Federal Register

Wednesday,
February 27, 2008

Part IV

Securities and Exchange Commission

17 CFR Parts 230, 232, and 239

Electronic Filing and Revision of Form D; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, and 239

[RELEASE NOS. 33–8891; 34–57280; 39–2453; IC–28145; FILE NO. S7–12–07]

RIN 3235–AJ87

Electronic Filing and Revision of Form D

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting rule amendments mandating the electronic filing of information required by Securities Act of 1933 Form D through the Internet. We also are adopting revisions to Form D and to Regulation D in connection with the electronic filing requirement. The revisions simplify and restructure Form D and update and revise its information requirements. The information required by Form D will be filed with us electronically through a new online filing system that will be accessible from any computer with Internet access. The data filed will be available on our Web site and will be interactive and searchable.

DATES: *Effective Date:* September 15, 2008 except the amendments to § 232.101(c)(6) and § 232.201(a) are effective March 28, 2008, § 232.101(a)(1)(xiii) is effective March 16, 2009 and § 230.503T, § 232.101(b)(10) and § 239.500T are effective from September 15, 2008 to March 16, 2009.

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

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

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I. Executive Summary and Background

A. History and Purpose of Form D

On June 29, 2007, we issued a release in which we proposed for public comment rule amendments mandating the electronic filing of Form D through the Internet and revisions to that form.[12] In this release, we are adopting the amendments substantially as proposed. As further described below, companies will be permitted to file Form D information voluntarily through the Internet when our new Form D electronic filing system becomes available on September 15, 2008 and will be required to file electronically through the Internet on and after March 16, 2009.

Form D serves as the official notice of an offering of securities made without registration under the Securities Act in reliance on an exemption provided by Regulation D.[13] Both public and nonpublic companies file information using this form.

Regulation D was part of a Commission initiative in the early 1980s to provide a more coherent pattern of exemptive relief from the registration requirements of the Securities Act, and particularly to address the capital formation needs of small business.[14] At the time, we intended the Form D filing requirement in Rule 503 of Regulation D to serve an important data collection objective.[15] We expected that the empirical data derived from the Form D filings would enable us to better evaluate the effectiveness of Regulation D as a capital raising device and eventually to further tailor our rules to provide appropriate support for both capital formation, especially as it relates to small business, and investor protection.[16]

We modified the requirements relating to Form D in 1986, making Form D a uniform notification form that could be filed with state securities

[1] 17 CFR 232.100.

[2] 17 CFR 232.101.

[3] 17 CFR 232.104.

[4] 17 CFR 232.201.

[5] 17 CFR 232.202.

[6] 17 CFR 232.10 *et seq.*

[7] 17 CFR 230.502.

[8] 17 CFR 230.503.

[9] 17 CFR 230.501–508.

[10] 17 CFR 239.500.

[11] 15 U.S.C. 77a *et seq.*

[12] We proposed the amendments in Release No. 33–8814 (June 29, 2007) [72 FR 37376]. The comment letters we received in response to the proposing release were filed in File Number S7–12–07 and are available at *http://www.sec.gov/comments/s7–12–07/s71207.shtml* or from our Public Reference Room at 100 F Street, NE., Washington, DC 20549.

[13] Regulation D contains separate exemptions for limited offerings in Rules 504, 505 and 506. Form D also is to be used by issuers making offerings of securities without registration in reliance on the exemption contained in Section 4(6) of the Securities Act [15 U.S.C. 77d(6)]. Although we primarily discuss Regulation D in this release, the revised Form D also will continue to apply to Section 4(6) offerings. Regardless of the type of offering to which revised Form D applies, it will be required to be filed electronically after a transition period during which we will allow either paper or electronic filing.

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

[15] We stated in the proposing release for the original Rule 503:

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

Release No. 33–6339 (Aug. 7, 1981) [46 FR 41791, 41799].

