhibit and subject to modified liability during the specified period, the financial statements themselves will, of course, continue to be part of the registration statement or report and therefore subject to the full panoply of the federal securities laws, including, without limitation, Sections 11, 12(a)(2) and 17 of the Securities Act and Sections 10(b), 13 and 18 of the Exchange Act.

file for a quarterly report on Form 10–Q or annual report on Form 20–F or Form 40–F, as applicable.

- The amendments will require that interactive data be submitted with a Securities Act registration statement filing only after a price or price range has been determined and any later time when the financial statements are changed, rather than requiring interactive data submissions with each filing.
- The amendments will require companies to submit interactive data for financial statements contained in additional forms—Securities Act registration statements on Forms F–9 and F–10 and periodic reports on Forms 40–F [85] as well as reports on Forms 8–K and Form 6–K that contain revised or updated financial statements.[86]
- The timing of the required Web site posting has been eased. A filer must post the interactive data exhibit on its corporate Web site not later than the end of the calendar day it submitted or was required to submit the interactive data exhibit, whichever is earlier. As proposed, Web site posting would have been required by the end of the business rather than calendar day.
- Interactive data will be required to be posted for at least 12 months on an issuer's Web site. The proposing release did not specify this, but commenters requested clarification.
- While the amendments will require filers to tag separately each amount within a footnote or schedule (*i.e.*, monetary value, percentage, and number), the rules will permit, but not require, filers to tag, to the extent they choose, each narrative disclosure.

We intend to monitor implementation and, if necessary, make appropriate adjustments to the adopted amendments.

II. Discussion of Amendments

A. Submission of Financial Information Using Interactive Data

For several years XBRL U.S. and its related entities, in consultation with the Commission staff and FASB staff, have developed and refined the list of tags to classify and define financial information in accordance with U.S. financial reporting practices and Commission regulations.[87] Many investors, accountants, and others, including companies that have been providing interactive data disclosure in the voluntary program, have helped in this process.

Interactive data financial statements using the list of tags for U.S. financial statement reporting have been submitted voluntarily to us by over 100 companies, some of which have done so since the start of the voluntary program. The list of tags for U.S. financial statement reporting has expanded significantly since the original version available for the voluntary program.[88] During this period, there has been a continuous increase in both the number and capabilities of software products and applications for users of interactive data, as well as of the services to assist companies to tag their financial statements using interactive data.[89] The growing number of software applications available to preparers and consumers is helping make interactive data increasingly useful to both institutional and retail investors, as well as to other participants in the U.S. and global capital markets. On this basis, we believe interactive data, and in particular the XBRL standard, is growing and that the updated list of tags for U.S. financial statement reporting is now sufficiently comprehensive to require that U.S. GAAP-reporting companies provide their financial statements in interactive data format using XBRL.[90] We anticipate that there will be a further update of this list of tags in February 2009 but that the newer tags will not differ significantly from the old list and that any update would not pose an additional burden to the tagging process.

With respect to the list of tags for IFRS financial reporting, the IASCF has, over several years, developed a list of tags designed to classify and define financial information in accordance with international accounting standards as issued by the IASB. Over the course of the past year, the IASCF has worked to strengthen the development of its list of tags by forming an XBRL Advisory Committee and an XBRL Quality Reporting Team, both consisting of international representatives from investors, auditors, accountants, regulators and others. On March 31, 2008, the IASCF published a near final version of the list of tags for IFRS financial reporting,[91] which was subject to public comment through May 30, 2008.[92] On June 24, 2008, the IASCF published the final version.[93] In addition, the IASCF is collaborating with XBRL U.S., other foreign regulators, accounting industry members, analyst/investor groups, XBRL technology/software service providers, and others to align practices designed to improve and broaden the IFRS list of tags. This collaboration involves the development of the appropriate scope for the IFRS list of tags' content and technology architecture. On this basis, we believe that the updated IFRS list of tags will be sufficiently advanced to require that foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB provide their financial statements in interactive data format under the phase-in schedule we are adopting.

As discussed in more detail below, the new rules set forth a phase-in period that begins with domestic and foreign large accelerated U.S. GAAP filers with a worldwide public common equity float above $5 billion as of the end of the second fiscal quarter of their most recently completed fiscal year. These large accelerated filers will be subject to the new rules beginning with their first quarterly report on Form 10–Q, or annual report on Form 20–F or Form 40–F, that contains financial statements for fiscal periods ending on or after June 15, 2009. Although it will not be required, we encourage other U.S. GAAP filers to provide financial information in interactive data format during the phase-in period. In such an instance, these filers' voluntary interactive data submissions will be under the rules as adopted instead of the existing rules of the voluntary program. We also encourage foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB to provide financial information in interactive data format once EDGAR will accept such

[85] Similar to Form 20–F, Form 40–F may be used either as a periodic report or a registration statement under the Exchange Act. As adopted, the amendments will require interactive data for Form 40–F only when used as a periodic report.

[86] *See* note 74 above.

[87] Press Release No. 2006–158 (Sept. 25, 2006).

[88] When we adopted the voluntary program, the list of tags for U.S. GAAP financial statement reporting contained approximately 4,000 data elements. The list of tags released on April 28, 2008 contains approximately 13,000 data elements, with the most significant additions relating to the development of elements for standard U.S. GAAP footnote disclosure.

[89] Press Release No. 2007–253 (Dec. 5, 2007).

[90] As previously noted, however, the new rules will not apply to investment companies registered under the Investment Company Act and other entities.

[91] Unless stated otherwise, when we refer to the ''list of tags for IFRS financial reporting'' we mean the interactive data taxonomy that is based on IFRS as issued by the IASB.

[92] *See* Press Release, The IASC Foundation publishes IFRS Taxonomy 2008 (March 31, 2008), available at *http://www.iasb.org/News/Press+Releases/The+IASC+Foundation+publishes+IFRS+Taxonomy+2008.htm.*

[93] *See* Press Release, The IASC Foundation publishes IFRS Taxonomy 2008 (June 24, 2008), available at *http://www.iasb.org/News/Press+Releases/IASC+Foundation+publishes+IFRS+Taxonomy+2008.htm.*

filings.[94] Prior to this time, such foreign private issuers will be unable to submit financial information in interactive data format.

The new rules will require filers to provide the same type of information in interactive data format that companies have been providing in the voluntary program,[95] together with the following items: The footnotes to the financial statements; any applicable schedules to the financial statements; and document and entity identifier tags, such as company name and public float. As is the case in the voluntary program, the new requirement for interactive data reporting is intended to be disclosure neutral in that we do not intend the rules to result in companies providing more, less, or different disclosure for a given disclosure item depending upon the format whether ASCII, HTML, or XBRL.

Because we believe that the various electronic formats have uses for which each is best suited, we will continue to require the existing ASCII and HTML electronic formats now used in filings.[96] We also believe it is necessary to monitor the usefulness of interactive data reporting to investors and the cost and ease of providing interactive data before we consider discontinuing the use of ASCII and HTML formats and the integration of formats. However, the new rules will treat interactive data as part of the official filing, instead of as only a supplement as is the case in the voluntary program.[97] Further evaluation also will be useful with respect to the availability of inexpensive and sophisticated interactive data viewers. In fact, there are many software providers and financial printers that are developing interactive data viewers. We anticipate that these will become widely available and increasingly useful to investors.

We expect that the open standard feature of the XBRL format will facilitate the development of applications and software, and that some of these applications may be made available to the public for free or at a relatively low cost. The expected continued improvement in this software should give the public increasingly useful ways to view and analyze company financial information. As we continue to evaluate the use of the new interactive data technologies, software, and lists of tags, we may consider proposing rules to require a filing format that integrates HTML with XBRL or eliminate financial statement reporting in ASCII or HTML format.

We believe XBRL is the appropriate interactive data format with which to supplement ASCII and HTML. Our experience with the voluntary program and feedback from company, accounting, and software communities point to XBRL as the appropriate open standard for the purposes of this rule. XBRL data will be compatible with a wide range of open source and proprietary XBRL software applications. As discussed above, many XBRL-related products exist for analysts, investors, public and private companies, and others to create and compare financial data more easily; still others are in development, and that process will likely be hastened by increased public company reporting using interactive data.

Most commenters generally supported the required submission of interactive data,[98] but a significant number did not.[99] Some commenters that supported the required submission of interactive data believed it would improve the usefulness of financial information to companies and investors, and that mandated interactive data use would provide the incentives to drive sufficient investment in software to enable widespread adoption of interactive data.[100] Commenters that provide interactive data services stated that issuers would need to expend only modest cost and effort to comply with the proposed requirements.[101] One commenter stated that it expected that costs would fall quickly, especially for small companies, as interactive data became part of standard corporate accounting software packages.[102] Another commenter stated that, based on its experience in the voluntary program, costs would fall significantly for subsequent submissions.[103] One commenter stated that it expected that preparing financial information in interactive data format would result in less manual effort and provide the foundation to improve business processes.[104] Similarly, comments on our 2004 concept release and proposed rules in 2004 and 2007 generally supported interactive data and XBRL in particular.[105]

Many commenters objected to some or all of the requirements as proposed and suggested alternatives.[106] For instance, one commenter argued that implementing interactive data would add significant costs to purchase software, and pay for assistance and annual maintenance fees for that software.[107] This commenter believed that the costs of using interactive data outweighed the benefits. Several commenters also claimed that complying with the proposed requirements would not reduce the likelihood of human error or would not reduce costs for issuers.[108] In this regard, one commenter stated that the additional costs would make the U.S. market less attractive to foreign issuers.[109]

Some commenters that objected to the required submission of interactive data believed that interactive data would not

[94] Pursuant to the EDGAR Filer Manual, we will notify filers of the ability to file in IFRS on our Web site.

[95] Unlike the voluntary program, unless otherwise stated, an interactive data file will be required to be provided with the traditional format filing to which it relates. Companies will not be permitted to provide an interactive data file with a Form 8–K or 6–K unless it presents in interactive data format the revised or updated financial statements included in that Form 8–K or 6–K as described in footnote 74. *See* Part II.B.4 for a further discussion.

[96] For example, HTML currently is best suited for providing human-readable text.

[97] As further discussed below in Part II.C.3, however, interactive data generally will be deemed not filed for purposes of specified liability provisions.

[98] *See, e.g.*, letters from American Bar Association (ABA), American Institute of Certified Public Accountants (AICPA), Astoria Financial Corp. (Astoria), California Public Employees' Retirement System (CalPERS), EDGAR Online, Inc. (EDGAR Online), and Financial Executives International (FEI).

[99] *See, e.g.*, letters from Council of Institutional Investors (CII), Financial Services Information Division of the Software and Information Industry Association (FISD), EuropeanIssuers, Committee of Annuity Insurers (COAI), Valero Energy Corp. (VEC), and Wellpoint, Inc. (WellPoint).

[100] *See, e.g.*, letters from American Business Conference (ABC), AICPA, National City Corporation (National City), New York State Society of Certified Public Accountants (NYSSCPA), and United Technologies Corporation (UTC).

[101] *See, e.g.*, letters from Enterprise Compliance International (ECI), EdgarFilings, and UBMatrix, Inc.

[102] *See* letter from James Angel, PhD (Angel).

[103] *See* letter from PepsiCo., Inc.

[104] *See* letter from UTC.

[105] Release No. 33–8497 (Sept. 27, 2004) [69 FR 59111] (concept release); Release No. 33–8496 (Oct. 1, 2004) [69 FR 59098]; Release No. 33–8781 (Feb. 12, 2007) [72 FR 6676]. *See, e.g.*, letter from Deloitte regarding the voluntary program proposing release and letter from PR Newswire Association LLC regarding the concept release. We also note that participants in the voluntary program provided positive feedback with respect to possible required use of XBRL. For example, the vast majority of voluntary program participants that submitted responses and views to a questionnaire answered in the affirmative to the question ''Based on your experience to date, do you think it would be advisable for the Commission to continue to explore the feasibility and desirability of the use of interactive data on a more widespread and, possibly, mandated basis?'' See question V.f in the Interactive Data Voluntary Program Questionnaire available at *http://www.sec.gov/cgi-bin/XBRL_Questionnaire*.

[106] *See, e.g.*, letters from ABA, ACLI/AIA, AllState, Astoria, CSG, FEI, FirstEnergy, IBM, Intel, National City, Pfizer and SCS.

[107] *See, e.g.*, letter from Florida Power and Light Company (FPL).

[108] *See, e.g.*, letters from CSG, EEC, National City, Southern and VEC.

[109] *See* letter from EuropeanIssuers.

at this point improve the usefulness of financial information to analysts or investors.[110] Some of these commenters suggested that there was not a widespread demand for interactive data in the market, and that the Commission should allow market forces to provide incentives for more widespread voluntary implementation of interactive data.[111] Other commenters believed that before adopting this requirement a way needs to be developed to independently verify that financial data have been tagged accurately and ensure that information that is consistent with that in the traditional format filing is provided to investors.[112]

Although commenters generally favored XBRL as the most appropriate interactive data format, some commenters expressed concerns about XBRL itself or the manner in which it is proposed to be implemented in connection with the proposals. These concerns ranged from the availability of adequate software products [113] to the potential that customized taxonomy extensions could grow so common that they would directly interfere with the comparability of inter-company data.[114] A significant number of commenters suggested ways to facilitate interactive data tagging, including exposing for comment the Commission's maintenance and support agreement for XBRL,[115] as well as monitoring,[116] cataloging,[117] providing guidance on [118] and discouraging [119] extension use. We acknowledge these concerns and suggestions and believe that the rules as adopted will address many of them. Widespread, mandatory adoption is expected to foster a network effect and encourage development of cost reducing and improved analytical products. Additionally, we believe that the taxonomy will become even more comprehensive over time as common extensions are incorporated into the base in annual releases thus minimizing any interference that common extensions might have with data comparability.

B. Phase-in Under the New Rules

1. Overview

The new rules initially will require interactive data reporting only by domestic and foreign large accelerated filers that prepare their financial statements in accordance with U.S. GAAP and have a worldwide public common equity float above $5 billion as of the end of the second fiscal quarter of their most recently completed fiscal year.[120] The first required submissions for issuers that file on domestic forms will be for quarterly reports containing financial statements for a fiscal period ending on or after June 15, 2009. For calendar year companies, this requirement will first apply to their June 30, 2009 quarterly reports filed on Form 10–Q.[121]

Filers under the new rules will be required to submit their financial statements in an interactive data file using the list of tags for U.S. GAAP or IFRS as issued by the IASB, in either case as approved for use by the Commission. The submission also will be required to include any supporting files as prescribed by the EDGAR Filer Manual. Interactive data will be required for the entirety of their financial statements, although tagging of the footnotes and schedules at a deeper level of detail will be phased in the following year.

We did not propose, and are not adopting, a requirement that filers provide interactive data for their Management's Discussion and Analysis (MD&A), executive compensation, or other financial, statistical or narrative disclosure.[122] Many commenters supported this position.[123] Some commenters supported the idea of eventually tagging non-financial statement information because of its usefulness to investors,[124] while others expressed concern that variations among companies in executive compensation practices may not lend themselves to the development of standard tags [125] and should at the most be voluntary rather than required.[126] Another commenter supported the application of interactive data format to MD&A because of a belief that interactive data format for MD&A disclosures would be more useful to investors than detailed tagging of the footnotes to the financial statements.[127] This commenter recommended block tagging each section of the MD&A, with some level of detailed tagging for the numbers and tables. In deciding not to require the tagging of this information at this time, we agree with the commenters who believed that more experience with interactive data and a greater understanding of the costs and time associated with compliance with the requirements as proposed is needed before expanding the requirement to other information. We will continue to consider, however, the advisability of permissible optional or required interactive data for disclosures made outside a set of financial statements prepared in accordance with U.S. GAAP or IFRS as issued by the IASB or related financial statement schedules required under Commission rules.

The following tables identify the reports for which a filer would first be required to include interactive data for the company's financial statements according to the company's filing status.[128]

[110] *See, e.g.*, letters from BDO Seidman, LLP (BDO), CII, EuropeanIssuers, and VEC.

[111] *See, e.g.*, letters from EuropeanIssuers and Jay Starkman (Starkman).

[112] *See, e.g.*, CII and VEC.

[113] *See, e.g.*, letter from Robert Gilmore (Gilmore).

[114] *See, e.g.*, letter from EuropeanIssuers.

[115] *See, e.g.*, letters from Center for Audit Quality (CAQ), Deloitte Touche LLP (Deloitte), E&Y, and PricewaterhouseCoopers LLP (PWC).

[116] *See, e.g.*, letter from CFA.

[117] *See, e.g.*, letter from ABA.

[118] *See, e.g.*, letters from CFA Institute Centre for Financial Market Integrity (CFA), ConstellationEnergy (Constellation), Deloitte, FEI, Grant Thornton, Morgan Stanley, and Rivet Software Inc (Rivet).

[119] *See, e.g.*, letters from Grant Thornton, CFA, Morgan Stanley, and Rivet.

[120] Approximately 500 companies initially will be required to submit interactive data. Other companies, however, initially will be permitted to submit interactive data if they use U.S. GAAP or IFRS as issued by the IASB.

[121] For most U.S. companies and foreign private issuers filing on domestic forms, the periodic report to which this will first apply will be the June 30, 2009 quarterly report. For a company that files on domestic forms with a June 30 fiscal year, the first report will be the September 30, 2009 quarterly report. Foreign private issuers not using domestic forms that are in the first phase-in group will first provide interactive data in connection with their first Form 20–F or Form 40–F annual reports for the year ended on or after June 15, 2009.

[122] Tagging this information is neither required nor permitted under the amendments.

[123] *See, e.g.*, letters from ABA, General Mills (Gen. Mills), KPMG, Pfizer, Inc. (Pfizer) and The Society of Corporate Secretaries, and Governance Professionals (SCS).

[124] *See, e.g.*, letter from CalPERS.

[125] *See, e.g.*, letters from ABA, Johnson & Johnson (J&J), Pfizer, Gen. Mills, and SCS.

[126] *See, e.g.*, letter from UTC.

[127] *See, e.g.*, letter from National City.

[128] Transition reports that contain financial statements of the type and for the periods specified also will be required to be submitted in interactive data format under the new rules. These dates apply to the initial required interactive data disclosure; detailed tagging of the financial statement footnotes and schedules will not be required for an additional year.

Domestic and Foreign Large Accelerated Filers Using U.S. GAAP with Worldwide Public Common Equity Float above $5 Billion as of the End of the Second Fiscal Quarter of Their Most Recently Completed Fiscal Year.	Quarterly report on Form 10–Q or annual report on Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2009.
All Other Large Accelerated Filers Using U.S. GAAP	Quarterly report on Form 10–Q or annual report on Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2010.
All Remaining Filers Using U.S. GAAP	Quarterly report on Form 10–Q or annual report on Form 20–F or Form 40–F containing financial statements for a fiscal period ending on or after June 15, 2011.
Foreign Private Issuers with Financial Statements Prepared in Accordance with IFRS as Issued By the IASB.	Annual reports on Form 20–F or Form 40–F for fiscal periods ending on or after June 15, 2011.

2. Companies Covered by New Rules and Phase-in

The new rules will cover all companies that report either in U.S. GAAP, including smaller reporting companies and foreign private issuers that report in U.S. GAAP or, in the case of foreign private issuers, in accordance with IFRS as issued by the IASB.[129] On November 14, 2008, we issued a release proposing to allow certain domestic issuers to prepare financial statements in accordance with IFRS as issued by IASB.[130] The phase-in will require domestic and foreign large accelerated filers that report in U.S. GAAP and meet the minimum worldwide common equity float of greater than $5 billion to provide their initial interactive data submissions in year one of the phase-in period discussed above. All other U.S. GAAP filers that meet the definition of large accelerated filer will be required to provide their initial interactive data submissions in year two of the phase-in period. All remaining U.S. GAAP filers, including smaller reporting companies and companies not previously subject to periodic reporting requirements, will be required to provide their initial interactive data submissions in year three of the phase-in period.

Foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB will be required to provide their initial interactive data submissions in year three of the phase-in period.

The additional phase-in time for all but the largest accelerated filers is intended to permit companies to plan and implement their data tagging with the benefit of the experience of year one filers. It also is intended to enable us to monitor implementation and, if necessary, make appropriate adjustments during the phase-in period. With respect to foreign private issuers that report using IFRS as issued by the IASB, the additional phase-in time for these issuers is to allow greater development of the IFRS list of tags and our ability to accept filings using them.

Our multiyear experience with the voluntary program has helped us to better understand the extent to which a filer will incur additional costs to create and submit its existing financial disclosures in interactive data format. Based on that experience, we believe that the process of preparing an interactive data file will not impose a significant burden or cost. The voluntary program clearly demonstrated, although that program was limited to face financial statements only and not footnotes, that companies can, if they choose, tag their financial statements using currently available software without need of outside services or consultants; alternatively, they can rely on financial printers, consultants, and software companies for assistance, although they will retain ultimate responsibility for both their financial statements and their tagged data. As discussed in more detail in the cost-benefit analysis below,[131] we believe that first-year costs for a company will decrease in subsequent periods, particularly after detailed footnote tagging has been implemented. We also believe that these costs will be justified by interactive data's benefits. As with domestic registrants, we believe foreign private issuers that report in U.S. GAAP or prepare their financial statements in accordance with IFRS as issued by the IASB will be able to comply with the rules without incurring significant costs.

We expect that smaller companies, which generally are disproportionately affected by regulatory costs, also will be able to provide their reports in interactive data format without undue effort or expense. While interactive data reporting involves changes in reporting procedures, mostly in the initial reporting periods, we expect that these changes may provide efficiencies in future periods. As a result, there may be potential net savings to the filer, particularly if interactive data become integrated into the filer's financial reporting process. While we recognize that requiring interactive data financial reporting will likely result in start-up expenses for smaller companies, these expenses may be lower than those of larger filers, given that smaller filers tend to have simpler financial statements than larger companies, with fewer elements and disclosures to tag. In addition, we expect that both software and third-party services will be available to help meet the needs of smaller filers. We expect that the phase-in will foster the improvement and availability of inexpensive software and that a firmly established phase-in deadline could stimulate the development of such software. We also intend that the third-year phase-in for smaller reporting companies will permit them to learn from the experience of the earlier filers. It will also give them a longer period of time over which to spread first-year data tagging costs.

As noted above,[132] CIFiR issued its final report recommending that the Commission, over the long term, phase in the requirement that companies file financial statements using interactive data after the satisfaction of specified preconditions:

- Successful testing of the list of tags for U.S. financial statement reporting;
- The ability of reporting companies to file interactive data on the Commission's electronic filing system using the new list of tags for U.S. financial statement reporting; and
- The ability of the Commission's electronic filing system to provide an accurate human-readable version of the interactive data.

CIFiR recommended that we phase in financial statements using interactive

[129] As noted above, however, the new rules would not apply to investment companies registered under the Investment Company Act, business development companies, or other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X.

[130] *See* Release No. 33–8982 (Nov.14, 2008) [73 FR 70816].

[131] *See* Part V.

[132] *See* Part I.C above.

data by requiring the largest 500 domestic registrants,[133] as determined by the value of shares held by unaffiliated persons, to furnish (rather than file) interactive data for the face of their financial statements and, in block-tagged form,[134] the footnotes to the financial statements. The Final Report also recommends that, one year after we impose this requirement on the first group of registrants, we impose the same requirement on the remaining domestic registrants that fall within the definition of ''large accelerated filer.'' Finally, the Final Report recommends that, once the specified conditions have been satisfied and the second phase-in period has been implemented, we evaluate whether and when to require that the domestic large accelerated filers file rather than furnish financial statements in interactive data format, as well as the inclusion of all other reporting companies.

Several commenters suggested a later phase-in for all companies with start dates of the second half of 2009 and when these pre-conditions are met. These commenters generally reasoned that the additional time would help companies and service providers to prepare.[135]

We believe that sufficient progress has been made regarding each of CIFiR's preconditions, particularly with respect to the list of tags for U.S. financial statement reporting.[136] While admittedly there has been only limited experience with footnote tagging, the current list of tags for U.S. financial statement reporting has been in wide use by participants in the voluntary program in submissions to us.[137] We understand that the list also is being used by companies that are tagging their financial statements outside of the voluntary program, including experimenting with footnote tagging. The tags also will be updated in an expected January 2009 version. The updated list is expected to contain improvements such as the reflection of new accounting pronouncements. The Commission's IDEA system into which companies actually will submit interactive data has been effectively implemented and the ability of companies to do so is now established. Finally, the Commission has developed a viewer to provide an accurate human-readable version of interactive data. Both the filing and viewing capabilities are fundamentally enhanced versions of applications and processes that were already in place for the voluntary program.

We have also carefully considered the Committee's thoughtful recommendation, including the recommended phase-in of 500 initial companies and delayed consideration of non-accelerated and other filers until after two years. We are adopting a phase-in schedule similar to that suggested by the Committee.[138] However, instead of waiting until after the second year to determine whether to propose extending the applicability of the rules to all filers, the new rules will establish a phase-in for the remaining companies' required interactive data submissions that will begin in the third year. Based on comments received on the proposing release, participants' experience with the voluntary program and our consultations with filers, software providers and filing intermediaries, we believe the new rules will accelerate the improvement and availability of inexpensive software. This, in turn, should generate more options and assistance for non-accelerated filers in general and, in particular, smaller reporting companies and foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB in particular so that they could become proficient in the use of interactive data without undue burden.

One commenter expressed concern about whether the initial phase-in of 500 issuers would involve enough companies to create a ''network effect'' so users of financial reporting obtain the benefits of interactive data in peer comparisons that are most useful and likely to occur if many or all filers provide financial reporting using interactive data.[139] Although including a larger number of filers in the initial phase-in might increase the overall commercial and analytical value of the interactive data, which in turn would likely increase the supply of software for analyzing and presenting interactive data to analysts and investors, we believe a firm schedule for all U.S. GAAP and IFRS reporting companies to file their financial statements using interactive data can provide an incentive to stimulate the further development of interactive data-related software and services, while also affording most companies additional time to learn from the experience of others.

We also believe that concurrently adopting a phase-in for non-accelerated filers in general and, in particular, smaller reporting companies, and foreign private issuers using IFRS as issued by the IASB will establish an appropriate and measured timeline, which we will be able to monitor and, if necessary, reconsider during the first two years of the phase-in.

Commenters generally supported the proposed phase-in schedule. A substantial majority of the commenters, however, suggested that the initial submission required be a Form 10–Q for domestic companies.[140] Other commenters recommended that the phase-in commence with filings made for fiscal periods[141] or years[142] beginning on or after December 15, 2008 or fiscal years beginning after December 31, 2008,[143] as opposed to fiscal periods ending on or after December 15, 2008, as proposed. The reasons cited by commenters included assuring that issuers would submit an interactive data file for three Forms 10–Q before submitting it for a Form 10–K,[144] providing more time for issuers and service providers to prepare[145] and allowing bugs to be detected in quarterly filings before the more widely distributed annual filings.[146]

The commenters suggesting that the initial submission required be a Form

[133] The recommendation does not address foreign companies. We do not believe that whether a U.S. GAAP reporting company is domestic or foreign should determine the applicability of the rules, and therefore foreign companies using U.S. GAAP will be included in the phase-in schedule along with their domestic counterparts. As noted, foreign private issuers that prepare their financial statements in accordance with IFRS as issued by the IASB also will be subject to the interactive data submission requirements, although they would not be phased in until year three. We also note that the CIFiR Final Report does not expressly address filings other than Exchange Act periodic reports.

[134] ''Block'' text means that the entire footnote or other discrete item, such as a schedule or table, would be tagged as an individual element.

[135] *See, e.g.*, letters from National City, Safeway, Inc. (Safeway), and Emerson Electric Company (EEC).

[136] We are still working on the ability to use the IFRS list of tags with our system, but expect it to be operational by the time filers that report in accordance with IFRS are required to submit interactive data files. As will be provided in the EDGAR Filer Manual, we will publish on our Web site when EDGAR can support filings that use the IFRS list of tags.

[137] Since June, when it became available on EDGAR, approximately 60 companies have completed approximately 100 submissions using the new taxonomy.

[138] As previously noted, the worldwide public float cutoff of $5 billion will result in approximately 500 companies subject to the new rules in year one.

[139] *See* letter from CalPERS.

[140] *See, e.g.*, letters from ABA, American Council of Life Insurers/American Insurance Association (ACLI/AIA), AICPA, AllState Corp. (AllState), Credit Suisse Group (CSG), and Comcast Corp. (Comcast).

[141] *See, e.g.*, letter from Constellation.

[142] *See, e.g.*, letters from Comcast, Grant Thornton, and Pfizer.

[143] *See, e.g.*, letter from Astoria.

[144] *See, e.g.*, letters from Astoria and Comcast.

[145] *See, e.g.*, letter from Constellation.

[146] *See, e.g.*, letter from Grant Thornton.

10–Q for domestic issuers generally reasoned that it would be helpful to companies and service providers alike if they could begin with a relatively simple form. Many of these commenters suggested that the content requirements of quarterly reports would be less burdensome than those of annual reports and allow companies to allocate more staff to initial tagging and provide a tagged template on which to build for subsequent filings.[147] At least one commenter acknowledged, however, that despite the greater initial effort posed by tagging an annual report, the comprehensiveness of this report would cause companies to address most of the issues in quarterly reports.[148] Some service providers commented that although a complete annual report is more effort for preparers, creating a related XBRL document is about the same level of effort for both a Form 10–K and Form 10–Q (assuming the footnotes are block tagged) and that the biggest difference between the forms is the larger number of footnotes in a Form 10–K, resulting in a nominal number of additional hours of effort.[149] These commenters further stated that allowing the tagging of a Form 10–Q instead of a Form 10–K would delay the use and development of XBRL by issuers while providing no significant savings of time or money. Overall, the commenters that generally supported the proposed phase-in schedule took the view that companies and service providers would be ready and the date certain together with the significant number of issuers involved would encourage potential vendors of interactive data products and services to invest in the development and marketing of new and improved products and services.[150]

Many of the commenters that suggested that the phase-in be slower had concerns related to the potential costs and burden of detailed footnote tagging.[151] Some commenters suggesting a different initial phase-in period than what was proposed cited the ability to assess costs and technology advancements.[152] Commenters also were concerned that such detailed tagging could result in more company specific extensions than anticipated, which might not be comparable between companies and present information out of context.[153]

One commenter suggested that the phase-in should be faster for some filers, and specifically recommended that all large accelerated filers reporting in accordance with U.S. GAAP be made subject to the filing requirements in the first year, perhaps starting with a quarterly report.[154] Other commenters stated that not only is tagging relatively simple and inexpensive, but that we should endeavor to get more companies tagging sooner in order to enhance the value of information available and to provide further impetus for software development.[155]

Some commenters also suggested that the rules should exclude or defer foreign private issuers because of the possibility that there might be a disproportionate burden on these issuers.[156] As to foreign private issuers reporting in accordance with U.S. GAAP and who meet the criteria for the first phase-in period in particular, several commenters stated that these issuers could face extra burdens potentially due to less access to service provider help, language barriers, a need to address both the U.S. GAAP list of tags and, possibly, relatively soon after, the IFRS IASB list of tags (such as those issuers that have signaled an intention to report in accordance with IFRS as issued by the IASB and discontinue reporting in U.S. GAAP), and have a potential competitive disadvantage in comparison to foreign private issuers already reporting in accordance with IFRS as issued by the IASB who would not have to tag until the third year.[157] One commenter suggested treating all foreign private issuers the same and placing them on the later phase-in schedule (or at least the ones that have announced an intention to switch to IFRS as their sole reporting standard).[158]

One commenter expressed the desire that the phase-in not be delayed due to a possible conversion away from U.S. GAAP to IFRS. The commenter noted in this regard that it believed interactive data could facilitate such a conversion if similar items were to receive similar tags.[159] In light of the differing opinions among commenters, the experience of those in the voluntary program, the size and resources of those issuers in the first group, and our ability to monitor the experiences of those larger first phase companies, we believe that the phase-in period as modified from the proposal generally addresses the burden and expense concerns expressed by some commenters. In this regard, as noted above, a filer first will be required to submit an interactive data file for a Form 10–Q, Form 20–F or Form 40–F, as applicable and the phase-in period will begin later than proposed. We believe that this approach will provide issuers more time to prepare their financial statements and service providers more time to deliver adequate software to support them. The staff also will consider requests to defer the phase-in on a case-by-case basis for issuers with special circumstances, particularly where the filer is committed to switching its basis of reporting to IFRS as issued by the IASB. Issuers could make such requests by applying for a continuing hardship exemption under amended Rule 202 of Regulation S–T.[160]

With respect to Canadian issuers, one commenter stated that such issuers filing forms under the Multijurisdictional Disclosure System (MJDS) [161] should be able to submit interactive data regardless of whether reporting in U.S. GAAP in order to avoid placing such issuers at a competitive disadvantage to other issuers permitted or required to submit interactive data.[162] The commenter stated that if it would not be feasible to enable such issuers to submit interactive data using a Canadian GAAP taxonomy, then the Commission should permit such issuers to tag a U.S. GAAP reconciliation. Consistent with the commenter's concern and our solicitation of comment in the proposing release, we are adding MJDS Forms F–9, F–10 and 40–F to the forms we expressly proposed to be subject to the interactive data requirements in adopting the requirements. The rules will not, however, require or permit interactive data related to these MJDS forms to be submitted when the financial statements they contain are

[147] *See, e.g.*, letters from EEI, IBM, Pfizer, Southern Company (Southern), United States Steel Corporation (USS) and UTC.

[148] *See* letter from Association of the Bar of the City of New York (NYCBA).

[149] *See, e.g.*, letters from EDGAROnline and Rivet.

[150] *See, e.g.*, letters from PepsiCo., EDGAROnline and Rivet.

[151] *See, e.g.*, letters from ABA, Constellation, SCS and Intel. *See* Part .II.B.3.a below for a more detailed discussion of footnote tagging.

[152] *See, e.g.*, letters from EEI, Cisco Systems (Cisco), Comcast, and PPG Industries Inc. (PPG).

[153] *See, e.g.*, the letters from ABA, ACLI/AIA, CSG. FEI, IBM and Intel.

[154] *See* letter from Grant Thornton.

[155] *See, e.g.*, letters from UBMatrix, EDGAROnline.

[156] *See, e.g.*, letters from CSG, Nippon Keidanren (NK), Philips International B.V. (Philips) and Sullivan & Cromwell (S&C).

[157] *See, e.g.*, letters from Credit Suisse Group (CSG), NK, Philips, S&C, and J.P. Morgan (JPM).

[158] *See* letter from Philips.

[159] *See* letter from CFA.

[160] As further discussed in Part II.E, Rule 202 will permit an issuer to apply in writing for a continuing hardship exemption from the requirement to provide interactive data if the issuer cannot do so without undue burden or expense.

[161] Certain Canadian foreign private issuers file registration statements and annual reports under the MJDS, which permits eligible Canadian companies to use their disclosure documents prepared in accordance with Canadian requirements in filings with the Commission.

[162] *See* letter from Canadian Pacific Railway (CP).

prepared in accordance with Canadian GAAP or as a U.S. GAAP reconciliation. There is no taxonomy for Canadian GAAP or a U.S. GAAP reconciliation and, as a result, there is not sufficient tagging guidance to produce tags that would be comparable across companies using Canadian GAAP.

As proposed and as adopted, investment companies registered under the Investment Company Act, business development companies or other entities that report under the Exchange Act and prepare their financial statements in accordance with Article 6 of Regulation S–X will not be subject to the new rules. The one commenter to address the exclusion of these companies agreed with this approach and stated that the investment management financial reporting taxonomy is not sufficiently developed and that the degree of investor benefit from tagging that occurs in the case of other types of issuers is not present for investment company and similar issuers.[163]

3. Information and Documents Covered by the New Rules

a. Financial Statements, Footnotes, and Financial Statement Schedules

The rules will require interactive data tagging of a filer's complete financial statements and any required financial statement schedules.[164] As with the voluntary program, the new rules will require companies to provide the interactive data in an exhibit. Interactive data will be required for all periods included in the filer's financial statements.[165] As proposed and as adopted, the new rules will not, however, require interactive data submissions for other financial statements that may be required of filers, including those provided pursuant to Rules 3–05, 3–09, 3–14, and 3–16 of Regulation S–X.[166] This approach was generally supported by commenters.[167]

As with the voluntary program, the new rules will require that the line item descriptions and amounts presented on the face of the financial statements in the traditional format filing be the same as in the interactive data format. Also, the rules will prohibit partial presentation of face financial statements in interactive data format. For example, filers will not be permitted to exclude comparative financial information for prior periods.

Unlike the voluntary program, our new rules require companies using U.S. GAAP or foreign private issuers using IFRS as issued by the IASB to provide tagged data for the footnotes and schedules to the financial statements. The 2005 adopting release for the voluntary program stated that we recognized that technical issues made it difficult to tag the notes to the financial statements. We did, however, provide volunteers with the option of tagging the notes to the financial statements.[168] Since the time of the adopting release, the necessary list of tags has been completed and the available software has advanced sufficiently to require that the financial statement footnotes and schedules be included in the new rules.

The voluntary program adopting release recommended that if participants voluntarily provided footnotes in interactive data format, then they should provide enough detail so that the tagging would be of practical value to users. The release stated that a single tag for the entire group of footnotes in a filing would cover too much information to be useful to the user. We still believe that one tag for the entire group of footnotes would be confusing and provide little benefit. If filers tag each footnote separately, however, users will be able to compare footnote disclosure between periods and across filers while minimizing the burden on preparers. We are therefore adopting the requirement that footnotes be tagged using four different levels of detail:

(i) Each complete footnote tagged as a single block of text;

(ii) Each significant accounting policy within the significant accounting policies footnote tagged as a single block of text;

(iii) Each table within each footnote tagged as a separate block of text; and

(iv) Within each footnote, each amount (*i.e.*, monetary value, percentage, and number) separately tagged.

To allow filers time to become familiar with tagging footnotes, in each filer's first year of interactive data reporting, only level (i) will be required. All four levels will be required starting one year from the filer's initial required submission in interactive data. In year two, for the first filing required to have detailed tagging of footnotes and schedules, the filer will have an additional 30 days to submit the interactive data exhibit. This is similar to the grace period provided for a filer's first required filing with interactive data. Subsequent interactive data exhibits using all of the levels will be required at the same time as the rest of the related report or registration statement. We believe the 30 day grace period will help a filer comply with the more detailed tagging requirements.

The requirement that in the second year a filer tag separately each amount within a footnote (*i.e.*, monetary value, percentage, and number) should not affect a filer's decisions regarding what to disclose. We are aware of questions as to whether the contextual information or data elements chosen from the standard list of tags could potentially reveal information that the rest of the related registration statement or periodic report would not otherwise make known. However, we do not believe that the contextual information or data elements chosen should provide any additional substantive disclosure.

To clarify the intent of the interactive data requirements, new Rule 405 of Regulation S–T, that sets forth tagging requirements, includes an instruction that states that the rule requires a disclosure format, but does not change substantive disclosure requirements. As proposed and as adopted, the rules also state clearly that the information in interactive data format should not be more or less than the information in the ASCII or HTML part of the related registration statement or report.[169]

As briefly noted above, commenters provided a mix of views on the footnote tagging requirements we proposed. Many commenters objected to some or all of the requirements as proposed and suggested alternatives.[170] In terms of burden, a significant number of commenters objected, in particular, to level (iv) tagging in whole or part.[171]

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[163] *See* letter from the Investment Company Institute.

[164] As previously noted, new Rule 405 of Regulation S–T will directly set forth the basic tagging requirements and indirectly set forth the rest of the tagging requirements through the requirement to comply with the EDGAR Filer Manual. Consistent with new Rule 405, the EDGAR Filer Manual will contain the detailed tagging requirements.

[165] References in the rules to the financial statements of the filer or issuer also include financial statements of its predecessor to the extent they are included in the related registration statement or report pursuant to Rule 3–02 of Regulation S–X, Instruction 1 to Item 8 of Form 20–F or the requirements applicable to Forms F–9, F–10 or 40–F.

[166] 17 CFR 210.3–05, 17 CFR 210.3–09, 17 CFR 210.3–14, and 17 CFR 210.3–16. Additionally, pro forma financial statements prepared under Article 11 of Regulation S–X are not subject to the interactive data requirements.

[167] *See, e.g.*, letter from Deloitte.

[168] *See* Part II.E. of Release No. 33–8529 (Feb. 3, 2005) [70 FR 6556].

[169] *See* Preliminary Note 2 of Rule 405 of Regulation S–T.

[170] *See, e.g.*, letters from ABA, ACLI/AIA, AllState, Astoria, FEI, FirstEnergy, IBM, Intel, National City, and SCS.

[171] *See, e.g.*, letters from ABA, ACLI/AIA, AllState, Astoria, CSG, FEI, FirstEnergy, IBM, Intel, National City, Pfizer, and SCS.

Several of these commenters argued that detailed footnote tagging would require significant effort from the issuer and could be confusing because of the high number of company-specific extensions and the risk of inconsistency among filers due to varying footnote formats.[172] Other criticisms included assertions that the effort required would be greater than the Commission estimated,[173] overly burdensome [174] and duplicative,[175] would result in so many extensions that the information would not be comparable among issuers,[176] and would produce information that users inappropriately would take out of context.[177]

Other commenters reacted more favorably, with some suggesting alternatives to the proposed rules. For instance, a number of commenters recommended that the detailed tagging of footnotes be gradually phased in to provide more time for issuers to get acclimated to the process and for the development of standard taxonomies.[178] Other commenters suggested that the required detail tagging of footnotes should focus on the most useful and used footnote data rather on a broad array of data that would require issuers to apply thousands of additional tags for detailed financial and narrative information.[179] Similarly, another commenter suggested that detail tagging only be required as to the more standardized types of footnotes.[180]

While we are adopting the proposed requirement to tag separately each amount within a footnote (*i.e.*, monetary value, percentage, and number), we will permit, but not require, filers to tag, to the extent they choose, each narrative disclosure. We believe that adopting the footnote tagging requirements substantially as proposed strikes an appropriate balance between satisfying investors' needs and not imposing undue burden on issuers. We believe the block-text tagging required under levels (i) through (iii) will satisfy the needs of those who desire information within the context of an entire footnote or an entire table. We also believe that requiring the detail tagging of individual amounts but permitting the detail tagging of narrative disclosures within the footnotes as provided under level (iv) will satisfy the needs of those who desire to analyze specific pieces of information or data. Further, we believe that by permitting filers to choose whether and which elements to tag in the narrative disclosures of the footnotes and schedules, they are granted a degree of flexibility and relieved of the uncertainty as to which narrative elements to tag, some of which are placed into footnotes and schedules voluntarily. We also believe that not requiring detailed tagging of narratives would not result in the loss of information due to block text tagging. Finally, we believe that taxonomy and software advances, combined with the rules' grace period, will avoid placing an undue burden on issuers. We will, however, monitor the implementation of these amendments and, if necessary, consider making appropriate adjustments to the requirements.

Apart from footnote disclosures, filers may be required under existing financial reporting requirements to include certain supplementary financial statement schedules with their financial statements. The form and content of these schedules are governed by Article 12 of Regulation S–X.[181] The list of tags for U.S. financial statement reporting enables companies to tag individual facts in these financial statement schedules, or to block tag each entire schedule.

Filers also will be required to include with their interactive data any financial statement schedules prescribed by Article 12 of Regulation S–X. These financial statement schedules will be tagged using two different levels of detail; only the first level will be required in the first year. Both levels will be required starting one year from the filer's initial required submission in interactive data format. Similar in concept to the tagging approach adopted for the financial statement footnotes, the required levels of detail will be: (i) Each complete financial statement schedule tagged as a block of text; and (ii) each amount (*i.e.*, monetary value, percentage, and number) separately tagged. However, we will permit but not require each narrative disclosure in such schedule to be separately tagged to the extent desired by the filer.

A filer may restate its previously filed financial statements for the correction of an error and file an amendment to its registration statement, periodic report or transition report. Alternatively, a filer may revise its previously filed financial statements to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments, or a change in accounting principle and file a Form 8–K or 6–K or an amendment to a pre-effective registration statement. The new rules require a filer to provide revised interactive data at the same time it files the restated or revised traditional format financial statements as an exhibit to the registration statement or report containing those financial statements.[182] If a filer decides to change a tag it used previously that was not inappropriate at the time used, it would not be required to disclose the change.

b. Reports Covered by the New Rules

We are adopting the proposed requirement to submit interactive data for the filer's financial statements contained in periodic reports on Forms 10–Q, 10–K and 20–F and, in addition, extending the requirement to the Form 40–F annual report and to Forms 8–K and 6–K that contain revised or updated financial statements.[183] Under the new rules, filers also will be required to provide interactive data for transition reports on Forms 10–Q, 10–K, or 20–F.

We are extending the interactive data requirements to Form 40–F when used as an annual report because we believe that the effort required to satisfy the requirement and the benefits from doing so would be comparable to the effort and benefits associated with the other periodic reports to which the requirement will apply. In response to our solicitation of comment on whether to require interactive data in connection with Forms 40–F, one commenter urged us to at least permit filers to submit interactive data in order to avoid placing filers of that form at a competitive disadvantage.[184]

As discussed above, we are extending the interactive data requirements to Forms 8–K and 6–K that contain updated interim financial statements or financial statements that have been revised to reflect the effects of certain subsequent events. These financial statements typically are not filed as amendments to forms for which we proposed to require interactive data, but

[172] *See, e.g.*, the letters from ACLI/AIA, FEI, IBM, and Intel.

[173] *See, e.g.*, letter from SCS.

[174] *See, e.g.*, letter from Intel.

[175] *See, e.g.*, letter from FEI.

[176] *See, e.g.*, letter from ABA.

[177] *See, e.g.*, letter from CSG.

[178] *See, e.g.*, letters from Comcast, Constellation, EEI, Ernst & Young LLP (E&Y), Morgan Stanley, National Association of Real Estate Investment Trusts (NAREIT), and Southern.

[179] *See, e.g.*, letters from Intel, Morgan Stanley, and SCS.

[180] *See* letter from USS.

[181] *See* Rules 5–04 and 7–05 of Regulation S–X and Items 17 and 18 of Form 20–F.

[182] Revised interactive data will be required so that the financial information will be the same in both the traditional format filing and the interactive data file. If the financial statements are not revised in connection with an amended registration statement, periodic report, or transition report, the exhibit index will indicate that the interactive data file was already provided.

[183] Form 40–F may be filed by a Canadian company filing in accordance with the MJDS. Similar to Form 20–F, it may be used as an annual report or an Exchange Act registration statement.

[184] *See* letter from CP.

they provide timely financial information comparable to that contained in such forms and may be incorporated by reference into registration statements for which interactive data requirements generally apply.[185] In this regard, several commenters noted that registrants use Form 8–K to file financial statements that reflect changes for reasons other than to correct accounting errors.[186]

c. Registration Statements Under the Securities Act Covered by the Rules

We are adopting substantially as proposed a requirement that, subject to the phase-in period described above, registration statements filed under the Securities Act,[187] include interactive data when financial statements are included directly in the registration statement, rather than being incorporated by reference. This requirement will apply to the issuer's financial statements for all periods included in the registration statement as required by Regulation S–X and our other rules. As proposed, the rules would apply from the first filing of a registration statement. The rules as adopted, however, require that interactive data be submitted only after a price or price range has been determined and any time thereafter when the financial statements are changed. We believe analysts, investors, the public, and others will benefit from the enhanced ability of interactive data to locate and compare financial data included in registration statements. Further, under the new rules, interactive data will be required for the acquiring company, the filer, but not for the company being acquired, in the context of a business combination.