[16] Release No. 33–6339 (Aug. 7, 1981) [46 FR 41791, 471799].

regulators.[17] This effort was undertaken with the cooperation of the North American Securities Administrators Association (NASAA), the organization of state securities regulators, as part of the Commission's efforts to reduce the costs of capital formation for small business and to promote uniformity between federal and state securities regulation. At that time, we also eliminated the requirement to amend a Form D filing for an offering every six months during the course of the offering and the requirement to make a final Form D filing within 30 days of the final sale in the offering. We left intact the requirement in Rule 503 to file a Form D notification within 15 days after the first sale of securities in an offering, leaving that as the sole current explicit requirement for a Form D filing.[18]

In 1989, we amended the Regulation D exemptions to eliminate the filing of Form D information as a condition to their availability.[19] At that time, we also added Rule 507 to Regulation D to provide an incentive for issuers to make a Form D filing, even though it was no longer a condition to the availability of the Regulation D exemptions.[20] Specifically, Rule 507 disqualifies an issuer from using a Regulation D exemption in the future if it has been enjoined by a court for violating Rule 503 by failing to file the information required by Form D.[21] Consequently, an issuer has an incentive to make a Form D filing to avoid the possibility that a court will enjoin the issuer for violating Rule 503 and, as a result, disqualify the issuer from using a Regulation D exemption in the future.

In 1996, we proposed to eliminate the Form D filing requirement and replace it with an issuer obligation to complete a Form D and retain it for a period of time.[22] At the time, our Task Force on Disclosure Simplification had suggested that the Commission consider the continued need for a Form D filing requirement.[23] After reviewing comments on the proposal, we determined that the information collected in Form D filings was still useful to us ''in conducting economic and other analyses of the private placement market'' and retained the requirement.[24] In 1998, we solicited public comment on, but did not propose, requiring electronic filing of the Form D notice.[25] The public comments generally favored electronic filing in principle but expressed concern about Form D filers needing to follow the same procedures as then were required generally for filings through the Commission's electronic filing system, called the Electronic Data Gathering, Analysis and Retrieval or ''EDGAR'' system.

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

- Collection of data for use in the Commission's rulemaking efforts; and
- Enforcement of the federal securities laws, including enforcement of the exemptions in Regulation D.[26]

The information submitted in Form D filings also is useful for other purposes. The staffs of state securities regulators and the Financial Industry Regulatory Authority (FINRA), the successor to the member firm regulatory functions of the National Association of Securities Dealers, Inc. and NYSE Regulation, Inc., also use Form D information to enforce securities laws and the rules of securities self-regulatory organizations. Form D filings also have become a source of information for investors. Our Web site advises potential investors in Regulation D offerings to check whether the company making the offering has filed a Form D notice and advises that ''[i]f the company has not filed a Form D, this should alert you that the company might not be in compliance with the federal securities laws.''[27] In addition, the information in Form D filings serves as a source of business intelligence for commercial information vendors, as well as for participants in the venture capital, private equity, and other industries that rely on Regulation D offerings and for competitors of companies that file Form D information. Academic researchers use Form D information to conduct empirical research aimed at improving the workings of these industries.[28] Journalists use Form D information to report on capital-raising in these industries.[29]

B. Need To Update Form D and Require Electronic Filing

Currently, much of the information required by Form D appears to be useful and justified in the interests of investor protection and capital formation.[30] It also appears that some useful information that could be required by Form D is not required currently. On the other hand, Form D currently requires some information that may no longer be useful. Our staff receives many inquiries from market participants suggesting that Form D could be clarified and simplified. Moreover, the absence of an electronic system for filing Form D information prevents issuers from filing through efficient modern methods and limits the usefulness of the information collected on Form D. The rules we adopt today address deficiencies in the Form D data collection requirements and process.

1. Easing Filing Burdens

Our new Form D rules are intended to ease the costs and burdens of preparing and filing Form D information. The informational requirements will be streamlined and updated. The instructions will be clarified and simplified. Issuers will file Form D information electronically through a new online filing system that will be

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

[18] 17 CFR 230.503.

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

[20] *Id.*

[21] On August 3, 2007, we issued a release proposing changes to Regulation D. See Release No. 33–8828 (Aug. 3, 2007) [72 FR 45116]. Among those changes were moving Regulation D's exemption disqualification provisions to a new subparagraph (e) of Rule 502 and adopting a new exemption that would appear in a revised Rule 507 of Regulation D. The Regulation D release also sought additional comment on the proposals we made in Release No. 33–8766 (Dec. 27, 2006) [72 FR 400] that concerned accredited investors in certain private pooled investment vehicles. Since we have not adopted and are still considering the changes proposed in the Regulation D release and the accredited investor changes proposed in the private pooled investment vehicle release, the new Form D and its implementing rules do not reflect those changes, as did the Form D in the Form D proposing release. We are still considering the proposed changes to Form D that would be necessary to reflect adoption of the Regulation D and private pooled investment vehicle changes, and may adopt the Form D changes if we adopt the Regulation D and private pooled investment vehicle changes.