Some commenters opposed requiring the submission of interactive data with registration statements for initial public offerings under the Securities Act.[188] Some of these objections included the burdens for newly public companies.[189] However, a number of commenters favored requiring interactive data for initial public offering registration statements, other Securities Act registration statements or both.[190] Some commenters recommended that interactive data be required to be submitted only after the registration statement becomes effective, given the effort in preparing an initial public offering and the frequency with which initial public offering efforts never come to fruition.[191]

We believe that the interactive data requirements for Securities Act registration statements in general and, in particular, as limited to filings only after a price or price range has been determined and any time thereafter when the financial statements are changed, strike an appropriate balance between the alternatives of requiring interactive data submissions with each pre-effective amendment or waiting until a registration statement has been declared effective. In our experience, most issues related to the staff's review of offerings typically are resolved or near resolution by the time a price range is determined, and, as a result, there typically would be relatively few changes to the financial statements contained in additional amendments. As a result, issuers would be required to tag information that likely is in substantially final form. Consequently, the information would be useful to investors and issuers would be unlikely to need to revise the information significantly in a way that would trigger multiple submissions of interactive data. As each submission would be tagged to indicate that the information in the submission has been revised, we believe investors should be able to monitor changes in the interactive data efficiently. Further, the rules as adopted provide that a company's first filing to be subject to the interactive data requirement would be a quarterly report or, for a foreign private issuer not required to file quarterly reports, an annual report. Accordingly, interactive data exhibits will not be required for initial public offerings.

d. Registration Statements Under the Exchange Act Covered by the Rules

We are not adopting a requirement to submit interactive data for the financial statements contained in registration statements under the Exchange Act on Forms 10, 20–F and 40–F. Although we only expressly proposed to require interactive data in connection with Securities Act registration statements, the proposing release solicited comment on whether to require interactive data for the financial statements in Forms 40–F and in registration statements under the Exchange Act on Forms 10 and 20–F.

One commenter suggested waiting in order to evaluate experience with interactive data submission before requiring submission of Exchange Act registration statements.[192] Another commenter stated that the interactive data requirements should apply to Canadian issuers that report in accordance with U.S. GAAP and, ultimately, IFRS as issued by the IASB.[193] The rules as adopted will not require interactive data files to be submitted as an exhibit to Forms 10, 20–F or 40–F when used as Exchange Act registration statements. However, a filer is permitted to voluntarily submit an interactive data exhibit with these registration statements.

4. Initial Filing Grace Period

As noted above, interactive data will be required at the same time as the rest of the filing to which it relates. However, each company's initial interactive data submission, regardless of filing type, will have a 30 day grace period, and therefore will be permitted as an amendment to a:

- Periodic report on Form 10–K, 20–F, 40–F or 10–Q within 30 days after the earlier of the due date or filing date of the related report;
- Securities Act registration statement within 30 days after the filing date of the price or price range as part of the related registration statement; [194] or
- Report on Form 8–K or 6–K that contains revised or updated financial statements that have been revised to reflect a subsequent event rather than the correction of an error within 30 days after the filing date of the related report.

In addition, as noted above, in year two for the first filing that is required to have footnotes and schedules tagged using all levels of detail, the interactive data exhibit will be required within 30 days after the due date or filing date of the related registration statement or periodic, current or transition report or Form 6–K, as applicable.

In the voluntary program, filers were permitted to provide the interactive data at the time of filing or at any later time,

[185] Issuers would not be required or permitted to submit an interactive data exhibit to a Form 8–K or 6–K under any circumstances other than those specified. *See* note 74 above.

[186] *See, e.g.*, letters from Deloitte, E&Y, and KPMG LLP (KPMG).

[187] The requirement will apply to registration statements under the Securities Act on Forms S–1, S–3, S–4, F–9, F–10, S–11, F–1, F–3, and F–4. This includes registration statements for annuity contracts that are filed on Forms S–1 and S–3. As proposed, however, the requirement that we are adopting will not apply to registration statements on Form N–3, N–4, or N–6, which are used to register variable annuity contracts and variable life insurance policies.

[188] *See, e.g.*, letters from ABC, National City, NYCBA, and Gary Purnhagen (Purnhagen).

[189] *See, e.g.*, letter from ABC.

[190] *See, e.g.*, letters from AICPA, Grant Thornton, PricewaterhouseCoopers LLP (PWC), CAQ, CalPERS, CFA, UTC, Morgan Stanley, and E&Y.

[191] *See, e.g.*, letters from BDO, CAQ, and PWC.

[192] *See* letter from UTC.

[193] *See* letter from EDGAROnline.

[194] The 30 day grace period would begin for a Securities Act registration statement once the price or price range is filed as part of it because it is at that time the interactive data filing requirement becomes applicable.

without a deadline.[195] We believe that, consistent with our view regarding the potential value of widespread market use of the interactive data, companies should be required to provide the interactive data at the time the registration statement or report is filed or required to be filed, whichever is earlier. We do not believe this timing requirement will place undue pressure on filers as experience with tagging financial statements grows and software and taxonomies develop. We believe, for example, based on our experience with the voluntary program, that the time period for the quarterly or annual report is sufficient for filers to convert their ASCII or HTML financial statements into interactive data format and that the initial grace periods help to alleviate concerns over timing burdens.

Commenters overwhelmingly supported a 30 day grace period for the initial submission and initial detail tagged footnote submission of interactive data and many supported a 30 day grace period for additional submissions during the phase-in and, in some cases, beyond.[196]

Some commenters suggested that the grace period apply either for all interactive data submissions during the first two years of the phase-in period,[197] or for every submission made during the entire phase-in period.[198] These commenters generally reasoned that during the time specified, companies and service providers still would be familiarizing themselves and developing expertise related to the tagging process and, as a result, would need time to complete the tagging process. Some of those that supported additional grace periods noted that the tagging process will be an additional step to financial statement preparation for years to come and that it will take time to integrate the interactive data process with the financial statement preparation process.[199] One commenter noted that the grace period following the filing of a Form 10–K offers little relief for smaller companies due to the number of filings prepared shortly thereafter. Specifically, this commenter noted that at many smaller companies, the staff responsible for the preparation of a Form 10–K immediately turn their time and attention to the preparation of the company's proxy statement after filing the Form 10–K. The commenter stated that a Form 10–Q is not followed by a similar series of reporting obligations, so a grace period following this report is consequently more helpful in assisting companies avoid excessive expense and burden.[200]

A few commenters suggested a grace period for submissions after the phase-in period. Some stated that technical difficulties and the limited availability of support services would necessitate the permanent or temporary extension of a grace period and proposed, on an on-going basis after the initial phase-in period, that interactive data files be due within 4 or more days after the related official filing is filed. Further, these commenters believed that this type of extension would not ultimately impair the usefulness of interactive data while moving the tagging procedures out of the financial reporting preparation timeframe but still providing it to investors in a timely fashion.[201] However, other commenters were concerned that a grace period beyond the periods proposed would diminish the usefulness of interactive data submitted beyond the due date of the related official filing.[202]

We acknowledge all of these concerns and suggestions, and while we are adopting the grace periods substantially as proposed, we are deferring the start of the phase-in which we believe may help to alleviate potential burdens by giving more time to prepare the initial submission. We also believe that the eventual dropping of the grace period after the initial submissions will help to make the interactive data files more useful and relevant to investors by requiring the submissions at the same time as the related official filing.

Many commenters suggested that grace period submissions be filed as exhibits to Form 8–K or 6–K rather than as exhibits to amendments to Exchange Act periodic reports, so as to avoid negative connotations associated with the filing of an amendment.[203] One commenter even suggested the creation of new forms for these amendments to distinguish them from substantive amendments to periodic reports.[204] We acknowledge these concerns, but note that grace period submissions filed with amended periodic reports need contain only the relevant interactive data as an exhibit and therefore there should not be any confusion that the amended report is being filed for any other reason. In this regard we note that Rule 12b–15 under the Exchange Act[205] generally provides that any amendment to a filing that required a certification must contain another certification; however, we clarify that, consistent with the exclusion of interactive data from the disclosure certification requirements discussed in part II.C.4 below, an amendment whose sole purposes is to submit interactive data as an exhibit is not subject to the certification requirements of Rule 12b–15 under the Exchange Act. We therefore adopt the rules as proposed as they relate to submitting interactive data as part of an amendment to the form containing the related traditional format financial statements.

5. Web Site Posting of Interactive Data

We believe interactive data, consistent with our new rules, should be easily accessible for all investors and other market participants. As such disclosure becomes more widely available, advances in interactive data software, online viewers, search engines and other Web tools may in turn facilitate improved access to and usability of the data, promoting its awareness and use. Encouraging widespread accessibility to filers' financial information furthers our mission to promote fair, orderly, and efficient markets, and facilitate capital formation. We believe Web site availability of the interactive data will encourage its widespread dissemination, thereby contributing to lower access costs for users. We therefore are requiring, generally as proposed, that each filer covered by the new rules provide the same interactive data that it will be required to provide to the Commission on its corporate Web site, if it has one, on the earlier of the calendar day it filed or was required to file the related registration statement or report, as applicable.[206] The interactive

[195] The voluntary program permits filers to provide financial information in interactive data form as an exhibit to a report on Form 8–K or Form 6–K when the related traditional format financial statements appear in a registration statement or periodic report. The new rules, however, will require that interactive data be provided as an exhibit to the registration statement or periodic report that contains the related traditional format financial statements.

[196] *See, e.g.*, letters from ACLI/AIA, AICPA, AllState, Astoria, CNW Group (CNW), Comcast, Constellation, and EEI.

[197] *See, e.g.*, letters from Constellation, EEI, and IBM.

[198] *See, e.g.*, letters from AllState, Astoria, Comcast, Foley & Lardner (Foley), Pfizer, and UBmatrix.

[199] *See, e.g.*, letters from FEI and SCS.

[200] *See* letter from ABA.

[201] *See, e.g.*, letters from AllState, EEI, SCS, and Southern.

[202] *See, e.g.*, letters from CFA and EDGAR Online.

[203] *See, e.g.*, letters from AICPA, Constellation, Institute of Management Accountants (IMA), NAREIT, Purnhagen, and Teva Pharmaceutical Industries Limited (Teva).

[204] *See* letter from IBM.

[205] 17 CFR 240.12b–15.

[206] New Rule 405 of Regulation S–T contains the Web site posting requirement. We also are providing, however, that Web site posting of the interactive data will not be required until the end of any applicable grace period that applies to the submission of the interactive data to the Commission. Similarly, we are providing that Web

Continued

data should be accessible through the issuer's Web site address the issuer normally uses to disseminate information to investors.[207] Finally, the interactive data will be required to be posted for at least 12 months, which is consistent with issuers' full one year reporting cycle.

We believe that access to the interactive data on corporate Web sites will enable search engines and other data aggregators to more quickly and cheaply aggregate the data and make them available to investors because the data will be available directly from the filer, instead of through third-party sources that may charge a fee. It could also transfer reliability costs of data availability to the public sector by reducing the likelihood that investors cannot access the data through the Commission's Web site due to down-time for maintenance or to increased network traffic. We also believe that availability of interactive data on corporate Web sites will make it easier and faster for investors to collect information on a particular filer if the interactive data is on the filer's Web site already, rather than if investors would be required to visit separately (for example, by hyperlink) and search the Commission's Web site for information, particularly if the investor is already searching the issuer's Web site. To help further our goals of decreasing user cost and increasing availability, we will not allow companies to comply with the Web posting requirement by including a hyperlink to the Commission's Web site.

We believe this requirement will be consistent with the increasing role that corporate Web sites perform in supplementing the information filed electronically with the Commission by delivering financial and other disclosure directly to investors. We also believe that this requirement can provide an incentive for corporations to add content to or otherwise enhance their Web sites, thereby improving investor experience. For example, we note that since 2003 issuers with corporate Web sites have been required to post on their Web sites, directly or by hyper linking to a third-party Web site such as the Commission's Web site, beneficial ownership reports filed with respect to their securities on Forms 3, 4, and 5. We also note that many companies provide on their Web sites access to their periodic reports, proxy statements, and other Commission filings.[208] The new rules will expand such Web site posting by requiring companies with Web sites to post their interactive data as well.[209]

Commenters had mixed views on the proposed Web site posting requirement. Some commenters stated that it would be appropriate for a company to post interactive data on its Web site because, for example, many users of financial statements access such types of information through corporate Web sites.[210] Other commenters objected to the Web site posting requirement, citing reasons including cost,[211] lack of investor benefit,[212] and facilitating use of information out of context.[213] Finally, some commenters addressed posting details such as when the interactive data must be posted and for how long it must remain accessible.

We believe that issuers that already have corporate Web sites can post interactive data at a reasonable cost[214] and that such posting can benefit investors by facilitating their access to interactive data[215] and, as a result, facilitating their automated parsing and analysis of financial information. Investors and analysts routinely parse information out of filed financial statements, whether in paper or electronic format. Interactive data merely facilitates the parsing.[216] In this regard, an issuer that wishes to provide access to context beyond the posted interactive data would be free to indicate on its Web site where a user could access the Commission filing to which the interactive data is an exhibit. Similarly, an issuer could provide access to the remainder of the filing directly on its Web site or by hyperlink to the Commission's Web site.

Several commenters suggested that issuers not be required to post interactive data on corporate Web sites on the same day they are submitted to the Commission because that would be too burdensome.[217] Commenters suggested grace periods to post such data such as 24 hours[218] or, in the case of foreign private issuers, two business days[219] after the related form has been filed with the Commission. As proposed, issuers would have been required to post the interactive data by the end of the business day on the earlier of the date the interactive data is submitted or is required to be submitted to the Commission. In order to make it easier for issuers to satisfy the posting requirement by providing several more hours in which to comply but still have the posted information available in a timely manner, the new rules, as adopted, will require posting by the end of the calendar rather than business day specified.

One commenter recommended that the Commission clarify the length of time that issuers would be required to keep interactive data posted.[220] As a result, we are revising the proposed rules to require that an issuer keep the information posted for at least 12 months. As we stated in connection with adopting a 12-month posting period for Forms 3, 4 and 5,[221] we believe that such a period strikes an appropriate balance between the issuer effort needed to post and the investor benefit from having access to the posted material through the additional source

site posting of the interactive data will not be required before submission of the interactive data when submission of the data is delayed in accordance with and during the term of any applicable hardship exemption provided under Rule 201 or 202 as proposed to be revised. Revisions to Rules 201 and 202 are more fully discussed below in Part II.E.

[207] If the issuer has a corporate Web site but does not normally disseminate information to investors through its Web site, it should provide access to the interactive data through a location on its Web site that it reasonably believes will facilitate user access to the forms. We took a similar approach to Web site posting location and 12 month time frame in connection with requiring that issuers with corporate Web sites post on their Web sites beneficial ownership reports filed with respect to their securities on Forms 3, 4 and 5 under Section 16(a) of the Exchange Act. *See* Section 16(a)(4)(C) [15 U.S.C. 78p(a)(4)(C)], Rule 16a–3(k) [17 CFR 240.16a–3(k)] and Release No. 33–8230 (May 7, 2003) [68 FR 25788].

[208] Companies filing registration statements and accelerated filers and large accelerated filers in their periodic reports are required to disclose whether or not they make available free of charge on or through their Web site, if they have one, their annual report on Form 10–K, quarterly reports on Form 10–Q, current reports on Form 8–K, and amendments to those reports. Companies that do not make their reports available in that manner also must disclose the reasons they do not do so and whether they voluntarily provide electronic or paper copies of their filings free of charge upon request. *See* Item 101(e) of Regulation S–K.

[209] As further discussed in Part II.E, under the new rules a company that fails to post its interactive data as required will be deemed ineligible to use short form registration Forms S–3, S–8, and F–3 and will be deemed not to have adequate public information available for purposes of Rule 144(c)(1) unless and until it posted.

[210] *See, e.g.*, letters from FEI, CFA and UTC.

[211] *See, e.g.*, letters from IBM and Starkman.

[212] *See, e.g.*, letters from Starkman and VEC.

[213] *See, e.g.*, letters from ABA and SCS.

[214] *See* Part IV.

[215] One commenter stated that an issuer should be able to satisfy its posting requirement through a hyperlink. *See* letter from IBM. Similarly, another commenter suggested dropping the posting requirement because the information would be available on the Commission's Web site and the requirement would be difficult to monitor. *See* letter from E&Y. We believe, however, that search engines and other data aggregators might be better able to access the posted information directly from issuers' Web sites.

[216] We believe that parsing information in a filing is useful but we continue to emphasize the need to evaluate the entirety of a filing.

[217] *See, e.g.*, letters from Foley, Liberty Global, Inc. (LGI), NYCBA, Southern, and Teva.

[218] *See, e.g.*, letter from LGI.

[219] *See, e.g.*, letter from Teva.

[220] *See* letter from ABA.

[221] Rule 16a–3(k) [17 CFR 240.16a–3(k)].

of the issuer's Web site. In this regard, we note that the interactive data would be available indefinitely on the Commission's Web site.[222]

C. Accuracy and Reliability of Interactive Data

1. Voluntary Program

Data must be accurate to be useful to investors. To help assure the accuracy of interactive data in the voluntary program, the data, upon receipt by our electronic filing system, undergoes a validation separate from the normal validation of the traditional format filing.[223] Potential liability also helps ensure the accuracy and reliability of the data. Although the voluntary program has provided limited protections from liability under the federal securities laws [224] and excluded interactive data from being subject to officer certification requirements under Exchange Act Rules 13(a)–14 and 15d–14,[225] interactive data in the voluntary program are subject to the anti-fraud provisions of the federal securities laws. The voluntary program also encourages participants' efforts to create accurate and reliable interactive data that is the same as the corresponding disclosure in the traditional electronic format filing by providing that a participant is not liable for information in its interactive data that reflects the same information that appears in the corresponding portion of the traditional format filing, to the extent that the information in the corresponding portion of the traditional format filing was not materially false or misleading. To further encourage reasonable efforts to provide accurate interactive data, the voluntary program treats interactive data that do not reflect the same information as the official version as reflecting the official version if the volunteer meets several conditions. The volunteer must have made a good faith and reasonable attempt to reflect the same information as appears in the traditional format filing and, as soon as reasonably practicable after becoming aware of any difference, the volunteer must amend the interactive data to cause them to reflect the same information.[226]

2. Use of Technology To Detect Errors

Complete, accurate, and reliable financial statements and other disclosures are essential to investors and the proper functioning of the securities markets. Our new requirement to submit interactive data with registration statements and reports is designed to provide investors with new tools to obtain, review, and analyze information from public filers more efficiently and effectively. To satisfy these goals, interactive data must meet investor expectations of reliability and accuracy. Many factors, including companies' policies and procedures as buttressed by incentives provided by the application of technology by the Commission, market forces and the liability provisions of the federal securities laws, help further those goals.

Building on the validation criteria referenced above for interactive data in the voluntary program, we plan to use validation software to check interactive data for compliance with many of the applicable technical requirements and to help the Commission identify data that may be problematic. For example, we expect the Commission's technology to:

- Check if required conventions (such as the use of angle brackets to separate data) are applied properly for standard and, in particular, non-standard special labels and tags;
- Identify, count, and provide the staff with easy access to non-standard special labels and tags; [227]
- Identify the use of practices, including some the XBRL U.S. Preparers Guide contains, that enhance usability; [228]
- Facilitate comparison of interactive data with disclosure in the corresponding traditional format filing;
- Check for mathematical errors; and
- Analyze the way that companies explain how particular financial facts relate to one another.[229]

The availability of interactive data to the staff may also enhance its review of company filings. After the FDIC required submission of interactive data, it reported that its analysts were able to increase the number of banks they reviewed by 10% to 33%, and that the number of bank reports that failed to fully meet filing requirements fell from 30% to 0%.[230]

We believe analysts, individual investors and others outside the Commission that use the interactive data submitted to us also will make use of software and other tools to evaluate the interactive data and, as a result, market forces will encourage companies to provide interactive data that accurately reflects the corresponding traditional format data in the traditional format filing. For example, the use of non-standard special labels or tags (extensions) could introduce errors, but we expect the open source and public nature of interactive data and the list of tags for U.S. financial statement reporting would enable software easily to detect and identify any modifications or additions to the approved list of tags. Based on our knowledge of the existing software market, we believe such software and other technology will be widely available for free or at reasonable cost. Investors, analysts, and other users therefore would be able to identify the existence and evaluate the validity of any such modifications or additions. We also anticipate that companies preparing their interactive data and investors, analysts, and other users will use such devices to search for and detect any changes made to the standard list of tags. The ability of analysts and other users to discover mistakes or alterations not consistent with the desired use of interactive data may give filers an additional incentive to prepare such data with care and promptly to correct any errors.

3. Application of Federal Securities Laws

An interactive data file generally will be subject to the federal securities laws in a modified manner similar to that of the voluntary program under new Rule 406T if the filer submits the interactive data file within 24 months of the time the filer first is required to submit

[222] *See* Release No. 33–8230 (May 7, 2003) [68 FR 25788].

[223] If the traditional format filing meets its validation criteria, but any interactive data fail their own validation criteria, all interactive data are removed and the traditional format filing is accepted and disseminated without the interactive data file.

[224] Rule 402 under Regulation S–T provides these liability protections.

[225] *See* Rules 13a–14(f) [17 CFR 240.13(a)–14(f)] and 15d–14(f) [17 CFR 240.15d–14(f)].

[226] 17 CFR 232.402(b).

[227] For example, if a company uses the word ''liabilities'' as the caption for a value data tagged as ''assets,'' the software would flag the filing and bring it to the staff's attention. In contrast, if the company used ''Total Assets'' or ''Assets, Total,'' the software would identify the use of these terms as a low risk discrepancy.

[228] The XBRL U.S. Preparers Guide, available from the XBRL U.S. Web site, provides guidance to facilitate preparing information in the interactive data format.

[229] The technology used to show these relationships is known as a ''linkbase.'' Linkbases are part of an XBRL taxonomy and serve one of two primary purposes: (1) To define additional information about a particular concept (for example to express the definition for Inventory or to express the authoritative references for Inventory); and (2) to express relationships between different concepts (for example Inventory adds up to Current Assets or Inventory appears after Accounts Receivable on the balance sheet, but before Prepaid Expenses). The Commission will seek to ensure that linkbases not only comply with technical requirements but also are not used to evade accounting standards.

[230] These bank reports require information that is more structured and less varied than the information we will require. As a result, the FDIC's efficiency gains from the use of interactive data likely would be greater than ours.

interactive data files [231] but no later than October 31, 2014.[232] Rule 406T provides that during the time a filer's interactive data files are treated in this modified manner, they will be:

- Subject to specified anti-fraud provisions [233] except in connection with a failure to comply with the tagging requirements that occurs despite a good faith attempt to comply and is corrected promptly after the filer becomes aware of the failure;
- Deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act and not otherwise subject to liability under these sections;
- Deemed not filed for purposes of Section 18 of the Exchange Act or Section 34(b) of the Investment Company Act and not otherwise subject to liability under these sections; and
- Deemed filed for purposes of (and, as a result, benefit from) Rule 103 under Regulation S–T.[234]

In regard to correcting an interactive data file, we are adding the term ''promptly'' to the list of defined terms in Rule 11 under Regulation S–T. Rule 11 defines ''promptly'' as ''as soon as reasonably practicable under the facts and circumstances at the time.'' The definition is followed by a non-exclusive safe harbor. The safe harbor generally provides that a correction made by the later of 24 hours or 9:30 a.m. on the next business day after the filer becomes aware of the need for the correction is deemed promptly made. If a filer fails to correct within the safe harbor timeframe, the filer still may have corrected promptly depending on the applicable facts and circumstances.

Despite the modified treatment of interactive data files under the federal securities laws, a filer would be subject to actions under circumstances where the protections of new Rule 406T do not apply. For example, the Commission could bring an action against a filer under Section 13(a) of the Exchange Act if the filer submits an interactive data file with a periodic report and the interactive data file fails to comply with the tagging requirements despite a good faith attempt, where the filer fails to correct the interactive data file promptly after it discovers the failure. On the other hand, the Commission would not be able to bring an action against a filer under Sections 17(a)(2) and (3) under the Securities Act if the filer submits an interactive data file with a Securities Act registration statement if the interactive data file fails to comply despite a good faith effort but the filer acted negligently.