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

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

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

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

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

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

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

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

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

accessible from any computer with Internet access. Issuers will provide data by responding to discrete information requests. Appropriate data entries will be reviewed automatically for proper characters and consistency with entries in other fields. Data entry fields will be accompanied by links to instructions and other helpful information. We believe these system features, among others, will help facilitate a relatively easy-to-use filing process that will deliver accurate information quickly, reliably, and securely.[31] The Form D filing will continue to be required within 15 days of an issuer's first sale in an offering without Securities Act registration in reliance on one or more of the exemptions provided in Regulation D, and the rules will clarify when amendments are required. Paper filing of Form D information will be eliminated after a transition period in which the information may be filed either electronically through the Internet or in paper.[32]

2. Better Public Availability of Form D Information

Requiring the electronic filing of Form D data through the Internet will make the information filed more readily available to regulators and members of the public.[33] The information will be available on our Web site and, because the online filing system will automatically capture and tag data items, the data will be interactive and searchable. The Commission's public Web site at *http://www.sec.gov* will enable users to view the information in an easy-to-read format, download the information into an existing application, or create an application to use the information.

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

3. Federal and State Uniformity and Coordination; One-Stop Filing

For over 20 years, Form D has served as a means to promote federal and state uniformity and coordination in securities regulation by providing a uniform notification form that can be filed with the Commission and with state securities regulators.[34] The contemplated electronic filing system for Form D information will continue that tradition and can enhance the utility of Form D as a means to promote uniformity and coordination between federal and state securities regulation.

The availability of Form D information filed with us through a searchable electronic database will enable both federal and state securities regulators to monitor the exempt securities transaction markets more effectively. The system also will permit improved coordination among federal and state regulators, which is essential to efficient and effective capital formation through exempt transactions, especially by smaller companies, and to investor protection. State securities regulators will be able to access the information on our Web site to learn if new Form D information of interest to them has been filed.

The system will enhance uniformity and coordination even more if it results in ''one-stop filing,'' an approach we and NASAA are exploring. One-stop filing will enable companies to file Form D information both with us and with the states they designate in one electronic transaction. While that capability will not be available when Form D electronic filing with the Commission begins, we have been working actively with NASAA to achieve that capability as soon as practicable. We understand that NASAA is considering establishing its own new electronic system that would interface with our system and would receive filings and collect fees on behalf of participating state securities regulators.[35] One-stop filing will reduce significantly the costs and burdens of preparing and filing Form D information with the Commission and with state securities regulators. This could represent a substantial savings for small businesses and others filing Form D information.

The commenters that responded to our Form D proposing release that addressed one-stop filing supported it,[36] but some made suggestions and some expressed concerns.[37] NASAA stated that it envisions a system that would direct issuers to a NASAA-hosted Web site that lists the fees for states a filer selects and enables the filer to make an electronic payment to those states that would include a modest service charge to defray costs of the site and service.[38] NASAA also stated that it envisions that the electronic payment would be made by means of an electronic funds transfer or credit card transaction. NASAA further envisions that, after payment, the system would allow a completed Form D to be filed with the Commission and distributed by the NASAA-hosted site to the states selected by the filer. Finally, NASAA anticipates that the Commission would have no direct involvement or responsibility for the state distribution and payment system. Two commenters expressed concerns about one-stop filing, relating primarily to the prospects for timely state adoption[39] and, in one case, the use of the electronic system as it relates to the National Securities Markets Improvement Act of 1996.[40] Finally, one

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

[32] Rule 101 of Regulation S–T, Rule 503 of Regulation D and the description of Form D will mandate electronic filing of Form D information subject to varied effective dates and temporary provisions, which together will permit the information to be filed either electronically through the Internet or in paper during the transition period. The transition period is discussed more fully in Part III.C below. Currently, our rules require issuers to file five paper copies of the Form D with us by mail or physical delivery to Commission headquarters. 17 CFR 230.503(a). The Commission received 27,843 Form D filings in its most recently ended fiscal year, 2007.