New Rule 406T differs from proposed Rule 406 primarily by omitting reference to interactive data in viewable form and applying only for a specified time.

We believe that interactive data in viewable form are best addressed in relation to interactive data files and traditional concepts of liability. Interactive data in viewable form that are displayed on the Commission's Web site will reflect the related interactive data file and, as a result, such interactive data in viewable form should be treated in the same manner as the related interactive data file in regard to a filer's failure to correctly tag an interactive data file that results in a failure of the interactive data in viewable form to reflect the related official filing. Interactive data in viewable form that are displayed on other Web sites would be subject to general anti-fraud principles applicable to republication of another person's statements.[235] Consistent with traditional concepts of liability, a filer would incur no additional liability for a failure that occurs in both an interactive data file and the related interactive data in viewable form.

We believe that limiting the modified application of the federal securities laws to a specified period improves the balance between avoiding unnecessary cost and expense and encouraging accuracy in regard to interactive data because it recognizes that issuers and service providers likely will grow increasingly skilled at and comfortable with the tagging requirements.

In the proposing release, the Commission sought comment on modified treatment of interactive data under the federal securities laws. Commenters overwhelmingly supported limiting liability,[236] with a fair number of commenters supporting the proposed approach, and a fair number suggesting that the proposed approach be made less stringent. One expressed the concern that the proposed approach should be made more stringent.[237] A significant number stated that the regulatory text was confusing or unclear, especially as to viewable interactive data. Finally, a few commenters made other liability-related suggestions, sought clarification of the liability applicable to situations not intended to be addressed expressly by the proposed rules or expressed other concerns.

Commenters supporting the proposed approach generally supported having interactive data files be deemed furnished rather than filed.[238] New Rule 406T is consistent with the proposals and these comments because it deems interactive data files not filed for purposes of various provisions under the federal securities laws.

Commenters suggesting that the proposed approach be made less stringent did so explicitly and implicitly. For example, while the proposals generally provided that an interactive data file would be protected from federal securities law liability if the issuer made a good faith attempt to prepare it correctly, one commenter criticized the good faith requirement explicitly [239] and others did so implicitly by stating there should be no liability where there is no affirmative intent to mislead.[240] The commenter that criticized the good faith requirement explicitly stated that it would be problematic because there would be litigation over its fulfillment. Upon further reflection and in light of

[231] The 24-month period would be exclusive of a grace period. For example, a large accelerated filer first required to submit interactive data for financial statements in a Form 10–Q for the fiscal period ended June 30, 2009, would be required to submit the interactive data by 30 days after the Form 10–Q's August 10, 2009 due date but its 24-month period would end August 10, 2011.

[232] In regard to liability and also similar to the voluntary program, we are adopting as proposed an exclusion for interactive data files from the officer certification requirements of Rules 13a–14 and 15d–14 of the Exchange Act. That exclusion is discussed further below in Part II.C.4.

[233] The specified anti-fraud provisions are Section 17(a)(1) of the Securities Act [15 U.S.C. 77q(a)(1)], Section 10(b) [15 U.S.C. 78j(b)] of Rule 10b–5 [17 CFR 240.10b–5] under the Exchange Act and Section 206(1) [15 U.S.C. 80b–6(1)] of the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*].

[234] Interactive data files will be deemed filed for purposes of Rule 103 under Regulation S–T [17 CFR 232.103] and, as a result, the issuer will not be subject to liability for electronic transmission errors beyond its control if the issuer corrects the problem through an amendment as soon as reasonably practicable after the issuer becomes aware of the problem. Interactive data files will be deemed filed for purposes of Rule 103 regardless of whether they are eligible for the modified treatment provided by Rule 406T at the time submitted. Rule 406T expressly provides that interactive data files are deemed filed for purposes of Rule 103 to remove any negative inference that otherwise might be drawn due to the fact that Rule 406T deems interactive data files to be not filed for other specified purposes.

[235] These general anti-fraud principles include the concepts of aiding and abetting and control person liability. In addition, liability for interactive data in viewable form displayed by third parties would depend in part on whether that information is attributable to the filer. *See, e.g.*, Release No. 34–58288 (Aug. 7, 2008) at Section II.B.2.

[236] *See, e.g.*, letters from ABA and IBM.

[237] *See* letter from CII.

[238] *See, e.g.*, letters from AICPA, Deloitte, NYCBA, SavaNet LLC (SavaNet), and UTC.

[239] *See* letter from S&C.

[240] *See, e.g.*, letters from Angel, Intel, LG, SCS, Southern, and USS.

these comments, new Rule 406T requires a ''good faith attempt'' to comply with the tagging requirements rather than the proposed ''good faith and reasonable attempt.'' We believe that omission of the reference to ''reasonable'' should not result in a lesser degree of effort by issuers but should help to avoid litigation over fulfillment of the requirement. As discussed in detail above, under new Rule 406T additional liability protection occurs when a filer makes a good faith attempt and corrects any failure to comply with the tagging requirements promptly after the filer becomes aware of the failure. In this context, we interpret ''good faith'' as not having the scienter required for purposes of the anti-fraud provisions.[241] In a further effort to help clarify what constitutes adequate effort for purposes of receiving additional liability protection and as also discussed in detail above, we have adopted a definition for the term ''promptly'' that includes a non-exclusive safe harbor.

Three commenters suggested that, at least at the outset of the interactive data submission requirement, there should be essentially no liability based on interactive data files or viewable interactive data.[242] Two of these commenters stated that there should be no liability because tagging would be a ''new'' process.[243] The third commenter stated that interactive data are merely a repetition, in another format, of information already required and there would be little risk that issuers would affirmatively try to introduce differences between the formats because any such differences would be transparent. Similarly, one commenter stated there should be no liability attributable to the posting of an interactive data file because the information would be out of context.[244] We acknowledge these comments but, in general, believe the measured level of liability that would apply at the outset of the mandated program is appropriate in light of the current level of development in tagging processes and the effect this level of liability should have on helping to assure that interactive data are reliable.[245]

Some commenters that supported limited liability at least at the outset of the interactive data submission requirement suggested that liability be revisited[246] or increased[247] later. Similarly, one commenter suggested that the imposition of liability on viewable interactive data be conditioned on the maturity of the tagging and rendering technology.[248] In that regard, three commenters suggested that the good faith exception proposed for the interactive data file in part could form the basis for an exemption for viewable interactive data.[249] As discussed above, we have decided to limit liability at the outset of the mandated program but phase out the limitation of liability over time. We believe that treatment of interactive data in viewable form that appears on our Web site in a manner analogous to the treatment of the related interactive data file for liability purposes is appropriate in light of the maturity of tagging and rendering technology. Similarly, we believe that treatment of interactive data in viewable form that appears on other Web sites under general anti-fraud principles applicable to republication of another person's statements also is appropriate in light of the maturity of such technology.

Commenters stated that the regulatory text was confusing or unclear in various ways, with a focus on viewable interactive data. In terms of specific items, commenters singled out, for example, the proposed Rule 406(c)(3)(C) provision attempting to draw a distinction between substantive content and compliance with the tagging provisions of proposed Rule 405.[250] In terms of general items and viewable interactive data, commenter concerns often related to the fact that the proposed rules expressly addressed viewable interactive data only to the extent, as converted by the Commission's viewer, it appeared identical in all material respects to the related official filing. As a result, commenters indicated that it was unclear what liability applied to viewable interactive data as rendered by the Commission's viewer, *not* identical in all material respects to the related official filing; and as rendered by a non-Commission viewer.[251] We believe that new Rule 406T clarifies or omits the provisions of proposed Rule 406 that commenters found confusing. As to viewable interactive data in particular, we now omit reference in the rule to one particular situation in favor of addressing viewable interactive data in general under traditional legal and liability concepts as discussed in detail above.

We did not propose to permit or require legends for interactive data files. One commenter expressly approved the absence of a legend requirement,[252] but four commenters suggested variously that the Commission require a legend that states people should not rely on the interactive data,[253] that they should not rely on it because of limited liability,[254] or that people should not use the interactive data in isolation.[255] We believe that attempting to place in interactive data legends of the type suggested would be impracticable because interactive data will often be accessed in their machine-readable form and, even if they were accessed in viewable form, might not be accessed in a place where the legend would appear. As to a legend that states people should not rely on the interactive data in particular, such a legend would be unnecessary because there is no reason the data should not be reliable and, were they not reliable, they would have little value.

To assist filers in ensuring the accuracy of their interactive data submissions, we plan to make available to filers the opportunity to make a test submission with the Commission. The test submission will enable the filer to learn how the validation system would respond if the test submission were a live submission and then, if the filer wishes, use the Commission's pre-viewer to see the viewable interactive data that would be displayed on the Commission Web site if the interactive data were accepted and disseminated.[256] If the validation system finds an error, it will advise the filer of the nature of the error and as to whether the error was major or minor. As occurs in the voluntary program, a major error in an interactive data exhibit that was part of a live filing will cause the exhibit to be held in suspense in the electronic filing system. The rest of the filing will be accepted and disseminated if there are no major errors outside of the interactive data exhibit. If that were to happen, the filer will need to revise the interactive data exhibit to eliminate

[241] *See* Ernst & Ernst v. Hochfelder, 425 U.S. 185, 206 (1976).

[242] *See* letters from NYCBA, Safeway, and S&C.

[243] *See* letters from NYCBA and Safeway.

[244] *See* letter from SCS.

[245] *See* Part II.B.5 for a discussion of commenter concerns regarding interactive data's being out of context.

[246] *See, e.g.*, letters from AICPA, E&Y, and Grant Thornton.

[247] *See, e.g.*, letters from SavaNet and UTC.

[248] *See* letter from ABA.

[249] *See, e.g.*, letters from ABA, E&Y, and IBM.

[250] *See* letters from ABA, Intel, and SCS.

[251] *See, e.g.*, letters from ABA and S&C.

[252] *See* letter from CFA. Under the current voluntary program, the filing with which interactive data are submitted must disclose that the purpose of the interactive data is to test the related format and technology and, as a result, investors should not rely on the interactive data in making investment decisions.

[253] *See, e.g.*, letters from AICPA, CAQ and PWC.

[254] *See* letters from CAQ and PWC.

[255] *See* letter from ABA.

[256] The EDGAR Filer Manual addresses test submissions primarily at Section 6.6.5 of Volume II.

the major error and submit the exhibit as an amendment to the filing to which it is intended to appear as an exhibit. A minor error in an interactive data exhibit that is part of a live filing will not prevent the interactive data exhibit from being accepted and disseminated together with the rest of the filing if there are no major errors in the rest of the filing. We believe it will be appropriate to accept and disseminate a filing without the interactive data exhibit submitted with it if only the exhibit has a major error, in order to disseminate at least as much information at least as timely as would have been disseminated were there no interactive data requirement.

Some commenters sought clarifications on whether there might be auditor liability on interactive data files.[257] There is no additional basis for auditor liability based on data tagging. Also, an auditor will not be required to apply AU Sections 550, 711 or 722 to interactive data provided in an exhibit or to the related viewable interactive data.[258]

In this regard, we also note that we are not requiring that filers involve third parties, such as auditors or consultants, in the creation of their interactive data filings. We are taking this approach after considering various factors, including:

- Commenters' views;
- The availability of a comprehensive list of tags for U.S. financial statement reporting from which appropriate tags can be selected, thus reducing a filer's need to develop new elements; [259]
- The availability of user-friendly software with which to create the interactive data file;
- The multi-year phase-in for each filer, the first year of which entails the relatively straightforward process of tagging face financial statements, as was done during the voluntary program, and block tagging footnotes and financial statement schedules;
- The availability of interactive data technology specifications, and of other XBRL U.S., XBRL International, and Commission resources for preparers of tagged data; [260]
- The advances in rendering/presentation software and validation tools for use by preparers of tagged data that can identify the existence of certain tagging errors;
- The expectation that preparers of tagged data will take the initiative to develop practices to promote accurate and consistent tagging; and
- The filer's and preparer's liability for the accuracy of the traditional format version of the financial statements.

Many commenters believed that issuers should not be required to obtain auditor assurance on their interactive data submissions at least at the outset of the interactive data submission requirement,[261] but a few commenters favored requiring assurance to enhance reliability.[262] Some commenters suggested monitoring interactive data submissions and considering whether to introduce an assurance requirement in the future.[263] We acknowledge the concerns of the commenters that believe we should require assurance on interactive data. For the reasons discussed above, however, we believe an assurance requirement is not now necessary.

A number of commenters, including many representing the auditing profession, recommended that the Commission and the PCAOB provide guidance to issuers and auditors for situations where an issuer wanted to voluntarily obtain some form of auditor assurance on interactive data.[264] We note that issuers can obtain third-party assurance under the PCAOB Interim Attestation Standard—AT sec. 101, Attest Engagements on interactive data, and can start and stop obtaining assurance whenever they choose.[265] We understand that the PCAOB is aware of sentiment in favor of interactive data-specific attestation standards.

Auditing firms generally did not support requiring issuers to obtain auditor assurance on data tagging, and stated their concern that users of interactive data financial statements may incorrectly assume that auditor assurance has been provided on the data tagging.[266] These auditing firms recommended:

- Requiring issuers' filings to specify clearly the extent of auditor involvement with the interactive data exhibit; [267]
- Requiring the interactive data submission to state that it is not subject to assurance when no assurance has been provided; [268]
- Prohibiting tagging the auditor's report; [269] and
- Revising the standard audit report to clarify the extent to which, if any, the audit extends to interactive data.[270]

Some commenters suggested monitoring the interactive data submission program and considering whether to introduce an assurance requirement in the future.[271] As stated previously, the Commission does not believe that auditor involvement is necessary with respect to the interactive data file. We also believe that the rules as adopted address some of the commenters' concerns regarding the perception of auditor involvement in the creation of the interactive data exhibit. Although Rule 405 as adopted does not include a requirement that auditors' reports be tagged, the rules do not prohibit issuers from indicating in the financial statements (such as in a footnote) the degree of auditor involvement in the tagging process. Accordingly, we believe that an issuer can make clear the level of auditor involvement or lack thereof in the creation of the interactive data exhibit.

4. Officer Certifications and Integration of Interactive Data and Business Information Processing

Rules 13a–14 and 15d–14 generally require officers to certify in periodic reports to various matters relating to internal control over financial

[257] *See e.g.*, letter from E&Y.

[258] *See* Part II.C.4 below for a further discussion of AU Sections 550, 711 and 722.

[259] We expect the same will be true with respect to the tags for reporting under IFRS as issued by the IASB.

[260] An example of Commission resources includes the EDGAR Filer Manual.

[261] *See, e.g.*, letters from AICPA, Deloitte, FEI, Gen. Mills, IMA, Illinois Society of Certified Public Accountants (ILSCPA), and Teva.

[262] *See, e.g.*, letters from CalPERS, CFA and CII. In connection with stating their concerns about the lack of auditor assurance, two of these commenters also stated their concern about the absence of management certification of interactive data under the proposed exclusion of interactive data from the officer certification requirements of Rules 13a–14 and 15d–14. *See* letters from CFA and CII.

[263] *See, e.g.*, letters from AICPA, CAQ, Deloitte, E&Y, Grant Thornton, and KPMG.

[264] These included tagging in general (*see, e.g.*, letters from AICPA and UTC); extensions (*see, e.g.*, letters from AICPA and UTC); and correct associated data (*see, e.g.*, letter from UTC).

[265] If an issuer wishes to refer in a filing to third party assurance voluntarily obtained from an auditor or other party, the issuer must comply with applicable consent requirements.

[266] *See, e.g.*, letters from CAQ, Deloitte, E&Y, Grant Thornton, KPMG, and PWC.

[267] *See, e.g.*, letters from Deloitte, Grant Thornton, and PWC.

[268] *See, e.g.*, letters from Deloitte, E&Y and Grant Thornton.

[269] *See, e.g.*, letters from CAQ, Deloitte, E&Y, Grant Thornton, and KPMG.

[270] *See, e.g.*, letter from Deloitte.

[271] *See* letters from AICPA, CAQ, Deloitte, E&Y, GT, and KPMG.

reporting [272] and disclosure controls and procedures.[273]

We are adopting amendments that exclude interactive data from the officer certification requirements of Rules 13a–14 and 15d–14. We believe that adopting these amendments is part of striking an appropriate balance between avoiding unnecessary cost and expense and encouraging accuracy in regard to interactive data. A number of commenters stated that interactive data submissions should not be included within the scope of officer certifications,[274] but two commenters expressed concern about the exclusion [275] and one commenter recommended that they be included after the two-year phase-in period.[276] The commenters supporting the exclusion cited varying reasons including, for example, that an officer should not be required to certify to data that is not human-readable [277] and that inclusion would result in increased expense and exposure without commensurate investor benefit.[278] The commenters expressing concern cited the exclusion together with the absence of an auditor assurance requirement as together resulting in less confidence in the interactive data than in traditional format information. As stated above in regard to liability generally, we believe that adopting the officer certification exclusion is part of striking an appropriate balance between avoiding unnecessary cost and expense and encouraging accuracy. We intend to monitor implementation and, if necessary, make appropriate adjustments in the future regarding officer certifications.

As the technology associated with interactive data improves, issuers may integrate interactive data technology into their business information processing, and such integration may have implications regarding internal control over financial reporting no different than any other controls or procedures related to the preparation of financial statements. If this integration occurs, the preparation of financial statements may become interdependent with the interactive data tagging process and an issuer and its auditor should evaluate these changes in the context of their reporting on internal control over financial reporting. However, this evaluation is separate from the preparation and submission of the interactive data file, and as such the results of the evaluation would not require management to assess or an auditor to separately report on the issuer's interactive data file provided as an exhibit to a filer's reports or registration statements.

Some commenters sought clarification of whether the basis for the proposed exclusion of interactive data from officer certification is that interactive data are not within the scope of disclosure controls and procedures.[279] In this regard, one of the commenters noted that the Commission did not propose amendments related to Sarbanes-Oxley requirements to Items 307 (disclosure controls and procedures), 308 (internal control over financial reporting) or 601 (exhibits) of Regulation S–K. As a result, the commenter recommended that the final rule explicitly address these areas to avoid misunderstandings and potential delays in implementation.[280] As discussed above, we are excluding interactive data from the officer certification requirements as part of our effort to strike an appropriate balance between avoiding unnecessary cost and expense and encouraging accuracy in regard to interactive data. Interactive data would fall within the definition of ''disclosure controls and procedures'' and, accordingly, we are not adopting the exclusion on that basis.

SAS 8 (AU Section 550) was issued in December 1975 to address an auditor's consideration of information in addition to audited financial statements and the independent auditor's report on the audited financial statements included in documents that are published by an entity (*e.g.*, an annual periodic report). Similarly, paragraph 18(f) of SAS 100 (AU Section 722) addresses an auditor's consideration of other information that accompanies interim financial statements included in quarterly periodic reports. With respect to registration statements, SAS 37 (AU Section 711) was issued in April 1981 to address the auditor's responsibilities in connection with filings under the federal securities statutes.

As we stated in the proposing release in regard to the proposed rules, with respect to the adopted rules, an auditor will not be required to apply AU Sections 550, 722, or 711 to the interactive data provided as an exhibit in a company's reports or registration statements, or to the viewable interactive data. Several commenters agreed that an auditor would not be required to apply AU Sections 550, 711 or 722 to the interactive data provided as an exhibit or to the related viewable interactive data but wanted the PCAOB to formalize that view.[281] We understand that the PCAOB is aware of this matter.

5. Continued Traditional Format

The new rules will not eliminate or alter existing filing requirements that financial statements and financial statement schedules be filed in traditional format. We believe investors and analysts may wish to use the traditional format to obtain an electronic or printed copy of the entire registration statement or report either in addition to or instead of disclosure formatted using interactive data.

The vast majority of commenters stated that the Commission should continue to require human-readable financial statements in traditional format even if it required interactive data format as well.[282] Most of these commenters also stated that the Commission should monitor the development of technology that could enable companies to file information in a manner that provides the processing benefits of interactive data and the visual clarity of the traditional format. These commenters reasoned that when such technology is developed, it would be appropriate to require only the single resulting format.

[272] Exchange Act Rules 13a–15(f) [17 CFR 240.13a–15(f)] and 15d–15(f) [17 CFR 240.15d–15(f)] define the term ''internal control over financial reporting,'' in general, as a process designed by or under the supervision of specified persons and effected by the issuer's board of directors, management and other personnel ''to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with [GAAP] and includes [specified] policies and procedures.'' Rules 13a–15 and 15d–15 generally require specified issuers to maintain internal control over financial reporting and require the management of those issuers to evaluate the effectiveness of the issuer's internal control over financial reporting. In addition, the certifications specified by Item 601(b)(31) of Regulation S–K and Instruction B(e) of Form 20–F that relate to these specified issuers, generally must address the establishment, maintenance, design, changes in and deficiencies and material weaknesses related to the issuer's internal control over financial reporting.

[273] Rules 13a–15(e) and 15d–15(e) define the term ''disclosure controls and procedures'' as ''controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in [its periodic] reports * * * is recorded, processed, summarized and reported within the time periods [required].''

[274] *See, e.g.*, letters from FirstEnergy, LGI, NYCBA, Safeway, Southern, Teva, USS, and WellPoint.

[275] *See* letters from CFA and CII.

[276] *See* letter from AICPA.

[277] *See* letter from Safeway.

[278] *See* letter from NYCBA.

[279] *See, e.g.*, letters from Deloitte and KPMG.

[280] *See* letter from KPMG.

[281] *See, e.g.*, letters from BDO, CAQ Deloitte, E&Y and PWC.

[282] *See, e.g.*, letters from Southern, AICPA, IBM, National City, NYSSCPA, and UTC.

D. Required Items

1. Data Tags

To comply with the proposed rules, filers using U.S. GAAP will be required to tag their financial statements using the most recent list of tags for U.S. financial statement reporting, as released by XBRL U.S. and required by the EDGAR Filer Manual.[283] Each company will be required to use one or more of the five standard industry-specific lists identified in the EDGAR Filer Manual, as is appropriate for its business.[284]

Regular updates to the list of tags for U.S. financial statement reporting will likely be posted annually and be available for downloading. In addition, interim extensions may be made available for download in order to reflect changes in accounting and reporting standards. To provide companies sufficient time to become familiar with any such updates, we anticipate giving advance notice before requiring use of an updated list of tags. Based on experience to date with the most recent update to the list of tags, we believe that it is sufficiently developed to support the interactive data disclosure requirements in the new rules.

Similarly, filers using IFRS as issued by the IASB will be required to tag their financial information using the most recent list of tags for international financial reporting, as released by the IASCF and specified in the EDGAR Filer Manual.[285] Although IFRS tags are not currently supported by EDGAR, the Commission will give notice when filers can voluntarily submit filings using the IFRS taxonomy.

One of the principal benefits of interactive data is its extensibility—that is, the ability to add to the standard list of tags in order to accommodate unique circumstances in a filer's particular disclosures. The use of customized tags, however, may also serve to reduce the ability of users to compare similar information across companies. This was the source of a significant amount of comment. Some commenters were concerned that currently available standard taxonomies do not cover many company specific extension needs and any increase in customized taxonomy extensions would directly interfere with the comparability of inter-company data.[286] A number of commenters suggested ways to facilitate interactive data tagging, which included monitoring,[287] cataloging,[288] and discouraging[289] extension use as well as revising the Preparers Guide to put it in plain English.[290]

We acknowledge these concerns. In order to promote comparability across companies, the new rules, as proposed, will limit the use of extensions to circumstances where the appropriate financial statement element does not exist in the standard list of tags. The new rules also require that wherever possible and when a standard element is appropriate, preparers change the label for a financial statement element that exists in the standard list of tags, instead of creating a new customized tag. For example, the standard list of tags for U.S. GAAP includes the financial statement element ''gross profit.'' The list does not include ''gross margin,'' because this is definitionally the same as ''gross profit''—both are generally used to mean ''excess of revenues over the cost of revenues.'' A filer using the label ''gross margin'' in its income statement should use the tag corresponding to the financial statement element ''gross profit.'' It would then change the label for this item on the standard list to ''gross margin.''