[33] Most filings made with us currently are filed electronically through our EDGAR system. We began to make EDGAR electronic filing mandatory in 1993. Initially, a number of forms—including Form D—were excluded from mandated electronic filing. Since the launch of the EDGAR system, we have increased the number of forms that are required to be filed electronically, but Form D has remained a paper-only filing. It will continue to remain so until the September 15, 2008 effective date of voluntary electronic filing, when companies will be able to file Form D information either in paper or electronically until the end of the phase-in period on March 16, 2009. Beginning on that date, Form D information will be required to be filed electronically through the Internet.

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

[35] The Commission's electronic filing system will not collect fees on behalf of any states.

[36] One commenter, for example, stated that if one-stop filing were implemented properly, it would reduce significantly the costs and burdens of preparing and filing Form D with the Commission and the states. See letter from American Bar Association, Section of Business Law, Committees on Federal Regulation of Securities and State Regulation of Securities (ABA).

[37] See letters from ABA, Coalition of Private Investment Companies (CPIC), Connecticut Department of Banking (Connecticut), Managed Funds Association (MFA), Massachusetts Securities Division (Massachusetts), NASAA and Pennsylvania Securities Commission (Pennsylvania).

[38] See letter from NASAA.

[39] See letters from ABA and MFA.

[40] See letter from ABA (''There are several aspects of 'one-stop' filing about which we have particular reservations emanating * * * partly from a desire to delineate clear boundaries as a result of federal preemption under the National Securities Markets Improvement Act of 1996 * * * .''). Section 102(a) of the National Securities Markets Improvement Act of 1996 (''NSMIA'') [Pub. L. No. 104–290 110 Stat. 3416 (Oct. 11, 1996)] enacted new Section 18 of the Securities Act [15 U.S.C. 77r], which, in part, limits

commenter expressed hope that companies would continue to be able to file a Form D notice with a particular state or states and not with the Commission where the company is comfortable relying on the Section 4(2) exemption from registration at the federal level and no federal Form D would be required.[41] We have considered these comments and will continue to consider them as we work with NASAA in an effort to establish one-stop filing.

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

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

C. Summary of Adopted Amendments

In sum, the amendments will:

- Mandate electronic filing of Form D information:
  - ○ After a phase-in period during which electronic filing will be voluntary; and
  - ○ Through an online filing system that will
    - ■ Be accessible from any computer with Internet access; and
    - ■ Capture and tag data items, so that the data will be interactive and viewable in an easy-to-read format; and
- Revise Form D's information requirements by:
  - ○ Permitting filers to identify all issuers in a multiple-issuer offering in one Form D filing;
  - ○ Deleting the current requirement to identify as ''related persons'' owners of 10 percent or more of a class of the issuer's equity securities;
  - ○ Replacing the current requirement to provide a business description of the issuer with a requirement to classify the issuer by industry from a pre-established list of industries;
  - ○ Requiring revenue range information for the issuer, or net asset value range information in the case of hedge funds (subject to an option to decline to disclose);
  - ○ Requiring more specific information on the registration exemption claimed by the issuer in the Form D notice as well as information on any exclusion claimed from the definition of ''investment company'' under the Investment Company Act of 1940 (''Investment Company Act);[42]
  - ○ Requiring reporting of the date of first sale in the offering;
  - ○ Specifying when amendments to a previously filed Form D notice are required by reason of mistakes of fact, errors or changes to information in a previously filed notice or the passage of a calendar year;
  - ○ Requiring reporting of whether the offering is expected to last over a year;
  - ○ Limiting reporting of the minimum investment amount accepted in the offering to the amount accepted from outside investors, so as not to affect employee stock ownership incentive plans adversely;
  - ○ Requiring CRD numbers for both individual recipients of sales compensation and associated broker-dealers;
  - ○ Replacing the current requirement to disclose information on a wide variety of expenses and applications of proceeds with a requirement to report expenses only as to amounts paid for sales commissions and, separately stated, finders' fees, and report use of proceeds only as to the amount of proceeds used to make payments to executive officers, directors and promoters;
  - ○ Replacing the current federal and state signature requirements with a combined signature requirement that includes an undertaking to provide offering documents to regulators on request (subject to applicable law), a consent to service of process and a certification that the issuer is not disqualified by rule from relying on an exemption claimed; and
  - ○ Permitting a limited amount of free writing in ''clarification'' fields to the extent necessary to clarify certain information provided.

The principal changes from the proposing release include:

- Permitting free writing to clarify responses to a total of five requests for information;
- Specifying that amendments to a previously filed Form D notice are required only for material mistakes of fact or errors, and not for any mistake of fact;
- Providing additional exceptions from changes that otherwise would require amendments to a previously filed Form D notice;
- Requiring an annual amendment to a Form D notice only if an entire calendar year has passed since the last filing, and not every year between January 1 and February 14; and
- Requiring expense and use of proceeds information on amounts paid for sales commissions, finders' fees, and payments to executive officers, directors and promoters, instead of eliminating those requirements.

II. Discussion of Amendments

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

For each offering of securities that is made without Securities Act registration in reliance on a claimed exemption under Regulation D, the issuer must file the information required by Form D with the Commission no later than 15 days after the first sale of securities. The form calls for issuers to provide basic identifying information and fundamental information about the offering. Some of the requirements of Form D have become outdated with the passage of time since the Commission adopted them. Further, some of the current form's requirements and instructions could be clarified and made less burdensome. The revisions we adopt today address these issues. In addition, the move to electronic filing necessitates several modifications. We generally are adopting the amendments substantially as proposed. Where we are not, we so note below.

the authority of the states to regulate offers and sales of securities exempt under ''rules or regulations issued under section 4(2)'' of the Act [15 U.S.C. 77d(2)], which includes Rule 506 but not Rules 504 or 505 of Regulation D.

[41] See letter from ABA.

[42] 15 U.S.C. 80a–1 *et seq.*

A. Amendments To Form D Content Requirements

Currently, Form D requires presentation of preliminary and other information required by five sections designated ''A'' through ''E.'' The revisions organize the information requirements around 16 numbered ''items'' or categories of information. Instructions at the end of the form explain the requirements for each item. On the online form, terms and items at the front of the form will be linked to the instructions at the back, which will be available immediately by clicking on a particular term or item. In this regard, we are adding to the General Instructions a sentence that provides that terms used but not defined in the form that are defined in Rule 405 [43] or Rule 501 [44] have the meanings given to them in those rules. The sentence will clarify the application of Rule 501 and, to the extent it defines the term ''promoter,'' Rule 405.[45]

1. Basic Identifying and Contact Information

New Form D generally carries over the requirements from current Form D for basic identifying and contact information and information about related persons, but modifies or omits some of these types of requirements. The requirements carried over, however, are restructured to reflect the electronic character of the filing.

Item 1, similar to current Form D, requires basic identifying information, such as the name of the issuer of the securities, any previous names, the type of legal entity and the issuer's year and place of incorporation or organization.[46] We are revising the form to provide specifically for the identification of multiple issuers in multiple-issuer offerings. Form D currently does not provide for this, sometimes raising questions as to how multiple-issuer offerings should be reported.[47] Although we proposed to add to the form a requirement to supply the issuer's Commission file number, if any, we have decided not to adopt that requirement. We believe requiring the Commission file number would add a burden but would provide limited benefits because most Form D filers are nonpublic companies and, as a result, would not have a Commission file number. Furthermore, it is possible to use other required information to aid in identifying issuers.

With regard to identifying issuers, two commenters responded to our solicitation of comment on whether Form D should require CUSIP numbers and trading symbols. One commenter favored adding such a requirement in order to help parse information and facilitate automating filing notices.[48] The other commenter, however, opposed adding the requirement as burdensome to issuers and resulting in information that is not useful.[49] We believe that the system's data tagging features will facilitate parsing information and obtaining filing notices to such an extent that the burden of requiring CUSIP numbers and trading symbols would not be justified by the benefits to be gained.

In response to a comment letter,[50] we have provided a place to identify an issuer as ''yet to be formed'' instead of providing a year of organization. The current Form D provides this alternative.

Two commenters expressed concern as to whether a filer would be able to specify its particular foreign place of incorporation or organization rather than just be able to indicate that the location is foreign.[51] We confirm that the online filing system will enable issuers to specify particular foreign jurisdictions.