Finally, under Item 401(c) of Regulation S–T, voluntary filers' interactive data elements must reflect the same information as the corresponding traditional format elements. Further, no data element can be ''changed, deleted or summarized'' in the interactive data file.[291] We are not changing this equivalency standard for financial statements provided in interactive data format as required by the new rules.

2. Regulation S–T and the EDGAR Filer Manual

The new rules require that filers provide interactive data in the form of exhibits to related registration statements and reports.[292] Interactive data will be required to comply with our Regulation S–T[293] and the EDGAR Filer Manual. The EDGAR Filer Manual is available on our Web site. It includes technical information for making electronic filings with the Commission. Volume II of this manual includes guidance on the preparation, submission, and validation of interactive data submitted under the voluntary program.

In addition to both Regulation S–T, which will include rules we are adopting, and the instructions in our EDGAR Filer Manual, filers may access other sources for guidance in tagging their financial information. These include the XBRL U.S. Preparers Guide; user guidance accompanying tagging software; and financial printers and other service providers. New software and other forms of third-party support for tagging financial statements using interactive data are also becoming widely available.

E. Consequences of Non-Compliance and Hardship Exemption

The new rules provide, as proposed, that if a filer does not make the required interactive data submission, or post the interactive data on the company Web site, by the required due date, the filer will be unable to use short form registration statements on Forms S–3, F–3, or S–8.[294] This disqualification will last until the interactive data are provided. During the period of disqualification, the filer also will be deemed not to have available adequate current public information for purposes of the resale exemption safe harbor

[283] The latest list of data tags for U.S. financial statement reporting was released on April 28, 2008 and is available at *http://xbrl.us/pages/us-gaap.aspx*. See XBRL U.S. Press Release, XBRL U.S. Finalizes U.S. GAAP Taxonomies and Preparers Guide with Delivery to SEC (May 2, 2008).

[284] We note that the vast majority of companies will fall under the Commercial and Industrial industry group. Additional guidance on the industry-specific lists is expected to appear in the EDGAR Filer Manual.

[285] The International Accounting Standards Committee Foundation has been developing the IFRS financial reporting tag list since 2002. *See http://www.iasb.org/xbrl/index.html.* The 2008 version of the IFRS financial reporting tag list was, as noted above, finalized in June 2008 and is planned to be updated annually for changes in accounting and reporting standards.

[286] *See, e.g.*, letter from EuropeanIssuers.

[287] *See, e.g.*, letter from CFA.

[288] *See, e.g.*, letter from ABA.

[289] *See, e.g.*, letters from Grant Thornton, CFA, Morgan Stanley, and Rivet.

[290] *See, e.g.*, letter from Grant Thornton.

[291] Item 401(c)(2) of Regulation S–T.

[292] The requirement to submit XBRL data as an exhibit will appear in Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of both Form F–9 and F–10, Item 101 of the Instructions to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F and paragraph C.6 of the General Instructions to Form 6–K.

[293] Rule 405 of Regulation S–T directly sets forth the basic tagging and posting requirements for the XBRL data and requires compliance with the EDGAR Filer Manual. Consistent with Rule 405, the EDGAR Filer Manual will contain the detailed tagging requirements.

[294] Forms S–3, F–3, and S–8 are regarded as short form registration statements because they enable eligible issuers to register securities for offer and sale under the Securities Act by providing information in a more streamlined manner than they otherwise could. In order to be eligible to use these short forms, an issuer must meet specified requirements, including being current in its filing of Exchange Act reports. In general, an issuer is current if it has filed all of its required Exchange Act reports for the twelve months before filing the registration statement. Filers that are unable to use short form registration also are unable to incorporate by reference certain information into Forms S–4 and F–4. See Item 12 of Forms S–4 and F–4.

provided by Rule 144.[295] Once a filer complies with the interactive data submission and posting requirements—provided it previously filed its financial statement information in traditional format on a timely basis—it will be deemed to be timely and current in its periodic reports.

We believe that precluding the use of short form registration statements during any period of failure to comply will appropriately direct attention to the interactive data reporting requirement. Allowing filers to reestablish their current status by later complying with the interactive data reporting requirement will strike a reasonable balance of negative consequences and recognition that the company's traditional format reports will have been filed.

Consistent with the treatment of other applicable reporting obligations, we are adopting hardship exemptions for the inability to timely submit interactive data. Rule 201 under Regulation S–T provides for temporary hardship exemptions. Rule 202 under Regulation S–T provides for continuing hardship exemptions.[296]

Rule 201 generally provides a temporary hardship exemption from electronic submission of information, without staff or Commission action, when a filer experiences unanticipated technical difficulties that prevent timely preparation and submission of an electronic filing. The temporary hardship exemption permits the filer to initially submit the information in paper but requires the filer to submit a confirming electronic copy of the information within six business days of filing the information in paper. Failure to file the confirming electronic copy by the end of that period results in short form ineligibility.[297]

We recognize the inherently electronic nature of interactive data. In light of this and the consequences to an issuer of not timely submitting interactive data, we are revising Rule 201, as proposed, to provide a temporary hardship exemption that does not depend upon filing a paper version. This exemption will apply without staff or Commission action if a filer experiences unanticipated technical difficulties that prevent the timely preparation and electronic submission of interactive data. The revised temporary hardship exemption will cause the filer to be deemed current for purposes of incorporation by reference, short form registration, and Rule 144 for a period of up to six business days from the date the interactive data were required to be submitted.[298] If the filer does not electronically submit the interactive data by the end of that period, from the seventh business day forward the filer will not be deemed current until it does electronically submit the interactive data. Similarly, we are revising Rule 201 to provide an essentially mirror-image exemption from the new requirement for an issuer that has a corporate Web site to post the interactive data on its Web site.

Rule 202 permits a filer to apply in writing for a continuing hardship exemption if information otherwise required to be submitted in electronic format cannot be so filed without undue burden or expense. If the Commission or the staff, through authority delegated from the Commission, grants the request, the filer must file the information in paper by the applicable due date and file a confirming electronic copy if and when specified in the grant of the request.

We are revising Rule 202, as proposed, to provide that a grant of a continuing hardship exemption for interactive data will not require a paper submission and that the filer will be deemed current until the end of the period for which the exemption is granted. Rule 202 also provides that, if the exemption was granted for only a specified period rather than indefinitely, the filer will be deemed current up to the end of that period. If the filer does not electronically submit the interactive data by the end of that period, from the next business day forward the filer will not be deemed current until it does electronically submit the interactive data. Similarly, we are revising Rule 202 to provide an essentially mirror-image exemption from the new requirement for an issuer that has a corporate Web site to post the interactive data on its Web site.

A few commenters generally supported the proposed consequences for late submissions and Web site postings of interactive data files,[299] but several objected.[300] Some commenters objected to all of the proposed consequences for late submissions and postings as, for example, unduly harsh in general[301] or inappropriate because the same information would be on file already in traditional format.[302] One commenter claimed that in analogous situations the Commission decided not to impose similar consequences. The commenter noted that in Release No. 34–49424,[303] the Commission decided not to impose short form eligibility or Rule 144 current public information loss for failure to provide timely certain disclosures required by Form 8–K.[304] The disclosures involved, however, were required by items that we stated ''may require management to make rapid materiality and other judgments within the compressed Form 8–K filing timeframe'' and issuers would not have been able to reestablish short form eligibility upon compliance because they would have been deemed not timely rather than not current.

We acknowledge these concerns, but in adopting the rules as proposed we believe that the consequences imposed will provide a useful compliance incentive and that commenters' concerns are mitigated somewhat by the availability of the temporary and continuing hardship exemptions and the ability of filers to reestablish their

[295] Rule 144 under the Securities Act creates a safe harbor for the resale of securities under the exemption from Securities Act registration set forth in Section 4(1) of the Securities Act [15 U.S.C. 77d(1)]. In order for some resales of securities to comply with Rule 144, the issuer of the securities must be deemed to have adequate current public information available as specified by Rule 144(c)(1) [17 CFR 230.144(c)(1)]. Rule 144(c)(1) deems an issuer required to file reports under the Exchange Act to have adequate public information available if it is current in its filing of Exchange Act periodic reports. In general, an issuer would be deemed current for this purpose if it has filed all of its required Exchange Act periodic reports for the twelve months before the sale of securities for which the Rule 144 safe harbor is sought.

[296] We have amended Rule 12b–25 [17 CFR 240.12b–25] under the Exchange Act, which, in general, deals with notification of the inability to timely file or submit all or part of specified forms and deems such forms to be timely filed under specified conditions. We added paragraph (h) to state that the provisions of the rule do not apply to interactive data files and that filers unable to submit or post interactive data files when required must comply with the hardship exemption requirements of either Rule 201 or 202 of Regulation S–T. New paragraph (h) will treat interactive data files in a manner similar to that which current Rule 12b–25(g) treats electronic filings in general. When Rule 12b–25 provides that the financial statements in traditional format are deemed filed timely even though actually filed later, the related interactive data exhibit must be submitted and posted on the date the related traditional format financial statements are actually filed, not when they are deemed to be filed under Rule 12b–25.

[297] Rule 201 of Regulation S–T.

[298] The information would not have to be filed in paper first, as this would be meaningless in the case of interactive data.

[299] *See, e.g.*, letters from CFA, E&Y, Grant Thornton, LG, and UTC.

[300] *See, e.g.*, letters from ABA, CSG, LGI, NYCBA, SCS, Southern, and USS.

[301] *See, e.g.*, letter from NYCBA.

[302] *See, e.g.*, letter from CSG.

[303] Release No. 34–49424 (March 16, 2004) [69 FR 15594].

[304] *See* letter from ABA. This commenter also pointed out that in Release No. 34–46464 (Apr. 8, 2003) [67 FR 58480], Release No. 34–46464A (Sept. 5, 2003) [67 FR 17880] the Commission stated that it considered making Web site posting of reports a condition to short form eligibility but concluded such an approach would be overly burdensome.

current status upon complying with their interactive data requirements.

III. Paperwork Reduction Act

A. Background

The amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995, or PRA.[305] The purpose of the amendments is to make financial information easier for investors to analyze and to assist issuers in automating regulatory filings and business information processing. We published a request for comment on the collection of information requirements in the proposing release, and submitted a request to the Office of Management and Budget (OMB), for review in accordance with the PRA.[306] OMB responded that it will not act on the request until the Commission supplements the request at the adopting stage with a discussion that includes the Commission's response to comments received on the proposed rules. Our new estimates that take into account variations between what we proposed and what we are adopting reflect a burden that is not significantly different than the estimates from the proposing release. When we receive OMB clearance, we will publish notice in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The title for the new collection of information the amendments will establish is ''Interactive Data'' (OMB Control No. 3235–0645). This collection of information relates to already existing regulations and forms adopted under the Securities Act and the Exchange Act that set forth financial disclosure requirements for registration statements as well as periodic, current and transition reports and Forms 6–K. The amendments will require issuers to submit specified financial information to the Commission and post it on their corporate Web sites, if any, in interactive data form. The specified financial information already is and will continue to be required to be submitted to the Commission in traditional format under existing registration statement as well as periodic, current, and transition report and Form 6–K requirements. Compliance with the amendments will be mandatory according to the phase-in schedule previously described.[307] Issuers not yet phased-in, however, could comply voluntarily with the amendments when the appropriate taxonomies are supported by EDGAR. The information required to be submitted would not be kept confidential by the Commission.

B. Reporting and Cost Burden Estimates

1. Registration Statement and Periodic Reporting

Form S–1 (OMB Control No. 3235–0065), Form S–3 (OMB Control No. 3235–0073), Form S–4 (OMB Control No. 3235–0324), and Form S–11 (OMB Control No. 3235–0067) prescribe information that a filer must disclose to register certain offers and sales of securities under the Securities Act. Form F–1 (OMB Control No. 3235–0258), Form F–3 (OMB Control No. 3235–0256), Form F–4 (OMB Control No. 3235–0325), Form F–9 (OMB Control No 3235–0377), and F–10 (OMB Control No. 3235–0380) prescribe information that a foreign private issuer must disclose to register certain offers and sales of securities under the Securities Act. Form 10–K (OMB Control No. 3235–0063) prescribes information that a filer must disclose annually to the market about its business. Form 10–Q (OMB Control No. 3235–0070) prescribes information that a filer must disclose quarterly to the market about its business. Form 10 (OMB No. 3235–0064) prescribes information that a filer must disclose when registering a class of securities pursuant to the Exchange Act. Form 8–K (OMB No. 3235–0060) prescribes information an issuer must disclose to the market upon the occurrence of certain specified events and enables an issuer to disclose other information voluntarily. Form 20–F (OMB Control No. 3235–0288) and Form 40–F (OMB No. 3235–0381) are used by a foreign private issuer both to register a class of securities under the Exchange Act as well as to provide its annual report required under the Exchange Act. Form 6–K (OMB No. 3235–0116) prescribes information that a foreign private issuer must disclose regarding certain specified changes to its business and securities pursuant to the Exchange Act and enables an issuer to disclose other information voluntarily.

As previously noted, we are adopting the amendments substantially as proposed. We expect the variations between what we proposed and what we adopted to lessen the collection of information burden, even after accounting for the amendments requiring companies to submit interactive data for financial statements contained in additional forms—Securities Act registration statements on Forms F–9 and F–10, periodic reports on Forms 40–F and current reports on Forms 8–K and reports on Forms 6–K that contain updated financial statements that have been revised to reflect a subsequent event rather than the correction of an error.

While we are adopting the proposed requirement to tag separately each amount within a footnote (*i.e.*, monetary value, percentage, and number), in contrast to the proposals, we will permit, but not require, filers to tag, to the extent they choose, each narrative disclosure. As a result, the cost estimates for detailed tagging in the adopting release are reduced by 30%, to 70 hours for the first filing, and 35 hours for subsequent filings. Permitting rather than requiring filers to tag each narrative footnote disclosure contributes significantly to lessening the estimated collection of information burden.[308]

As noted above, in contrast to the proposals, we are adopting amendments requiring companies to submit interactive data for financial statements contained in additional forms—Securities Act registration statements on Forms F–9 and F–10, periodic reports on Forms 40–F and current reports on Forms 8–K and reports on Forms 6–K that contain updated financial statements that have been revised to reflect a subsequent event rather than the correction of an error. The amendments expanding the forms subject to the interactive data requirements tend to increase the estimated collection of information burden but this increase is more than offset by the factors that tend to decrease the collection of information burden.

We expect the following variations from the proposal will not affect the collection of information burden in more than a negligible and non-quantifiable way.

- The amendments will require that interactive data be submitted with a Securities Act registration statement filing only after a price or price-range has been determined and any later time when the financial statements are changed rather than, as proposed, requiring interactive data submissions with each filing.
- The timing of the required Web site posting has been eased. A filer must

[305] 44 U.S.C. 3501 *et seq.*

[306] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[307] *See* Part II.B.

[308] The other factor that contributes significantly to lessening the estimated collection of information burden is the reduction in the estimated number of filers subject to the interactive data requirements due to the elimination of issuers of asset-backed securities. Such issuers inadvertently were included in the estimate made in connection with the proposed rules.

post the interactive data exhibit on its corporate Web site not later than the end of the calendar day it submitted or was required to submit the interactive data exhibit, whichever is earlier. As proposed, Web site posting would have been required by the end of the business rather than calendar day.

- Interactive data will be required to be posted for at least 12 months on an issuer's Web site. The proposing release did not specify this, but commenters requested clarification.

The information required by the new collection of information we are adopting will correspond to specified financial information now required by these forms and will be required to appear in exhibits to these forms and on filers' corporate Web sites. The compliance burden estimates for the collection of information are based on the phase-in, beginning with approximately 500 large accelerated filers subject to the rules in the first year, followed by approximately 1,000 more filers in year two and approximately 8,700 more filers in year three. These numbers are estimated using the public float measured on the last day of the second quarter following the company's most recent fiscal year end—the same date used to determine a filer's accelerated filer status. The proposing release estimated a larger number of filers being phased in, including 1,300 in year two and 10,200 in year three. In those estimates, issuers of asset-backed securities, who annually file a Form 10–K, were included. Those issuers, however, typically are not required to and do not include their financial statements in Forms 10–K, and, as a result they would not be required to provide interactive data files under the proposed rules. Consequently, they were removed from the updated estimate reported here.

Based on estimates from the voluntary filer participant questionnaire results, we estimate that interactive data filers would incur the following average:

- Internal burden hours to tag the face financials:
  - 125 hours for the first filing under the requirements; and
  - 17 hours for each subsequent filing.
- Out-of-pocket cost for software and filing agent services: $6,140 for each filing.

Based on qualitative assessments of time and modifications to the proposed level four detailed tagging requirements that eliminate required tagging of the narrative, we estimate that interactive data filers would incur the following average internal burden hours:

- Footnotes
  - 7 hours to block tag for each filing made during the first year under the requirements;
  - 70 hours to detail tag for the first filing made in the second year under the requirements; and
  - 35 hours to detail tag for each subsequent filing.
- Schedules
  - 1 hour to block tag for each filing made during the first year under the requirements;
  - 7 hours to detail tag for the first filing made in the second year under the requirements; and
  - 3.5 hours to detail tag for each subsequent filing.
- Web site Posting: 4 hours to post all interactive data submissions made during each year.

In the proposing release, the number of hours to detail tag the footnotes in the second year of the requirements was estimated at 100 hours for the first filing, and 50 for subsequent filings. Several commenters provided alternative estimates. For example, one commenter [309] suggested that detailed tagging initially would require 80 hours of time, while another commenter indicated that 40 hours would be required on an ongoing basis.[310] Although both of these estimates are below our estimate, other commenters suggested that the time required for detailed tagging of the footnotes would be hundreds of hours,[311] three to four times higher than our estimate,[312] and an order of magnitude higher than our estimate.[313]

One of the considerations responsible for the wide variation in predicted time for detailed tagging was the proposed requirement to tag the narrative portion of the footnote. Unlike the discrete numerical values in the face financials that are well-defined and easy to quantify, the narrative portion of the footnotes provides a higher degree of variability in the number and structure of reported items. While we are adopting the proposed requirement to tag separately each amount within a footnote (*i.e.*, monetary value, percentage, and number), we will permit, but not require, filers to tag, to the extent they choose, each narrative disclosure. As a result, the cost estimates for detailed tagging in the adopting release are reduced by 30%, to 70 hours for the first filing, and 35 hours for subsequent filings. Nevertheless, it is reasonable to assume that many filers, particularly the largest filers with the most complex filings, may require more than 70 hours to comply with the detailed tagging requirement. It is also reasonable to assume that many filers will require significantly less time than 70 hours, and 70 hours seems to fall within the range suggested by commenters and what is anticipated by Commission staff. We believe that the proposed requirement to tag each narrative disclosure within a footnote that, as adopted, will be optional, probably was a significant component of the higher estimates provided by commenters. As discussed in greater detail above, a significant number of commenters objected, in particular, to the proposed detailed footnote tagging requirement and several of those commenters argued that detailed footnote tagging would require significant effort by the issuer.[314]

Based on the number of filers we expect to be phased in each of the first three years under the requirements, the number of filings that we expect those filers to make that would require interactive data [315] and the internal burden hour and out-of-pocket cost estimates described, we estimate that the average yearly burden of the requirements over the first three years would be 916,846 internal hours per year and $110.6 million in out-of-pocket expenses for software and filing agent services per year and would be incurred by an average of 4,055 filers for an average yearly burden per filer of 226.1 internal hours and $27,300 in out-of-pocket expenses. This estimate reflects a reduction in average yearly burden compared to the proposing release, where we estimated $1,164,690 internal hours per year and $129 million out-of-pocket expenses per year. This reduction is in part attributed to a smaller number of filers due to the elimination of issuers of asset-backed securities that inadvertently were included in the estimate made in connection with the proposed rules, and in part due to a lower estimate for detailed tagging due to making optional the proposed requirement to detail tag the narrative disclosures in footnotes. Together, these cost reductions outweighed the increased cost of requiring that interactive data be

[309] *See* letter from FirstEnergy. It is unclear whether this commenter believed that detailed tagging would require 80 hours on an ongoing basis.

[310] *See* letter from National City.

[311] *See* letter from Intel.

[312] *See* letter from IBM.

[313] *See* letter from Constellation Energy.

[314] *See* Part II.B.3.a.

[315] We include in the number of filings that would require interactive data both initial filings and amended filings but we estimate that the burden incurred in connection with an amended filing would be one half the burden that would be incurred if the amended filing were an initial filing.

submitted for the financial statements in additional forms.

By the fifth year under the requirements, filers generally will have been subject to the requirements for at least two years. As a result, filers generally would incur burdens applicable to interactive data filings made after the first filing in which the filer detail tagged footnotes and schedules. Consequently, we estimate that in the fifth year under the requirements, the burden on all filers would be 2,571,167 internal hours and $284 million in out-of-pocket expenses and would be incurred by 10,229 filers for an average burden per filer of 251 internal hours and $27,800 in out-of-pocket expenses.[316] The higher average burden reported for year five relative to the average from years one through three reflects the completed phase-in of all filers and all requirements, including detailed tagging, by that time.

2. Regulation S–K and Regulation S–T

Regulation S–K (OMB Control No. 3235–0071) specifies information that a registrant must provide in filings under both the Securities Act and the Exchange Act. Regulation S–T (OMB Control No. 3235–0424) specifies the requirements that govern the electronic submission of documents. The changes to these items that we are adopting will add and revise rules under Regulations S–K and S–T. The additional collection of information burden that will result from these changes, however, are included in the burden estimate for the new collection of information ''Interactive Data.'' The rules in Regulations S–K and S–T do not impose any separate burden. We assign one burden hour each to Regulations S–K and S–T for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

C. Comments on Collection of Information Burden

We solicited comments in the proposing release on the PRA estimates we provided there. One commenter addressed the PRA directly, while others commented generally on the time and cost burden of the amendments. The commenter that addressed the PRA directly stated that our PRA cost estimates appeared low and that our estimates understated software and non-software costs such as planning and ongoing quality assurance.[317] As discussed in detail above, other commenters provided their own estimates of the amount of time it would take to tag financial statements and footnotes.[318]

Some commenters who opposed the amendments generally asserted that interactive data would not improve the usefulness of financial information to analysts or investors [319] or that the Commission underestimated the complexity or cost of compliance in general [320] and implementing interactive data would add significant costs to purchase software, and pay for assistance and annual maintenance fees for that software and that the costs of using interactive data outweighed the benefits.[321]

In contrast, some commenters that supported the required submission of interactive data believed it would improve the usefulness of financial information to companies and investors, and that mandated interactive data use would provide the incentives to drive sufficient investment in software to enable widespread adoption of interactive data.[322] Also in contrast, commenters that provide interactive data services stated that issuers would need to expend only modest cost and effort to comply with the requirements.[323] One commenter stated that it expected that costs would fall quickly, especially for small companies, as interactive data became part of standard corporate accounting software packages.[324] Another commenter stated that, based on its experience in the voluntary program, costs would fall significantly for subsequent submissions.[325]

We acknowledge the concerns some commenters hold regarding usefulness and cost but believe that interactive data have the potential to increase the speed, accuracy and usability of financial disclosure, and eventually reduce costs and that the phase-in schedule and the grace periods will provide issuers the time to learn more cost-effective ways to comply. We also believe that the third year phase-in for smaller reporting companies will permit them to learn from the experience of the earlier filers. Further, as noted previously, we will be monitoring the experiences of issuers during the phase-in periods to assess commenters' concerns.

IV. Cost-Benefit Analysis

A. Benefits

Requiring issuers to file their financial statement information using the interactive data format would enable investors, analysts, and the Commission staff to capture and analyze that information more quickly and at a lower cost than is possible using the same financial information provided in a static format.[326] Even though the new regime does not require any new information to be disclosed or reported, certain benefits may accrue when issuers use an interactive data format to provide their financial reports. These include the following.