Item 2, similar to current Form D, requires filers to provide place of business and telephone contact information.[52]

The revised form will include instructions to clarify that post office box numbers and ''care of'' addresses are not acceptable as place of business information. One commenter asked that an issuer be permitted to provide a ''care of'' address because mail might not otherwise be delivered to the issuer where, for example, the issuer operates out of another entity's office and a separate address listing is precluded by lease restrictions or practical concerns.[53] We acknowledge the concern, but reiterate our statement in the proposing release that this information is not collected for mailing purposes. The purpose of this information is to allow securities enforcement authorities to determine the location of the issuer's operations and personnel responsible for the offering. Post office box numbers and ''care of'' addresses do not provide this information. In instances in which lease restrictions or other practical concerns arise, the issuer must make arrangements to provide acceptable place of business and contact information.

The revised form will differ from the proposed form as to place of business and telephone contact information. The proposed version would have required place of business and telephone contact information in a multiple-issuer offering only for the primary issuer and would not have permitted such information for the other issuers. In the proposing release, we reasoned that issuers in multiple-issuer transactions typically have the same place of business, and we generally do not need more than one address to contact the responsible personnel for enforcement purposes. In this regard and upon further consideration after reviewing the public comment letters, we have decided that the revised form will differ in one respect—it will permit, but not require, such information for issuers other than the primary issuer in a multiple-issuer offering. In so revising the form, we believe we address the concerns expressed by two commenters. One commenter asked that we require such information for all the issuers in multiple-issuer offerings to accommodate states that currently require a separate Form D from every issuer in a multi-issuer offering, or alternatively, that we require a separate Form D from each of the issuers.[54] The other commenter asked that we permit multiple issuers to provide separate addresses to avoid the implication that issuers are affiliated when they are not.[55] We believe these concerns are adequately addressed by permitting all issuers to provide the information

[43] 17 CFR 230.405.

[44] 17 CFR 230.501.

[45] One commenter expressly supported defining the term ''promoter'' in the instructions. See letter from Connecticut.

[46] Issuers will specify their legal entity type (e.g., corporation or limited partnership).

[47] Currently, the Form D instructions do not specify whether all issuers in a multiple-issuer offering can be listed in the same Form D notice or whether each issuer must submit essentially the same notice. In this situation, the staff currently advises each issuer to submit a separate Form D notice because the filings are retrievable in our filing system only by reference to the name of one issuer. The changes clarify the requirements of this item and eliminate the burden on issuers to file what are essentially duplicate notices in order to comply with the requirement to file Form D information. The new online filing system will support multiple-issuer filings. As a result, all issuers easily can be identified in a single filing.

[48] See letter from Pink Sheets LLC.

[49] See letter from ABA.

[50] See *id.*

[51] See letters from ABA and Connecticut.

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

[53] See letter from ABA.

[54] See letter from Pennsylvania.

[55] See letter from ABA.

because that enables issuers that are filing with states that otherwise would require separate Forms D to include the information if they wish to avoid filing the separate forms, if permitted by state law.

One commenter asked that Form D require the name of a contact person for the primary issuer and any other issuers in a multiple-issuer offering.[56] The commenter stated that contact might be necessary in connection with the filing itself or in regard to litigation or enforcement or for other purposes. We believe, however, that address and telephone number information would be sufficient to make an initial contact and that it should be possible to proceed from that point to locate the most appropriate person based on the nature of the contact.

Item 3, similar to current Form D, requires information about related persons (executive officers, directors, and promoters).[57] As proposed, however, we are deleting the current requirement that issuers identify as ''related persons'' owners of 10 percent or more of a class of their equity securities.[58] In so proposing, we reasoned that

- Investors should continue to have access to this information, if it is material, in the private placement memorandum customarily supplied to them or in other information made available through the issuer;[59]
- We believe we can collect sufficient information to satisfy the regulatory objectives of Form D by requiring only the identification of executive officers, directors, and promoters; and
- Issuers that are not reporting companies have raised privacy concerns with respect to the requirement to identify 10 percent equity owners who are not executive officers, directors, or promoters because they do not already have to disclose this information, and the widespread availability of the information on our Web site may raise additional privacy concerns for these companies as they seek to raise capital through a private offering.[60]

Two commenters explicitly supported the proposal to delete the requirement to report publicly the names and addresses of 10 percent or greater equity holders.[61] Both commenters cited privacy concerns. One of the commenters also stated that individual investors would have access to the information to the extent relevant and omitting the information would save time and eliminate filing burdens.[62]

Four commenters objected to the proposal to delete the requirement to disclose 10 percent or greater holders, citing the usefulness of the information and, in some cases, questioning the validity of privacy concerns.[63] These commenters asserted, in essence, that the information is useful to:

- State regulators because, for example, it enables them to determine whether the specified persons are disqualified from conducting an offering or have an enforcement history that warrants additional information and disclosure;[64]
- The general public because it reveals the investment activity of public sector entities;[65] and
- Investors because this degree of ownership control is material and it cannot be assumed this information will be provided even if material, especially where disclosure or fraud may be an issue.[66]

We have considered the differing views on whether to retain the requirement to report publicly the names and addresses of 10 percent or greater equity holders. We still believe it is appropriate to delete the requirement for the reasons discussed above and in the proposing release. In this regard, we note that Item 3 will continue the current Form D requirement to report executive officers and directors based on the functions people perform rather than their titles. Issuers are required to report the names and addresses of promoters whether they act directly or indirectly.[67] We have modified the instructions to Item 3 slightly from the language proposed to clarify these requirements. As a result, the requirements should result in public reporting of all of a company's principal policymakers.

As proposed, we are deleting the requirement that issuers provide the name of the offering in Form D if the offering has a name. In so proposing, we stated that naming offerings reported on Form D is not as common today as it was before the 1986 tax reforms,[68] when the current Form D requirement was adopted. We understand that some issuers have found this requirement to be unclear. For these reasons, we are deleting the requirement.

2. Additional Information About Issuer

Item 4 of the new Form D requires issuers to identify their industry group from a specified list. The requirement to provide industry group information replaces the current requirement in Form D to provide a description of the issuer's business.[69] We believe simply selecting an industry group classification from a pre-established list is less burdensome for issuers and more useful for the regulatory purposes underlying the Form D filing requirement. The industry group classifications will provide us better, and more easily retrievable, information about industries and offerings where we may have identified policy issues.[70] As proposed, if a company selects the ''Pooled Investment Fund'' option, pop-up or other data fields will require the issuer also to select from among lower level options designating a specific type

[56] See letter from NASAA.

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

[58] We also are revising Item 3 to enable an issuer to clarify its response. This change is discussed more fully in Part II.C below.

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

[60] As we stated in the proposing release, from time to time issuers have asked us to grant confidential treatment to this information under Securities Act Rule 406 [17 CFR 230.406], but we have denied such requests consistently because the information currently is required by Form D. We estimated in the proposing release that about 95 percent of the companies filing Form D notices in 2006 were private companies, which frequently are not required to make public the names of their equity owners in accordance with the laws of the state or other jurisdiction of their organization.

[61] See letters from ABA and MFA.

[62] See letter from ABA.

[63] See letters from Chris Evans (claiming to represent the views of the vast majority of news organizations), Massachusetts, NASAA and Pennsylvania.

[64] See letters citing one or more of these examples from Massachusetts, NASAA and Pennsylvania.

[65] See letter from Chris Evans.

[66] See letters from Massachusetts and NASAA.

[67] The words ''directly or indirectly'' are used in the applicable definition of the term ''promoter'' in Rule 405.

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

[69] The industry group list in the new form differs from the one in the proposing release primarily in two ways. First, the new form's list provides for additional choices under the heading ''Energy'' in order to reduce the number of issuers that would need to choose the less helpful alternative of ''Other Energy.'' Second, the new form's list omits the specific choices that had been under the heading ''Business Services'' because we believe greater specificity is not necessary for issuers in that industry group.

[70] The instruction to Item 4 provides that an issuer or issuers that can be categorized in more than one industry group should be categorized based on the industry group that most accurately reflects the use of the bulk of the offering proceeds. The instruction also provides that, for purposes of responding to Item 4, the issuer should ''use the ordinary dictionary and commonly understood meanings of the terms identifying the industry groups.''

of pooled investment fund and to select between ''yes'' and ''no'' as to whether the issuer is registered as an investment company under the Investment Company Act.