1. More Financial Information Available to Investors

Interactive data reporting could increase the amount of financial data available to investors in at least three ways. First, there is likely to be an increase in coverage of smaller reporting companies by commercially available products that provide corporate financial data. Second, the level of financial data available in electronic format by these and other services will likely increase as a result of interactive data tagging. Finally, there is likely to be an increase in the number of suppliers of financial services products because of requiring companies to provide interactive data. As a result, many smaller filers will have greater investor awareness because of interactive data reporting, and investors will have more financial data readily available in machine-readable format to consider for all filers.

At present, many small companies are not included in commercially available products that provide corporate financial data, possibly due to high data collection costs relative to the value of providing coverage. For example, two commonly used financial information vendors cover approximately 70% of Commission filers.[327] For the large number of firms whose financial

[316] We provide an estimate of the burden in the fifth year under the new requirements because we believe the burden in the fifth year may help indicate what the burden would be under the new requirements on an ongoing basis.

[317] *See* letter from Credit Suisse.

[318] *See* Part III.B.1.

[319] *See* letters from EEC, EuropeanIssuers, and FISD.

[320] *See,* for example, letters from CAQ, E&Y, FPL, Intel and SCS.

[321] *See* letter from FPL.

[322] *See, e.g.*, letters from ABC, AICPA, National City, NYSSCPA, and UTC.

[323] *See* letters from ECI, EDGARFilings and UBMatrix.

[324] *See* letter from Angel.

[325] *See* letter from Pepsico.

[326] *See* Part I.

[327] Compustat and Thomson One Banker are two widely used, fee-based vendors of corporate financial data that is formatted for interactive data use. This analysis was performed by matching the unique Commission issued Central Index Key (CIK) numbers from all Forms 10–K, 10–KSB, 20–F, and 40–F filed in calendar year 2007, but not including issuers of asset backed securities within Standard Industrial Classification (SIC) code 6189, to the universe of companies covered by both Standard and Poor's Compustat and Thomson One Banker.

statements are not currently reported in these databases, their absence may reduce the likelihood that they receive coverage by financial analysts who use commercially available products to assess issuer performance. Consequently, if interactive data reporting increases coverage of smaller companies by commercially available financial information products, and this increases their exposure to analysts and investors, then lower search costs for capital could result. In other words, smaller companies could realize a lower cost of capital, or less costly financing.

While an increase in coverage could occur for some issuers, it is possible that less than full coverage will remain in more sophisticated products that provide analysis or reporting items beyond basic financial information. This conclusion is based on an assumption that many commercially available product offerings provide information beyond what is reported in basic financial information, and the costs of providing this additional information for every company may make 100% coverage prohibitive. In particular, the smallest issuers may not offer sufficient market capitalization to make investment worthwhile to larger investors, for whom these commercial products are primarily designed.

It is also possible that information quality in financial markets could be higher if interactive data reporting were required than if not, leading to more efficient capital allocation. Since financial tagging will include footnotes and supplemental tables, as well as the base financials reported in the standard tables, it is likely that as a result of interactive data tagging, there will be more information available to investors in a machine-readable format. That is, information not currently collected on a broad scale by data aggregators because of the costs of manual key entry, particularly data found in the footnotes and supplemental tables, will be available to investors in a tagged, machine-readable format. With more information readily available to investors on all filers, they may be able to better distinguish the merits of various investment choices, thereby facilitating capital flow into the favored investment prospects. This outcome is the main tenet of improved market efficiency, whereby providing more widespread access to information concerning the value of a financial asset, such as a company's shares, results in better market pricing. Consequently, reducing the costs of accessing, collecting and analyzing information about the value of a financial asset facilitates this end.

Finally, it is possible that requiring companies to provide interactive data could improve the quality of financial information available to end users, and help spur interactive data-related innovation in the supply of financial services products, resulting from a potential increased competition among suppliers of such products due to lower entry barriers as a result of lower data collection costs.

2. Less Costly and More Timely Financial Information

It is likely that the new interactive data requirements will lower the cost of collecting corporate financial data in a machine-readable format and allow it to be analyzed by investors and other end-users more quickly than without interactive data. At present, financial information is made available to investors in text formatted documents that require manual key-entry of the data into a format that allows statistical analysis and aggregation. Investors seeking broad financial coverage of companies must either spend considerable time manually collecting the data, or subscribe to a financial service provider that specializes in this data aggregation process, but passes on the expense of the data collection effort.

Requiring companies to report interactive data should lower both the time and expense for investors to access this data. Since company financial data will be tagged and immediately downloadable into a larger, more comprehensive database that includes other filers, there will be no need for manual key entry of the data, eliminating this expense. Moreover, with this manual key entry effort no longer necessary, the delay between when the financial data are first filed and when the data is available in machine-readable format will reduce substantially. For instance, one unpublished study reports that as recently as 2004, the average time required for one large data aggregator to make financial data available to investors was 10.8 days.[328] With interactive data reporting, company financials can be integrated into subscriber databases within a matter of hours or minutes. As a result of having data made available more quickly to investors and other end-users, newly revealed information can be more quickly priced into the market by a larger number of investors, consistent with tenets of improved market efficiency.

If interactive data serves to lower the data aggregation costs as expected, then it is further expected that smaller investors will have greater access to financial data than before. In particular, many investors that had neither the time nor financial resources to procure broadly aggregated financial data prior to interactive data will have lower cost access than before interactive data. Lower data aggregation costs will allow investors to either aggregate the data on their own, or purchase it at a lower cost than what would be required prior to interactive data. Hence, smaller investors will have fewer informational barriers that separate them from larger investors with greater financial resources.

It is also likely that a filer that uses a standardized interactive data format at earlier stages of its reporting cycle also may increase the usability of its internal financial information. For example, filers that use interactive data may be able to consolidate enterprise financial information more quickly and potentially more reliably across operating units with different accounting systems.[329] There has been a growing development of software products to assist filers to tag their financial statements using interactive data helping make interactive data increasingly useful.[330]

Interactive data also could provide a significant opportunity for issuers to automate their regulatory filings and business information processing, with the potential to increase the speed, accuracy, and usability of financial disclosure. This reporting regime may in turn reduce filing and processing costs.

3. Fewer Errors

Because a substantial portion of each financial report makes use of the same information, a filer that uses a standardized interactive data format at earlier stages of its reporting cycle may also increase the accuracy of its financial disclosure by reducing the need for repetitive data entry that could contribute human error and enhancing the ability of a filer's in-house financial professionals to identify and correct errors in the issuer's registration statements and periodic reports filed in traditional electronic format. It is also possible that there will be fewer errors in the aggregated financial data used by

[328] Julia D'Souza, K. Ramesh, and M. Shen, ''The interdependence between institutional investor stock ownership and information dissemination by capital market data aggregators,'' Michigan State University working paper, available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1010834*.

[329] However, we recognize that at the outset, filers would most likely prepare their interactive data as an additional step after their financial statements have been prepared.

[330] Press Release No. 2007–253 (Dec. 5, 2007).

investors since manual key entry of data will no longer be required by either the investor or a data aggregating service.

4. Increased Comparability and Interpretation of Financial Data

Another potential information consequence of the new requirements may be changes to the precision and comparability of the information disseminated by data service providers since the interactive data requirements would shift the source of data formatting that allows aggregation and facilitates comparison and analysis from end-users to issuers submitting interactive data. At present, data service providers manually key financial information into a format that allows aggregation. As a result, the data service provider makes interpretive decisions on how to aggregate reported financial items so that they can be compared across all companies. Consequently, when a subscriber of the commercial product offered by a data service provider uses this aggregated data, it can expect consistent interpretation of the reported financial items. In contrast, a requirement for issuers to submit interactive data information would require the issuers to independently decide within the confines of applicable requirements which financial ''tag'' best describes each financial item—lessening the amount of interpretation required by data service providers or end-users of the data. Once a standard tag is chosen, comparison to other companies is straightforward. However, since companies have some discretion in how to select tags, and can extend the taxonomy (create new tags) when an appropriate tag does not exist, unique interpretations by each company could result in reporting differences from what current data service providers and other end-users would have chosen. This view suggests that the issuer-submitted information disseminated by data service providers may be, on the one hand, less comparable because they have not normalized it across issuers but, on the other hand, more accurate because the risk of human error in the manual keying and interpretation of filed information would be eliminated and more precise because it will reflect decisions by the issuers themselves. Replicating prior methods would still be possible, however, because issuers would continue to be required to file financial information in traditional format. As a result, nothing would prohibit data service providers from continuing to provide data in the same manner that they did before. Nonetheless, interactive data benefits could diminish if other reporting formats are required for clarification in data aggregation.

B. Costs

The primary cost of the rulemaking is the cost of filers' implementation of the rule, which includes the costs of submitting and posting interactive data. We discuss this cost element extensively below. In addition, because the rule allows an increase in the flow of financial information being reported directly to analysts and investors, there will be a cost of learning on the part of the investors in using and analyzing financial information at the interactive data level. Finally, because interactive data provides a standardized reporting format—a set of common tags from which filers can select—this might affect a company's ability to communicate its unique financial attributes to investors.

As for the cost of implementation of the rule, based on currently available data, we estimate the average direct costs of submitting and posting interactive data-formatted financial statements and other information for all issuers under the proposed rules would, based on certain assumptions, be as follows:

TABLE 1—ESTIMATED DIRECT COSTS OF SUBMITTING INTERACTIVE DATA-FORMATTED FINANCIAL STATEMENTS AND OTHER INFORMATION

	First submission with block-text footnotes & schedules	Subsequent submission with block-text footnotes & schedules	First submission with detailed footnotes & schedules	Subsequent submission with detailed footnotes & schedules
Preparation face financials [331]	$31,370	$4,310	$4,310	$4,310
Preparation footnotes [332]	1,750	1,750	17,500	8,750
Preparation schedules—Software and filing agent services [333]	250	250	1,750	875
	6,140	6,140	6,140	6,140
Web site posting [334]	1,000	1,000	1,000	1,000
Total cost	40,510	13,450	30,700	21,075
Upper bound	82,220	21,340	60,150	37,940

The above estimates are based in part on questionnaire responses from 22 issuers that have participated in the voluntary program. Thirty-five participants were sent questionnaires, corresponding to a response rate of 63%. These responses provided detail on the projected costs of preparing the face financials and for purchasing software or related filing agent services. [335] The estimated total cost reported in Table 1 reflects expenditures on

[331] Estimates based on voluntary filer program questionnaire responses, excluding participants with an interactive data-related business interest. These data suggest that the time required for tagging the face financials decreases by approximately 85% between the first and second submissions, from 125.47 hours to 17.25 hours, numbers which are rounded to 125 and 17 for PRA calculations. A $250 wage rate is assumed for all preparation cost estimates.

[332] The costs associated with block-tagging of footnotes and schedules are assumed to remain constant in subsequent filings. In contrast, anticipated learning benefits from more complicated detailed tagging of footnotes and schedules are assumed to result in a 50% reduction in cost for subsequent filings.

[333] Software licensing and the use of a print agent can be substitutionary—companies can choose to do one or other, or do both—and are thus aggregated.

[334] This is an annual cost, and as such, will not be incurred for subsequent filings within the same year.

[335] Voluntary program participants were not required to tag financial statement footnotes or schedules related to the financial statements except that registered management investment company participants were required to tag one specified schedule. Similarly, voluntary program participants were not required to post on their corporate Web sites, if any, the interactive data information they submitted. Consequently, the costs of requirements to tag financial statement footnotes and schedules related to financial statements and post interactive data information are not derived from the voluntary program participant questionnaire responses or discussed in our analysis of those responses.

interactive data-related software, consulting or filing agent services used, and the market rate for all internal labor hours spent (including training) to prepare, review and submit the first interactive data format information face financial statements. The major assumptions used for this analysis are as follows.

- Labor cost is estimated at $250 per hour, commensurate with the wage rate of an external accountant; [336]
- Voluntary program participants reported a 85% average reduction in time required to prepare face financials from the first to second filing;
- Block tagging of footnotes is estimated at 7 hours for the first filing, with a 50% reduction in time for subsequent filings; and
- Detailed tagging of footnotes is estimated at 70 hours for the first filing, with a 50% reduction in time for the subsequent filings.

1. Potential Variability in the Cost Estimate

We report an upper bound for the estimated total cost based on (1) the variation in responses from the voluntary program participants and the likelihood of sampling error—respondents represent approximately 0.21% of all issuers that ultimately would be required to submit interactive data [337]—and (2) the likelihood of sample selection bias due to non random participation by filers in the voluntary filing program. In particular, we estimate that:

- Average cost estimates increase by 20% after removing voluntary program participants in an interactive data-related business.
- Due to sampling error,[338] there is a 1% chance that the true costs are underestimated by up to 80%.

The upper bound reported in Table 1 is $82,220 for the first filing compared to the average of $40,510. This upper bound is calculated based on the 1% likelihood that costs are underestimated by 80%, and after removing responses from five participants in an interactive data-related business. These voluntary filer program participants, including filing agents, financial services providers, and other consulting agents, may have incentives and skill sets unrepresentative of the average issuer that may cause their costs to depart from the likely submission cost of the average issuer when interactive data is required.

The costs in Table 1 do not reflect the following factors that could also affect the total cost of compliance.

- Smaller financial issuers appear to have less complex financials and labor costs that tend to be 20–30% lower than for other issuers to submit interactive data information.
- There also is some evidence to suggest that the smallest (non-accelerated) issuers might have submission costs or compliance difficulties in excess of other issuers.
- The lists of tags used to prepare the face financial statements by those issuers that responded to the questionnaire for the voluntary program have been updated for the required program.[339]

The voluntary program questionnaire evidence is based on responses of predominantly large issuers, and their cost experience may not be representative of the smaller issuers or non-participating larger issuers. In particular, voluntary program participants that responded to the questionnaire are found among the largest of all issuers, with more than 88% considered large accelerated filers (measured as greater than $700 million in public float). In contrast, only 1,529 of 10,229 filers (15%) expected to be subject to the rule were considered large accelerated filers in their fiscal year-end 2007.

A size bias is plausible, since there are reasons to believe that the reported submission costs vary with the size of the issuer. For instance, larger issuers might have lower interactive data submission costs than smaller issuers, since they have a larger pool of internal resources to draw from, allowing them to more efficiently allocate available skill sets from their labor pools to implement interactive data reporting technology. Moreover, larger organizations might have greater excess capacity in their internal labor pool such that they are better able to absorb the short-term labor needs of ''learning'' interactive data. If so, the effect of sample selection in this instance may be to underreport the interactive data submission costs for smaller issuers.

Alternatively, smaller issuers could have lower submission costs than larger issuers if their operations are less complex. This reasoning suggests that simpler business operations lead to simpler financial statements, requiring less effort to tag and submit using interactive data. Hence, any reduction in available resources to allocate to interactive data submission may be offset by lesser demand for resources. This view suggests a trade-off in submission costs as issuers become smaller, and as a typical result, less complex.

The balance of evidence suggests that smaller filers will have, on average, lower submission costs than larger filers. Although the U.S. voluntary filer program contains data predominantly on larger filers, and as a result cannot directly address this issue, evidence from the Japanese interactive data pilot program reveals a 20 to 30% reduction in the time required to comply with their first interactive data filing for the smaller filers relative to the largest filers.[340] This percent reduction is consistent with the percent reduction in U.S. filing complexity across filer size. In particular, we find that the number of financial statement items reported in periodic reports falls by 15 to 20% for the smallest filers compared to largest filers. Hence, the reduction in time required in the Japanese study is broadly consistent with the filing complexity—measured by the number of filing elements—among U.S. filers.

Nevertheless, there remain concerns for the smallest filers. The Japanese study reveals that compliance costs begin to increase as filer size goes from smaller to smallest, although the costs are not more than those of the largest filers—costs for the smallest Japanese filers are roughly 15% lower than the largest filers, but about 25% higher than the lowest cost smaller filers. Moreover, the smallest Japanese filers had the highest likelihood of delayed filing in

[336] These estimates are from the Securities Industry and Financial Markets Association's Management and Professional Earnings in the Securities Industry 2007, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[337] This is based on 10,672 domestic and foreign issuers that filed an annual report in calendar year 2007. Under our proposed rules, not all foreign private issuers would be required to submit interactive data; only those foreign private issuers that prepare their financial statements in accordance with U.S. GAAP or IFRS as issued by the IASB would be required to submit interactive data. Foreign private issuers that report in accordance with other structures and reconcile to U.S. GAAP would not be required to submit interactive data.

[338] In general, sampling error is the error that arises as a function of sampling in general and the sample chosen in particular.

[339] For example, the related list of tags would differ between the voluntary and proposed required program. When we adopted the voluntary program, the list of tags for U.S. GAAP financial statement reporting contained approximately 4,000 data elements. The list of tags released on April 28, 2008 contains approximately 13,000 data elements, with the most significant additions relating to the development of elements for standard U.S. GAAP footnote disclosure.

[340] Starting in April 2008, Japanese filers were required to report financial statements with their Financial Services Agency (JFSA) using interactive data technology. Before this requirement, 1,233 Japanese companies participated in a pilot program; 768 participants described their interactive data submission experience through a JFSA survey. For our previous fuller discussion of the JFSA survey, see the proposing release.

their first submission: 25% did not file by the mandated date compared to 5% for the largest filers. These risk factors motivate a phase-in schedule that allows smaller filers to lag larger filers in mandated reporting compliance.

2. Cost Estimates for Footnote Tagging and for Software

While the required time to prepare face financials is estimated based on responses from the voluntary filer participants, the same is not true for tagging of footnotes. At the time of the questionnaire, footnote tagging was not prevalent among voluntary filers and a cost estimate from their experience could not be obtained. In the proposing release, block tagging was estimated at seven hours for the first filing, and detailed tagging estimated at 100 hours. In both cases, a 50% reduction in preparation time was assumed between the first and subsequent filings, which is a more conservative learning rate than what was observed for tagging of face financial (85% reduction). In the adopting release, detailed tagging of the narrative is no longer required, and as a result, the cost estimates for detailed tagging in the adopting release are reduced by 30%, to 70 hours for the first filing, and 35 hours for subsequent filings. Nevertheless, it is reasonable to assume that many filers, particularly the largest filers with the most complex filings, may require more than 70 hours to comply with the detailed tagging requirement. It is also reasonable to assume that many filers will require significantly less time than 70 hours, and 70 hours seems to fall within the range suggested by commenters and what is anticipated by Commission staff. As discussed in more detail above, we believe that the proposed requirement to tag each narrative disclosure within a footnote that, as adopted, will be optional, probably was a significant component of the higher estimates provided by commenters.[341]

The software costs assumed in the cost estimate also include anticipated print agent and filing service fees. The experience of voluntary filer participants suggests that many filers have not yet determined the optimal compliance method, and several pursued simultaneous approaches. So while some participants prepared and filed their documents on their own, and others contracted the entire experience to a print agent, many pursued some combination of the two. As a result of the complexity with which filers reported their experience, we aggregated all of their software and print agent costs into one category. We estimate the total cost for software and filing agent services at $6,140 per filing.

It is possible that filers will experience a lower cost than $6,140. For instance, one service provider[342] charges a flat fee of $1,995 for both Form 10–K and Form 10–Q periodic reports. Nevertheless, some commenters were concerned about the availability and rising cost of software. For instance, one commenter reported a 65% increase in software costs from one vendor after the Commission released its interactive data proposal in May of 2008.[343] Another commenter worried that third party vendors will not be ready in time for the proposed phase-in of the rule.[344]

Until the rule is phased in on a broad scale, it is hard to predict what equilibrium price of software, consulting, and filing agent services will prevail. The roles of each potential kind of service provider within the interactive data market are likely to develop further and are not yet clear, and there are many potential participants to consider, including the software vendors, financial reporting system providers (*i.e.*, providers of widely used financial products), print/filing agents, and other consultants. Until the market of issuers that submit interactive data information grows substantially larger (either by requirement or by expansion of the number of volunteers), many different potential solutions are possible. For example, issuers may adopt solutions that create interactive data submissions using third party software, a so-called ''bolt-on'' approach, or may seek integrated solutions that enable issuers to prepare interactive data submissions from their existing financial services software. Moreover, filing agents may maintain their role as an intermediary by offering interactive data technology or other service providers may cause that role to change. Others with financial and technical expertise may participate in the technology that may yield different results.

Combining the uncertainty over the source of future interactive data services with increased demand for these services could result in a new market price that is different from what is currently reported by voluntary program participants. This price could be higher if the demand for interactive data services increases (from 76 voluntary program participants at the time of the cost analysis to more than 10,000 total participants) at a faster rate than the supply for these same services. More broadly, if an interactive data requirement resulted in clients subscribing for interactive data services faster than the rate at which these services can be supplied, then prices could increase. A phase-in schedule that limits the number of participants in the first year is likely to mitigate this concern to the extent that the rate of phase-in allows interactive data service suppliers to keep pace with demand.

3. Interpretability of Standardized Tagging

Since interactive data formatting provides a standard set of tags from which companies select when they report their financial data, one potential consequence of the proposed requirements is that companies will be less able to communicate their unique financial attributes to investors. A standard set of tags helps facilitate easier comparability between companies, but this benefit might come at a cost of less precise information about a company if the selected tag is different from what the company would have labeled the information without interactive data reporting. While it is possible for a company to create an extension (a new tag) to reflect unique financial information when it is not otherwise described by a standard tag, this information will no longer be easily aggregated across other companies.

Nevertheless, the risk of interpretability of reported financial data already exists in the current data aggregation process. According to current practices, financial data service providers manually key financial information into a format that allows aggregation so that they can resell it to investors. As a result, the data service provider makes interpretive decisions on how to aggregate reported financial items so that they can be compared across all companies. This is done so that a subscriber of the commercial product offered by a data service provider can expect consistent interpretation of the reported financial items, allowing comparability in the same way that it is intended with interactive data. Hence, from one perspective, adoption of interactive data will shift the burden of making the interpretive decision on how to label a financial item from financial service providers to the companies making the filings. To the extent that the company is better able to classify financial data for comparability to other companies through interactive data tagging than a financial data service provider who manually keys and classifies financial data from standard paper based filings,

[341] *See* Part III.B.1.

[342] *See* letter from Rivet.

[343] *See* letter from FPL.

[344] *See* letter from Comcast.

then interpretability of reported financial data should not worsen with adoption of interactive data reporting.

4. Corporate Web Site Posting

Filers must also post their interactive data files to their corporate Web site if they have one. The direct cost estimate of doing so is four hours of time, or $1,000. In relation to the other costs of interactive data adoption, this cost is low. Although the estimated cost of mandatory posting is low compared to other costs of interactive data compliance and it is possible that many companies would post this data even if it were not mandatory, it is difficult to quantify specific benefits of mandatory posting beyond the benefit of having this same document posted on the Commission's Web site. Nevertheless, potential benefits of required corporate Web site posting include the following:

- Encouraging widespread accessibility and dissemination of interactive data, promoting its awareness and use;
- Making it easier and faster for investors to collect information on a particular filer required to post, particularly if the investor is already searching the Web site;
- Transferring reliability costs of data availability to the public companies by reducing the likelihood that investors cannot access the data through the Commission's Web site, due to down-time for maintenance or due to increased network traffic;
- Enhancing access to corporate financial data by Web crawlers searching for such information that face access restrictions on EDGAR; and
- Providing incentive for corporations to add content or enhance their Web site improving the investor experience.

Although there is potential to realize each of these stated benefits, there are also reasons why they may not manifest. The most likely reason that benefits will not accrue to investors from mandatory Web site posting is that a key feature of interactive data that makes them valuable to investors is the ability to aggregate financial data across companies. Since filers will use common tags that allow aggregation of firm financials, company performance can be compared in ways that are far less costly and time consuming than doing so without interactive data. Facilitating this comparison, however, is expected to be less likely to occur at a specific corporate Web site than it is at a third party Web site that provides a wide range of companies to analyze. Since companies are not required to post interactive data for other filers, this leaves investors two options for assembling aggregated financial data. The investor can obtain the data from separate visits to each corporate Web site of interest, or the investor can visit a third party Web site—such as EDGAR or commercial sources—and obtain the necessary data from a single source. The latter option is far more efficient, not only because of time savings, but also because central depositories of financial information provide access to companies for which an investor might not otherwise know to look. In other words, a filer may only know to investigate a company by having it reside in a location adjacent to where the investor is already searching. For instance, a feature of many third party information forums is to provide, without prompting, a set of comparable firms to the firm that an investor is currently researching using the provider's tools. There is no duty for a company to provide on its Web site a similar set of comparables for a visiting investor.

As a result, it is likely that individual corporate Web site posting of data could potentially offer a faster source of financial data to an investor only if the investor is not interested in broad data aggregation. If an investor is interested in interactive data for several companies, then identifying the unique Web address for each company, and locating where on the Web site the interactive data resides, will consume far more of an investor's time than going to a central location with only a single Web address and a single Web site design to navigate. If, on the other hand, an investor is interested only in the information from a specific company, then interactive data offer fewer benefits to the investor relative to other file formats, such as HTML, that offer data in a visually organized manner.

Similarly, data aggregators and Web crawling tools that search for corporate financial data will not necessarily benefit from mandatory corporate Web site posting of interactive data. For the same reason that an individual investor will find it easier to visit a central information depository for information rather than each individual corporate Web site, so will data aggregators and Web crawlers. Programming a Web crawling tool to search thousands of Web sites whose addresses and layouts are continually changing is more complex than doing the same for a single Web site. Moreover, investors face similar risks at corporate Web sites of restricted Web crawler activity, the Web site going down for maintenance, and slow connections due to high network traffic as they would at a central information depository such as EDGAR. This is particularly true to the extent that smaller corporate filers have fewer resources to maintain their Web site than the Commission or other third party sources of financial information.

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

Section 23(a)(2) of the Exchange Act [345] 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) [346] of the Securities Act, Section 3(f) [347] of the Exchange Act, and Section 2(c) [348] of the Investment Company Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The amendments requiring issuers to submit interactive data to the Commission and post it on their corporate Web sites are intended to make financial information easier for investors to analyze. In particular, we believe that the amendments will enable investors and others to search and analyze the financial information dynamically; facilitate comparison of financial and business performance across issuers, reporting periods and industries; and, possibly, provide a significant opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of financial disclosure. Further, we believe that the amendments may lead to more efficient capital formation and allocation. As discussed in detail above, we suggest that smaller public companies could benefit from increased analyst and investor coverage if interactive data increases the availability, or reduces the cost of collecting and analyzing, corporate financial data. As a result, interactive data may reduce some of the information barriers that make it costly for companies to find appropriate sources of external finance, thus

[345] 15 U.S.C. 78w(a)(2).
[346] 15 U.S.C. 77b(b).
[347] 15 U.S.C. 78c(f).
[348] 15 U.S.C. 80a–2(c).

lowering their cost of capital and increasing the efficiency of capital formation.

We understand that private sector businesses such as those that access financial information and aggregate, analyze, compare or convert it into interactive format have business models and, as a result, competitive strategies that the new interactive data requirements might affect. Since interactive data technology is designed to remove an informational barrier, business models within the financial services industry that are currently adapted to traditional format document reporting may change, with possible consequences for the revenue stream of current product offerings due to the competitive effects of such a change. The competitive effects may relate to changes in the accessibility of financial information to investors, the nature of the information that investors receive, and the potential from new entry or innovation in the markets through which financial reports are transmitted from filers to investors. For example, lower entry barriers that result from lower data collection costs may increase competition among suppliers of financial services products and help spur interactive data-related innovation. It is also possible, however, that, increased competition from new market entrants could reduce industry profit margins, and, as a result, the quality of financial services may suffer. For example—and illustration purposes only—assume that an Internet service company develops an interactive data-based tool that easily provides company base financial data for free to all subscribers, and it uses this product as a loss leader to increase viewership and advertising revenue. If the data provided is of the same quality as data provided through subscription to other available commercial products, then there should be no informational efficiency loss and the quality of financial data services should not be impaired. However, if the incumbent financial service providers provide a higher quality of information that improves investor interpretation beyond base financials, but they find that it is no longer profitable to produce this information as a result of subsidized products from inferior providers, then these financial data service providers may reduce the supply of higher quality information to investors.

We requested comment on whether the amendments would promote efficiency, competition, and capital formation or have an impact or burden on competition.

A few commenters expressly addressed the amendments' competitive effects. One commenter argued that the amendments would harm competition and innovation in computer operating systems because interactive data are restricted on non-Windows operating systems.[349] This commenter stated that interactive data source code was not available to the public and that there were no interactive data viewers that worked under Macintosh or Linux platforms. We have considered the commenter's views. In this regard, we note that the XBRL form of interactive data that the rules require, with appropriate software, could be used on non-Windows operating systems and seen in human-readable form through viewers that worked under Macintosh or Linux platforms. We also note that XBRL is an ''open standard'' format and its technological specifications are widely available to the public royalty-free at no cost.

Several commenters questioned the efficiency of interactive data. In this regard, commenters addressed the comparability of interactive data and the corporate Web site posting requirement.

Some commenters stated that interactive data would be hard for investors to use in the manner it was intended to be made part of the interactive data requirements because there would be a lack of comparability due to the Commission's permitting issuers to use taxonomies with thousands of standard elements and additional extensions.[350] We believe that the combination of a robust list of standard elements and the ability to add extensions where necessary, strikes an appropriate balance between comparability and specificity. We also believe that if certain extensions become common, new standard elements can be added to eliminate the need to use these extensions and, thereby, enhance comparability.

A commenter questioning the efficiency of the Web site posting requirement expressed concern about the risk of hosting delays, and the potential for errors and duplication of effort. This commenter suggested that a hyperlink to the interactive data on the Commission's Web site would be more effective and would be consistent with the current practice of some companies linking to their periodic reports on the Commission's site.[351] As noted above, we believe that corporate Web site availability of interactive data will encourage its widespread dissemination, thereby contributing to lower access costs for users. Users that prefer to access the interactive data through another source such as the Commission's Web site would be free to do so.

Commenters addressed competition in terms of the opportunity to participate in submitting interactive data and the costs imposed by the requirement to submit interactive data. A commenter argued for the expansion of interactive data's use in order to promote competition. Specifically, this commenter suggested that issuers be permitted to submit interactive data with MJDS forms to enable MJDS issuers to avoid a competitive disadvantage that would result from the inability to submit interactive data.[352] As discussed above, the new rules generally will require issuers to submit interactive data for their MJDS forms. One commenter stated that the additional costs of the interactive data requirements would make the U.S. market less attractive to foreign issuers.[353] Another commenter recommended that foreign private issuers be excluded from the phase-in period, asserting that foreign issuers would face more difficulty due to factors such as language differences and less access to service suppliers.[354] We acknowledge these concerns about cost and effort but believe that the adopted requirements are appropriate in light of the potential interactive data have to increase the speed, accuracy and usability of financial disclosure, and eventually reduce costs.

VI. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to amendments that will require issuers to provide their financial statements to the Commission and on their corporate Web sites in interactive data format.

A. Reasons for, and Objectives of, the Adopted Amendments

The main purpose of the amendments is to make financial information easier for investors to analyze while assisting in automating regulatory filings and business information processing. Currently, issuers are required to file the financial statements in their registration statements, quarterly and annual reports, and transitional reports and revised or updated financial statements in their current reports on Form 8–K

[349] *See* letter from Jay Starkman.

[350] *See* letters from Haynsworth and SavaNet.

[351] *See* letter from IBM.

[352] *See* letter from CP.

[353] *See* letter from EuropeanIssuers.

[354] *See* letter from CSG.

and reports on Form 6–K in a traditional format that provides static text-based information. We believe that providing these financial statements in interactive data format will:

- Enable investors and others to search and analyze the information dynamically;
- Facilitate comparison of financial and business performance across issuers, reporting periods and industries; and
- Provide an opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of financial disclosure.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Act Analysis appeared in the proposing release (IRFA). We requested comment on any aspect of the IRFA, including the number of small entities that may be affected by the amendments, the nature of the potential impact of the amendments on small entities, and how to quantify the impact of the amendments. We asked those submitting comments to provide empirical data supporting the extent of the impact.

One commenter, while acknowledging that the largest filers included in the first phase should be able to effectively deal with the amendments' requirements, expressed concern about the capacity of smaller filers to do so.[355] This filer suggested that the Commission thoroughly study the initial phase-in period to determine whether smaller filers will have the resources and staff to be able to comply with the requirements of the rule in the time period proposed. This filer also believed that smaller issuers with less than $50 million of public float should be able to opt out of the requirements of the amendments but voluntarily comply if they so choose. One commenter noted that the grace period following the filing of a Form 10–K offers little relief for smaller companies due to the number of filings prepared shortly thereafter. Specifically, this commenter noted that at many smaller companies, the staff responsible for the preparation of a Form 10–K immediately turn their time and attention to the preparation of the company's proxy statement after filing the Form 10–K. The commenter stated that a Form 10–Q is not followed by a similar series of reporting obligations, so a grace period following this report is consequently more helpful in assisting companies avoid excessive expense and burden.[356]

We also note that commenters that provide interactive data services stated that issuers would need to expend only modest cost and effort to comply with the proposed requirements.[357] One commenter stated that it expected that costs would fall quickly, especially for small companies, as interactive data became part of standard corporate accounting software packages.[358] As noted throughout the release, we are sensitive to the impact of the amendments on small companies and while we recognize that requiring interactive data financial reporting will likely result in start-up expenses for such companies, these expenses may be substantially lower than those of larger filers, given that smaller filers tend to have simpler financial statements than larger companies, with fewer elements and disclosures to tag. We expect that the phase-in will foster the improvement and availability of inexpensive software. We also believe that the third year phase-in for smaller reporting companies will permit them to learn from the experience of the earlier filers and give them a longer period of time across which to spread first-year data tagging costs.

C. Small Entities Subject to the Amendments

The amendments will affect issuers that are small entities. Exchange Act Rule 0–10(a) [359] 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.[360] We estimate that there are approximately 1,100 issuers that file reports under the Exchange Act and may be considered small entities.[361] All of these issuers would become subject to the amendments in year three of the phase-in.

D. Reporting, Recordkeeping and Other Compliance Requirements

All issuers subject to the amendments will be required to submit financial information to the Commission in interactive data format and, if they have a corporate Web site, post the interactive data on their Web site. We believe that, in order to submit financial information in interactive data format, issuers in general and small entities in particular likely will need to prepare and then submit the interactive data by expending internal labor hours in connection with either or both of;

- Purchasing, learning, and using software packages designed to prepare financial information in interactive format; and
- Hiring and working with a consultant or filing agent.[362]

We believe that issuers will incur relatively little cost in connection with the requirement to post the interactive data on the issuer's corporate Web site because the requirement applies only to issuers that already have a corporate Web site.[363]

E. Agency Action To Minimize the Effect on Small Entities

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 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 requirements;
- Using performance rather than design standards; and

[355] *See* letter from NYSSCPA.

[356] *See* letter from ABA.

[357] *See* letters from ECI, EDGARFilings and UBMatrix.

[358] *See* letter from James J. Angel.

[359] 17 CFR 240.0–10(a).

[360] 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 VI 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 amendments on small entities.

[361] The estimated number of small entities that report under the Exchange Act is based on 2007 data including the Commission's internal computerized filing system and Thompson Financial's Worldscope database.

[362] Some issuers such as those that have participated in the voluntary program may already prepare financial information in interactive data format or already have the expertise and software to prepare financial information in interactive data format. Those issuers would incur fewer costs as a result of the new requirements. Based on our experience with the voluntary program, however, we believe that it would be unlikely that those issuers would include many small entities.

[363] The internal labor and external costs required to comply with the new rules are discussed more fully in Parts III and IV above.

• Providing an exemption from the requirements, or any part of them, for small entities.

We believe that, as to small entities, differing compliance, reporting or non-phase-in timetable requirements, a partial or complete exemption from the amendments or the use of performance rather than design standards would be inappropriate because these approaches would detract from the long-term completeness and uniformity of the interactive data format financial information database. Less long-term completeness and uniformity would reduce the extent to which the amendments would enable investors and others to search and analyze the information dynamically; facilitate comparison of financial and business performance across issuers, reporting periods and industries; and, possibly, provide an opportunity to automate regulatory filings and business information processing with the potential to increase the speed, accuracy, and usability of financial disclosure. We note, however, that small entities will not be subject to the amendments until year three of the phase-in and, as all other issuers, will not be required to tag in detail the footnotes and schedules to their financial statements until their second year subject to the requirements.[364] We solicited comment 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 making financial information easier for investors to analyze while assisting in automating regulatory filings and business information processing. One commenter stated that at some future point, all filers should be required to submit their financial statements in interactive data.[365] This commenter also stated, however, that smaller filers should, for now, be able to opt out of the requirement to submit interactive data. In this regard, the commenter stated that it did not believe there would be sufficient analyst interest in these filers to justify the costs the filers would incur. We acknowledge the commenter's views. We note, however, that even if there were relatively little analyst interest in smaller filers, the interactive data requirements are intended not only to facilitate access to and use of information by analysts but by others as well. In addition, we note that the interactive data requirements also are intended to provide an opportunity to automate regulatory filings and business information processing, with the potential to increase the speed, accuracy and usability of financial disclosure.

Based in part on our experience with the voluntary program, we believe that the amendments are sufficiently clear and straightforward.

VII. Statutory Authority and Text of Amendments

We are adopting the amendments outlined above under Sections 7, 10, 19(a) and 28 of the Securities Act,[366] Sections 3, 12, 13, 14, 15(d), 23(a), 35A, and 36 of the Exchange Act,[367] Sections 314 and 319 of the Trust Indenture Act[368] and Sections 6(c), 8, 24, 30, and 38 of the Investment Company Act[369] and Section 3(a) of the Sarbanes-Oxley Act.[370]

List of Subjects

17 CFR Parts 229, 230, 232, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

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

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

■ 1. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Amend § 229.601 by revising the exhibit table in paragraph (a) and by revising paragraph (b)(100) and adding paragraph (b)(101) to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

Exhibit Table

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EXHIBIT TABLE

	Securities Act forms								Exchange Act forms				
	S–1	S–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K
(1) Underwriting agreement	X	X	X	.....	X	X	X	X	.....	X	.....	.....	.....
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	.....	X	X	X	X	X	X	.....	X	X
(3)(i) Articles of incorporation	X	.....	X	.....	X	X	.....	X	X	X	X	X	X
(ii) Bylaws	X	.....	X	.....	X	X	.....	X	X	X	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	.....	.....	.....	.....	.....
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

[364] In this regard, in Part II.B.2 of this release we note that the additional phase-in time for companies not required to submit interactive data in year one of the phase-in period is intended to permit them to plan for and implement the interactive data reporting process after having the opportunity to learn from the experience of year one filers. We also there note that the additional phase-in time also is intended to enable us to monitor implementation and, if necessary, make appropriate adjustments to the phase-in period.

[365] *See* letter from NYSSCPA.

[366] 15 U.S.C. 77g, 77j, 77s(a) and 77z–3.

[367] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, and 78mm.

[368] 15 U.S.C. 77nnn and 77sss.

[369] 15 U.S.C. 80a–6(c), 80a–8, 80a–24, 80a–29, and 80a–37.

[370] Public Law No. 107–204, 116 Stat. 745.

EXHIBIT TABLE—Continued

	Securities Act forms								Exchange Act forms				
	S–1	S–3	S–4 [1]	S–8	S–11	F–1	F–3	F–4 [1]	10	8–K [2]	10–D	10–Q	10–K
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....
(8) Opinion re tax matters	X	X	X	.....	X	X	X	X	.....	.....	.....	.....	.....
(9) Voting trust agreement	X	.....	X	.....	X	X	.....	X	X	.....	.....	.....	X
(10) Material contracts	X	.....	X	.....	X	X	.....	X	X	.....	X	X	X
(11) Statement re computation of per share earnings	X	.....	X	.....	X	X	.....	X	X	.....	.....	X	X
(12) Statements re computation of ratios	X	X	X	.....	X	X	.....	X	X	.....	.....	.....	X
(13) Annual report to security holders, Form 10–Q or quarterly report to security holders [3]	.....	.....	X	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(14) Code of Ethics	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	X
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	.....	.....	.....	X	.....
(16) Letter re change in certifying accountant [4]	X	.....	X	.....	X	.....	.....	.....	X	X	.....	.....	X
(17) Correspondence on departure of director	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....
(18) Letter re change in accounting principles	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(19) Report furnished to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....
(20) Other documents or statements to security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	.....	.....	.....
(21) Subsidiaries of the registrant	X	.....	X	.....	X	X	.....	X	X	.....	.....	.....	X
(22) Published report regarding matters submitted to vote of security holders	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	.....	X [5]	X [5]	X [5]	X [5]
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	.....	X	X
(25) Statement of eligibility of trustee	X	X	X	.....	.....	X	X	X	.....	.....	.....	.....	.....
(26) Invitation for competitive bids	X	X	X	.....	.....	X	X	X	.....	.....	.....	.....	.....
(27) through (30) [Reserved]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
(31) (i) Rule 13a–14(a)/15d–14(a) Certifications (ii) Rule 13a–14/15d–14 Certifications	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
												.....	X
(32) Section 1350 Certifications [6]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	X
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(35) Servicer compliance statement	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X
(36) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents	.....	.....	.....	.....	.....	.....	.....	.....	X	X	.....	X	X
(101) Interactive Data File	X	X	X	.....	X	X	X	X	.....	X	.....	X	X

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

[3] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10–K, where the annual report to security holders is incorporated by reference into the text of the Form 10–K.

[4] If required pursuant to Item 304 of Regulation S–K.
[5] Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.
[6] Pursuant to §§ 240.13a–13(b)(3) and 240.15d–13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10–Q.

(b) * * *

(100) *XBRL-Related Documents.* Only an electronic filer that prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program and, as a result, may submit XBRL–Related Documents (§ 232.11 of this chapter) in electronic format as an exhibit to: the filing to which they relate; an amendment to such filing; or a Form 8–K (§ 249.308 of this chapter) that references such filing, if the Form 8–K is submitted no earlier than the date of filing. Rule 401 of Regulation S–T (§ 232.401 of this chapter) sets forth further details regarding eligibility to participate in the voluntary XBRL program.

(101) *Interactive Data File.* An Interactive Data File (§ 232.11 of this chapter) is:

(i) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is described in paragraph (b)(101)(i)(A), (B) or (C) of this Item, except that an Interactive Data File: first is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter), as applicable; is required for a registration statement under the Securities Act only if the registration statement contains a price or price range; and is required for a Form 8–K (§ 249.308 of this chapter) only when the Form 8–K contains audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle, and, in such case, the Interactive Data File would be required only as to such revised financial statements regardless whether the Form 8–K contains other financial statements:

(A) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(B) A large accelerated filer not specified in paragraph (b)(101)(i)(A) of this Item that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(C) A filer not specified in paragraph (b)(101)(i)(A) or (B) of this Item that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(ii) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(A) Registrant prepares its financial statements:

(*1*) In accordance with either:

(*i*) Generally accepted accounting principles as used in the United States; or

(*ii*) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(*2*) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(B) Interactive Data File is not required to be submitted to the Commission under paragraph (b)(101)(i) of this Item.

(iii) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

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

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

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

* * * * *

■ 4. Amend § 230.144 by revising paragraph (c)(1) and the Note to § 230.144(c) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(c) * * *

(1) *Reporting issuers.* The issuer is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and has:

(i) Filed all required reports under section 13 or 15(d) of the Exchange Act, as applicable, during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter); and

(ii) Submitted electronically and posted on its corporate Web site, if any, every Interactive Data File (§ 232.11 of this chapter) required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter), during the 12 months preceding such sale (or for such shorter period that the issuer was required to submit and post such files); or

* * * * *

Note to § 230.144(*c*). With respect to paragraph (c)(1), the person can rely upon:

1. A statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has:

a. Filed all reports required under section 13 or 15(d) of the Exchange Act, as applicable, during the preceding 12 months (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter), and has been subject to such filing requirements for the past 90 days; and

b. Submitted electronically and posted on its corporate Web site, if any, every Interactive Data File (§ 232.11 of this chapter) required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter), during the preceding 12 months (or for such shorter period that the

issuer was required to submit and post such files); or

2. A written statement from the issuer that it has complied with such reporting, submission or posting requirements.

3. Neither type of statement may be relied upon, however, if the person knows or has reason to believe that the issuer has not complied with such requirements.

* * * * *

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

■ 5. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 6. Amend § 232.11 by adding definitions for ''Interactive Data File,'' ''Promptly,'' and ''Related Official Filing'' in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Interactive Data File. The term *Interactive Data File* means the machine-readable computer code that presents information in eXtensible Business Reporting Language (XBRL) electronic format pursuant to § 232.405.

* * * * *

Promptly. The term *Promptly* means as soon as reasonably practicable under the facts and circumstances at the time. An amendment to the Interactive Data File made by the later of 24 hours or 9:30 a.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on the next business day after the electronic filer becomes aware of the need for such amendment shall be deemed to be ''promptly'' made.

* * * * *

Related Official Filing. The term *Related Official Filing* means the ASCII or HTML format part of the official filing with which an Interactive Data File appears as an exhibit.

* * * * *

■ 7. Amend § 232.201 by:

■ a. Revising paragraph (a) introductory text;

■ b. Amending paragraph (b) by revising the headings to Notes 1 and 2; and

■ c. Adding paragraph (c).

The revisions and addition 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), a Form D (§ 239.500 of this chapter) or an Interactive Data File (§ 232.11 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.

* * * * *

(b) * * *

Note 1 to paragraph (b): * * *

Note 2 to paragraph (b): * * *

(c) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and—

(1) Submission of an Interactive Data File (§ 232.11) as an exhibit as required pursuant to Rule 405 of Regulation S–T (§ 232.405), the electronic filer still can timely satisfy the requirement to submit the Interactive Data File in the following manner:

(i) Substitute for the Interactive Data File in the required exhibit a document that sets forth the following legend:

IN ACCORDANCE WITH THE TEMPORARY HARDSHIP EXEMPTION PROVIDED BY RULE 201 OF REGULATION S–T, THE DATE BY WHICH THE INTERACTIVE DATA FILE IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED BY SIX BUSINESS DAYS; and

(ii) Submit the required Interactive Data File no later than six business days after the Interactive Data File originally was required to be submitted.

(2) Posting on its corporate Web site of an Interactive Data File as required pursuant to Rule 405 of Regulation S–T, the electronic filer still can timely satisfy the requirement to post the Interactive Data File by so posting the Interactive Data File within six business days after the Interactive Data File was required to be submitted to the Commission.

Note to paragraph (c): Electronic filers unable to submit or post, as applicable, the Interactive Data File under the circumstances specified by paragraph (c), must comply with the provisions of this section and cannot use Form 12b–25 (§ 249.322 of this chapter) as a notification of late filing. Failure to submit or post, as applicable, the Interactive Data File as required by the end of the six-business-day period specified by paragraph (c) of this section will result in ineligibility to use Forms S–3, S–8 and F–3 (§§ 239.13, 239.16b, and 239.33 of this chapter) and constitute a failure to have filed all required reports for purposes of the current public information requirements of Rule 144(c)(1) (§ 230.144(c)(1) of this chapter).

■ 8. Amend § 232.202 by:

■ a. Revising paragraphs (a) introductory text, (a)(2), (b)(2), and (b)(3);

■ b. Revising paragraph (c);

■ c. Revising paragraph (d);

■ d. Revising the headings to Notes 1, 2, and 3 to the section; and

■ e. Adding Note 4 to the section.

The revisions and addition 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, group of filings or submission, 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 or submitted in electronic format or, in the case of an Interactive Data File (§ 232.11), to be posted on the electronic filer's corporate Web site, cannot be so filed, submitted or posted, as applicable, without undue burden or expense. Such written application shall be made at least ten business days before the required due date of the filing(s), submission(s) or posting of the proposed filing, submission, or posting 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.

* * * * *

(2) If the Commission, or the staff acting pursuant to delegated authority, denies the application for a continuing hardship exemption, the electronic filer shall file or submit the required document or Interactive Data File in electronic format or post the Interactive Data File on its corporate Web site, as applicable, on the required due date or the proposed filing or submission date, or such other date as may be permitted.

* * * * *

(b) * * *

(2) The burden and expense to employ alternative means to make the electronic submission or posting, as applicable; and/or

(3) The reasons for not submitting electronically the document, group of documents or Interactive Data File or not posting the Interactive Data File, as

well as the justification for the requested time period.

(c) If the request is granted with respect to:

(1) Electronic filing of a document or group of documents, not electronic submission or posting of an Interactive Data File, then the electronic filer shall submit the document or group of documents for which the continuing hardship exemption is granted in paper format on the required due date specified in the applicable form, rule or regulation, or the proposed filing date, as appropriate and the following legend shall be placed in capital letters at the top of the cover page of the paper format document(s):

IN ACCORDANCE WITH RULE 202 OF REGULATION S–T, THIS (specify document) IS BEING FILED IN PAPER PURSUANT TO A CONTINUING HARDSHIP EXEMPTION.

(2) Electronic submission of an Interactive Data File, then the electronic filer shall substitute for the Interactive Data File in the exhibit in which it was required a document that sets forth one of the following legends, as appropriate:

IN ACCORDANCE WITH A CONTINUING HARDSHIP EXEMPTION OBTAINED UNDER RULE 202 OF REGULATION S–T, THE DATE BY WHICH THE INTERACTIVE DATA FILE IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED TO (specify date); or

IN ACCORDANCE WITH A CONTINUING HARDSHIP EXEMPTION OBTAINED UNDER RULE 202 OF REGULATION S–T, THE INTERACTIVE DATA FILE IS NOT REQUIRED TO BE SUBMITTED.

(3) Web site posting by an electronic filer of its Interactive Data File, the electronic filer need not post on its Web site any statement with regard to the grant of the request.

(d) If a continuing hardship exemption is granted for a limited period of time for:

(1) Electronic filing of a document or group of documents, not electronic submission or posting of an Interactive Data File, then the grant may be conditioned upon the filing of the document or group of documents that is the subject of the exemption in electronic format upon the expiration of the period for which the exemption is granted. The electronic format version shall contain the following statement in capital letters at the top of the first page of the document:

This document is a copy of the (specify document) filed on (date) pursuant to a Rule 202(d) continuing hardship exemption.

(2) Electronic submission or posting of an Interactive Data File, then the grant may be conditioned upon the electronic submission and posting, as applicable, of the Interactive Data File that is the subject of the exemption upon the expiration of the period for which the exemption is granted.

Note 1 to § 232.202: * * *

Note 2 to § 232.202: * * *

Note 3 to § 232.202: * * *

Note 4 to § 232.202: Failure to submit or post, as applicable, the Interactive Data File as required by Rule 405 by the end of the continuing hardship exemption if granted for a limited period of time, will result in ineligibility to use Forms S–3, S–8, and F–3 (§§ 239.13, 239.16b and 239.33 of this chapter) and constitute a failure to have filed all required reports for purposes of the current public information requirements of Rule 144(c)(1) (§ 230.144(c)(1) of this chapter).

■ 9. Amend § 232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents, Interactive Data Files (§ 232.11) or XBRL-Related Documents (§ 232.11).

■ 10. Amend § 232.401, paragraph (a), by adding a new first sentence to read as follows:

§ 232.401 XBRL-Related Document submissions.

(a) Only an electronic filer that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), a ''business development company'' as defined in section 2(a)(48) of that Act, or an entity that reports under the Exchange Act and prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program. * * *

* * * * *

■ 11. Amend § 232.402 by removing the phrase ''Public Utility Act,'' from the first sentence of paragraph (b).

§§ 232.403 and § 232.404 [Reserved].

■ 12. Reserve § 232.403 and § 232.404.

■ 13. Add § 232.405 and § 232.406T to read as follows:

§ 232.405 Interactive Data File submissions and postings.

Preliminary Note 1. Sections 405 and 406T of Regulation S–T (§§ 232.405 and 232.406T) apply to electronic filers that submit or post Interactive Data Files. Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of both Form F–9 (§ 239.39 of this chapter)and Form F–10 (§ 239.40 of this chapter), Item 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.7 of the General Instructions to Form 40–F (§ 249.240f of this chapter) and paragraph C.6 of the General Instructions to Form 6–K (§ 249.306 of this chapter) specify when electronic filers are required or permitted to submit or post an Interactive Data File (§ 232.11), as further described in the Note to § 232.405.

Preliminary Note 2. Section 405 imposes content, format, submission and Web site posting requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

Preliminary Note 3. Section 406T addresses liability related to Interactive Data Files.

(a) *Content, format, submission and posting requirements—General.* An Interactive Data File must:

(1) Comply with the content, format, submission and Web site posting requirements of this section;

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of either Form F–9 or Form F–10, Item 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F or paragraph C.6 of the General Instructions to Form 6–K, as applicable, as an exhibit to:

(i) A form that contains the disclosure required by this section or

(ii) An amendment to a form that contains the disclosure required by this section if the amendment is filed no more than 30 days after the earlier of the due date or filing date of the form and the Interactive Data File is the first Interactive Data File the electronic filer submits or the first Interactive Data File the electronic filer submits that complies or is required to comply, whichever occurs first, with paragraphs (d)(1) through (d)(4), (e)(1) and (e)(2) of this section;

(3) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, either Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of either Form F–9 or Form F–10, Item 101

of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F or paragraph C.6 of the General Instructions to Form 6–K; and

(4) Be posted on the electronic filer's corporate Web site, if any, in accordance with, as applicable, either Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of either Form F–9 or Form F–10, Item 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F or paragraph C.6 of the General Instructions to Form 6–K.

(b) *Content—Categories of information presented.* An Interactive Data File must consist of only a complete set of information for all periods required to be presented in the corresponding data in the Related Official Filing, no more and no less, from all of the following categories:

(1) The complete set of the electronic filer's financial statements (which includes the face of the financial statements and all footnotes); and

(2) All schedules set forth in Article 12 of Regulation S–X (§§ 210.12–01—210.12–29) related to the electronic filer's financial statements.

Note to paragraph (b): It is not permissible for the Interactive Data File to present only partial face financial statements, such as by excluding comparative financial information for prior periods.

(c) *Format—Generally.* An Interactive Data File must comply with the following requirements, except as modified by paragraph (d) or (e) of this section, as applicable, with respect to the corresponding data in the Related Official Filing consisting of footnotes to financial statements or financial statement schedules as set forth in Article 12 of Regulation S–X:

(1) *Data elements and labels.*

(i) *Element accuracy.* Each data element (*i.e.*, all text, line item names, monetary values, percentages, numbers, dates and other labels) contained in the Interactive Data File reflects the same information in the corresponding data in the Related Official Filing;

(ii) *Element specificity.* No data element contained in the corresponding data in the Related Official Filing is changed, deleted, or summarized in the Interactive Data File;

(iii) *Standard and special labels and elements.* Each data element contained in the Interactive Data File is matched with an appropriate tag from the most recent version of the standard list of tags specified by the EDGAR Filer Manual. A tag is appropriate only when its standard definition, standard label and other attributes as and to the extent identified in the list of tags match the information to be tagged, except that:

(A) *Labels.* An electronic filer must create and use a new special label to modify a tag's existing standard label when that tag is an appropriate tag in all other respects (*i.e.*, in order to use a tag from the standard list of tags only its label needs to be changed); and

(B) *Elements.* An electronic filer must create and use a new special element if and only if an appropriate tag does not exist in the standard list of tags for reasons other than or in addition to an inappropriate standard label; and

(2) *Additional mark-up related content.* The Interactive Data File contains any additional mark-up related content (*e.g.*, the eXtensible Business Reporting Language tags themselves, identification of the core XML documents used and other technology related content) not found in the corresponding data in the Related Official Filing that is necessary to comply with the EDGAR Filer Manual requirements.

(d) *Format—Footnotes—Generally.* The part of the Interactive Data File for which the corresponding data in the Related Official Filing consists of footnotes to financial statements must comply with the requirements of paragraphs (c)(1) and (c)(2) of this section, as modified by this paragraph (d), unless the electronic filer is within one of the categories specified in paragraph (f) of this section. Footnotes to financial statements must be tagged as follows:

(1) Each complete footnote must be block-text tagged;

(2) Each significant accounting policy within the significant accounting policies footnote must be block-text tagged;

(3) Each table within each footnote must be block-text tagged; and

(4) Within each footnote,

(i) Each amount (*i.e.*, monetary value, percentage, and number) must be tagged separately; and

(ii) Each narrative disclosure may be tagged separately to the extent the electronic filer chooses.

(e) *Format—Schedules—Generally.* The part of the Interactive Data File for which the corresponding data in the Related Official Filing consists of financial statement schedules as set forth in Article 12 of Regulation S–X must comply with the requirements of paragraphs (c)(1) and (c)(2) of this section, as modified by this paragraph (e), unless the electronic filer is within one of the categories specified in paragraph (f) of this section. Financial statement schedules as set forth in Article 12 of Regulation S–X must be tagged as follows:

(1) Each complete financial statement schedule must be block-text tagged; and

(2) Within each financial statement schedule,

(i) Each amount (*i.e.*, monetary value, percentage and number) must be tagged separately; and

(ii) Each narrative disclosure may be tagged separately to the extent the electronic filer chooses.

(f) *Format—Footnotes and Schedules Eligible for Phased-In Detail.* The following electronic filers must comply with paragraphs (c)(1) and (c)(2) of this section as modified by paragraphs (d) and (e) of this section, except that they may choose to comply with paragraph (d)(1) of this section rather than paragraphs (d)(1) through (d)(4) of this section and may choose to comply with paragraph (e)(1) of this section rather than paragraphs (e)(1) and (e)(2) of this section:

(1) Any large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States, if none of the financial statements for which an Interactive Data File is required is for a fiscal period that ends on or after June 15, 2010;

(2) Any large accelerated filer not specified in paragraph (f)(1) of this section that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States, if none of the financial statements for which an Interactive Data File is required is for a fiscal period that ends on or after June 15, 2011; and

(3) Any filer not specified in paragraph (f)(1) or (f)(2) of this section that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, if none of the financial statements for which an Interactive Data File is required is for a fiscal period that ends on or after June 15, 2012.

(g) *Posting.* Any electronic filer that maintains a corporate Web site and is required to submit an Interactive Data File must post that Interactive Data File on that Web site by the end of the calendar day on the earlier of the date

the Interactive Data File is submitted or is required to be submitted and the Interactive Data File must remain accessible on that Web site for at least a 12-month period.

Note to § 232.405: Item 601(b)(101) of Regulation S–K specifies the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the issuer's corporate Web site, if any, and the circumstances under which it is permitted to be submitted as an exhibit, with respect to Forms S–1 (§ 239.11 of this chapter), S–3 (§ 239.13 of this chapter), S–4 (§ 239.25 of this chapter), S–11 (§ 239.18 of this chapter), F–1 (§ 239.31 of this chapter), F–3 (§ 239.33 of this chapter), F–4 (§ 239.34 of this chapter), 10–K (§ 249.310 of this chapter), 10–Q (§ 249.308a of this chapter) and 8–K (§ 249.308 of this chapter). Paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of both Form F–9 and Form F–10 specifies the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the issuer's corporate Web site, if any, and the circumstances under which it is permitted to be submitted as an exhibit, with respect to Form F–9 and Form F–10, respectively. Item 101 of the Instructions as to Exhibits of Form 20–F specifies the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the issuer's corporate Web site, if any, and the circumstances under which it is permitted to be submitted as an exhibit, with respect to Form 20–F. Paragraph B.7 of the General Instructions to Form 40–F and Paragraph C.6 of the General Instructions to Form 6–K specify the circumstances under which an Interactive Data File must be submitted as an exhibit and be posted to the issuer's corporate Web site, if any, and the circumstances under which it is permitted to be submitted as an exhibit, with respect to Form 40–F and Form 6–K, respectively. Item 601(b)(101) of Regulation S–K, paragraph 101 of the Information Not Required to be Delivered to Offerees or Purchasers of both Form F–9 and Form F–10, Item 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.7 of the General Instructions to Form 40–F and paragraph C.6 of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

§ 232.406T Temporary rule related to Interactive Data Files.

(a) *Scope.* Section 232.406T addresses the liability for the Interactive Data File. An Interactive Data File is subject to the same liability provisions as the Related Official Filing except as provided in paragraphs (b) and (c) of this section.

(b) *In general.* The Interactive Data File, regardless of whether it is an exhibit to a document incorporated by reference into filings:

(1) Is subject to the anti-fraud provisions of section 17(a)(1) of the Securities Act, section 10(b) of the Exchange Act, § 240.10b–5 of this chapter, and section 206(1) of the Investment Advisers Act except as provided in paragraph (c) of this section;

(2) Is deemed not filed or part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act, is deemed not filed for purposes of section 18 of the Exchange Act or section 34(b) of the Investment Company Act, and otherwise is not subject to liability under these sections; and

(3) Is deemed filed for purposes of § 232.103.

(c) *Good faith attempts and prompt correction.* Subject to paragraph (b) of this section, the Interactive Data File shall be subject to liability for a failure to comply with § 232.405, but shall be deemed to have complied with § 232.405 and would not be subject to liability under the anti-fraud provisions set forth in paragraph (b)(1) of this section or under any other liability provision if the electronic filer:

(1) Makes a good faith attempt to comply with § 232.405; and

(2) After the electronic filer becomes aware that the Interactive Data File fails to comply with § 232.405, promptly amends the Interactive Data File to comply with § 232.405.

(d) *Temporary section.* Section 232.406T is a temporary section that applies to an Interactive Data File submitted to the Commission less than 24 months after the electronic filer first was required to submit an Interactive Data File to the Commission pursuant to § 232.405, not taking into account any grace period, but no later than October 31, 2014. After these dates, an Interactive Data File is subject to the same liability provisions as the Related Official Filing. This temporary section will expire on October 31, 2014.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 14. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll, 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.

* * * * *

■ 15. Amend § 239.13 by revising paragraph (a)(8) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(8) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(i) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(ii) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

■ 16. Amend Form S–3 (referenced in § 239.13) by revising paragraph I.A.8 of the General Instructions to read as follows:

Note: The text of Form S–3 does not and this amendment will not appear in the Code of Federal Regulations.

Form S–3

* * * * *

General Instructions

I. * * *

A. * * *

8. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(a) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(b) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the

registrant was required to submit and post such files).

* * * * *

■ 17. Amend § 239.16b by revising paragraph (b) to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

* * * * *

(b) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(1) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(2) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

■ 18. Amend Form S–8 (referenced in § 239.16b) by revising paragraph A.3 of the General Instructions to read as follows:

Note: The text of Form S–8 does not and this amendment will not appear in the Code of Federal Regulations.

Form S–8

* * * * *

General Instructions

A. * * *

3. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(a) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(b) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

* * * * *

■ 19. Amend § 239.33 by revising paragraph (a)(6) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(6) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(i) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(ii) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

* * * * *

■ 20. Amend Form F–3 (referenced in § 239.33) by revising paragraph I.A.6 of the General Instructions to read as follows:

Note: The text of Form F–3 does not and this amendment will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. * * *

A. * * *

6. *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S–T (§ 232.101 of this chapter) shall have:

(i) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S–T (§ 232.201 or § 232.202(d) of this chapter); and

(ii) Submitted electronically to the Commission and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit and post such files).

* * * * *

■ 21. Amend Form F–9 (referenced in § 239.39) by reserving paragraphs (8) through (100) and adding paragraph 101 at the end of ''Part II—Information Not Required To Be Delivered to Offerees or Purchasers'' to read as follows:

Note: The text of Form F–9 does not and this amendment will not appear in the Code of Federal Regulations.

Form F–9

* * * * *

PART II—Information Not Required To Be Delivered to Offerees or Purchasers

* * * * *

(8) through (100) [Reserved]

(101) An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the Registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is described in paragraph (a)(i),(ii), (iii) of this Instruction 101, except that an Interactive Data File: First is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter), as applicable; and is required for a registration statement under the Securities Act only if the registration statement contains a price or price range:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as

of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction (101) that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (a)(ii) of this Instruction (101) that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(*1*) Generally accepted accounting principles as used in the United States; or

(*2*) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a) of this Instruction 101.

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

■ 22. Amend Form F–10 (referenced in § 239.40) by reserving paragraphs (8) through (100) and adding paragraph 101 at the end of ''Part II—Information Not Required To Be Delivered to Offerees or Purchasers'' to read as follows:

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

Form F–10

* * * * *

PART II—Information Not Required To Be Delivered to Offerees or Purchasers

* * * * *

(8) through (100) [Reserved]

(101) An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the Registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is described in paragraph (a)(i),(ii), (iii) of this Instruction 101, except that an Interactive Data File: first is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter), as applicable; and is required for a registration statement under the Securities Act only if the registration statement contains a price or price range:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction 101 that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (a)(ii) of this Instruction 101 that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(*1*) Generally accepted accounting principles as used in the United States; or

(*2*) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a) of this Instruction (101).

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

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

■ 23. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 24. Amend § 240.12b–25 by adding paragraph (h) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 20–F, 11–K, N–SAR, N–CSR, 10–Q, or 10–D.

* * * * *

(h) *Interactive data submissions.* The provisions of this section shall not apply to the submission or posting of an Interactive Data File (§ 232.11 of this chapter). Filers unable to submit or post an Interactive Data File within the time period prescribed should comply with either Rule 201 or 202 of Regulation S–T (§ 232.201 and § 232.202 of this chapter).

■ 25. Amend § 240.13a–14 by revising paragraph (f) to read as follows:

§ 240.13a–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(f) The certification requirements of this section do not apply to:

(1) An Interactive Data File, as defined in Rule 11 of Regulation S–T (§ 232.11 of this chapter); or

(2) XBRL-Related Documents, as defined in Rule 11 of Regulation S–T.

■ 26. Amend § 240.15d–14 by revising paragraph (f) to read as follows:

§ 240.15d–14 Certification of disclosure in annual and quarterly reports.

* * * * *

(f) The certification requirements of this section do not apply to:

(1) An Interactive Data File, as defined in Rule 11 of Regulation S–T (§ 232.11 of this chapter); or

(2) XBRL-Related Documents, as defined in Rule 11 of Regulation S–T.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 27. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 28. Amend Form 10–Q (referenced in § 249.308a) by adding a paragraph with two check boxes to the cover page after the paragraph with two check boxes that starts ''Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *'' to read as follows:

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

Form 10–Q

* * * * *

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐ No ☐

* * * * *

■ 29. Amend Form 10–K (referenced in § 249.310) by adding a paragraph with two check boxes to the cover page after the paragraph with two check boxes that starts ''Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *'' to read as follows:

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

Form 10–K

* * * * *

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐ No ☐

* * * * *

■ 30. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Adding a paragraph with two check boxes to the cover page after the paragraph with two check boxes that starts ''Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *;'' and

■ b. Revise paragraph 100 and add paragraph 101 at the end of ''Instructions as to Exhibits.''

The additions and revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐ No ☐

* * * * *

Instructions as to Exhibits

* * * * *

100. *XBRL-Related Documents.* Only a registrant that prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program and, as a result, may submit XBRL-Related Documents (§ 232.11 of this chapter). Rule 401 of Regulation S–T (§ 232.401 of this chapter) sets forth further details regarding eligibility to participate in the voluntary XBRL program.

101. *Interactive Data File.* An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the Form 20–F is an annual report and the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction 101 that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (a)(ii) of this Instruction 101 that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(1) Generally accepted accounting principles as used in the United States; or

(2) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a) of this Instruction 101.

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

■ 31. Amend Form 40–F (referenced in § 249.240f) by:

■ a. Adding a paragraph with two check boxes to the cover page after the paragraph with two check boxes that starts ''Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months * * *;'' and

■ b. Add paragraph B.(7) to the General Instructions.

The additions read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S–T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files).

Yes ☐ No ☐

* * * * *

General Instructions

* * * * *

B. * * *

(7) An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter), and, as submitted, listed as exhibit 101, if the Form 40–F is an annual report and the registrant is does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction 7 that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (a)(ii) of this Instruction 7 that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the registrant lists it as exhibit 101 and the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(*1*) Generally accepted accounting principles as used in the United States; or

(*2*) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a) of this Instruction 7.

(c) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

■ 32. Amend Form 6–K (referenced in § 249.306) by revising paragraph (5) and paragraph (6) to General Instruction C to read as follows:

Note: The text of Form 6–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 6–K

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General Instructions

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C. * * *

(5) *XBRL-Related Documents.* Only a registrant that prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program and, as a result, may submit XBRL-Related Documents (§ 232.11 of this chapter). XBRL-Related Documents submitted as an exhibit to a Form 6–K must be listed as exhibit 100. Rule 401 of Regulation S–T (§ 232.401 of this chapter) sets forth further details regarding eligibility to participate in the voluntary XBRL program.

(6) *Interactive Data File.* An Interactive Data File (§ 232.11 of this chapter) is:

(a) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) and, as submitted, listed as exhibit 101, if the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*) and is described in paragraph (a)(i), (ii) or (iii) of this Instruction (6), except that an Interactive Data File: first is required for a periodic report on Form 10–Q (§ 249.308a of this chapter), Form 20–F (§ 249.220f of this chapter) or Form 40–F (§ 249.240f of this chapter), as applicable; and is required for a Form 6–K (§ 249.306 of this chapter) only when the Form 6–K contains either of the following: audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle; or current interim financial statements included pursuant to the nine-month updating requirement of Item 8.A.5 of Form 20–F, and, in either such case, the Interactive Data File would be required only as to such revised financial statements current interim financial statements regardless whether the Form 6–K contains other financial statements:

(i) A large accelerated filer (§ 240.12b–2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as

of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(ii) A large accelerated filer not specified in paragraph (a)(i) of this Instruction (6) that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(iii) A filer not specified in paragraph (a)(i) or (ii) of this Instruction (6) that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(b) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S–T (§ 232.405 of this chapter) if the:

(i) Registrant prepares its financial statements:

(A) In accordance with either:

(1) Generally accepted accounting principles as used in the United States; or

(2) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(B) Not in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*); and

(ii) Interactive Data File is not required to be submitted to the Commission under paragraph (a)(i) of this Instruction (6).

(iii) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S–X (17 CFR 210.6–01 *et seq.*).

* * * * *

■ 33. Amend § 249.322 by adding paragraph (c) to read as follows:

§ 249.322 Form 12b–25–Notification of late filing.

* * * * *

(c) *Interactive data submissions.* This form shall not be used by electronic filers with respect to the submission or posting of an Interactive Data File (§ 232.11 of this chapter). Electronic filers unable to submit or post an Interactive Data File within the time period prescribed should comply with either Rule 201 or 202 of Regulation S–T (§ 232.201 and § 232.202 of this chapter).

■ 34. Amend Form 12b–25 (referenced in § 249.322) by adding paragraph 6 to the General Instructions to read as follows:

Note: The text of Form 12b–25 does not and this amendment will not appear in the Code of Federal Regulations.

Form 12b–25

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General Instructions

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6. *Interactive data submissions.* This form shall not be used by electronic filers with respect to the submission or posting of an Interactive Data File (§ 232.11 of this chapter). Electronic filers unable to submit or post an Interactive Data File within the time period prescribed should comply with either Rule 201 or 202 of Regulation S–T (§ 232.201 and § 232.202 of this chapter).

* * * * *

By the Commission.

Dated: January 30, 2009.

Florence E. Harmon,

Deputy Secretary.

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