We proposed that Item 5 would require all issuers, regardless of industry group, to either include revenue range information in the Form D filing or choose the ''Decline to Disclose'' option, which might be used if a private company considered its revenue range to be confidential information.[71] We further proposed that, if the business were not intended to produce revenue, such as a fund that seeks asset appreciation, it could select the ''Not Applicable'' option. We continue to believe that this information will help us to determine the types and sizes of most issuers that rely on the Regulation D and Section 4(6) exemptions. For instance, as noted in the proposing release, this information will increase significantly the effectiveness of the data collected as a tool for assessing the use of the Regulation D exemptions for small businesses and other different sizes of issuers.

We are adopting Item 5, as proposed, except as it will apply to issuers that classify themselves in Item 4 in the industry group ''hedge funds'' or as pooled investment funds other than venture capital and private equity funds. In order to obtain information on the size of these issuers, Item 5 will request them to provide aggregate net asset value range information.[72] Consistent with the revenue range requirement applicable to other issuers, however, these issuers will be given the option to ''Decline to Disclose'' that information or to specify that such information is ''Not Applicable.'' This addition responds to a comment letter stating that ''assets under management'' is a more meaningful measure of the size of such issuers than revenues.[73] We believe we can obtain adequate size information about venture capital and private equity funds from the information on the total offering amount supplied in response to Item 13, because these types of funds typically do not engage in continuous offerings of indefinite amount, unlike hedge funds and some other types of pooled investment funds.

One commenter suggested that we eliminate the ''Decline to Disclose'' option from the proposed revenue range requirement[74] and another suggested that we eliminate the revenue range requirement entirely.[75] The commenter that suggested we eliminate the ''Decline to Disclose'' option reasoned that elimination would be necessary to make the requirement effective as an information collection tool. The commenter that suggested that we eliminate the requirement entirely reasoned that many companies will opt out, reducing the integrity of the information collected and possibly causing people to draw negative inferences about the company. The commenter went on to state that revenue information is not necessary for a notice filing, and requiring it is inconsistent with the prohibition on general solicitation and general advertising that applies to many offerings required to be reported on Form D.[76] We recognize that adopting the ''Decline to Disclose'' option will reduce the amount of information that we receive. We also recognize, however, that some companies may regard this type of information as confidential. Weighing these countervailing considerations in light of the importance of the information, we believe that, on balance, it is best to provide filing companies the option to decline to disclose their revenue range. Commenters did not specify any negative consequences that a company may suffer if it chooses to decline to disclose its revenue range. We believe the information will be useful for the reasons described above. Finally, we believe that revenue information in range form would not likely itself, or in combination with the other information the new form requires, raise general solicitation or general advertising issues.

3. Identification of Claimed Exemptions and Exclusions

Item 6 requires the issuer to identify the exemption or exemptions being claimed for the offering, from among Rule 504's[77] paragraphs and subparagraphs, Rule 505, Rule 506, and Section 4(6), as applicable. This requirement, in general, is carried over from the current Form D requirement with added specificity, requiring the issuer to identify the specific paragraph or subparagraph of any Rule 504 exemption being claimed as well as any specific paragraph of Investment Company Act Section 3(c)[78] that the issuer claims for an exclusion from the definition of ''investment company'' under the Investment Company Act.[79] We are requiring this increased level of specificity and additional type of information in order to assist our policymaking and rulemaking efforts in various areas. Identification of a claimed exemption or exclusion often is key to analysis of the appropriateness of the claim. State securities regulators also use this information to determine the extent of their jurisdiction over the offering under NSMIA. Unlike the requirement in current Form D, however, Item 6 does not enable the issuer to check a box to indicate a claim to the Uniform Limited Offering Exemption (ULOE) from state securities law requirements. We believe that the ULOE box causes confusion and burdens for companies completing Form Ds without resulting in a significant amount of useful information. Most, if not all, companies claiming a ULOE exemption also will check the Rule 505 box, because Rule 505 is the Commission's companion exemption to the ULOE exemption.[80] Similarly, revised Form D omits all other references to ULOE and the provisions that, in general, require specified information on a state-by-state basis in an appendix to the form and require specified representations and undertakings. We believe that this information is burdensome to provide without sufficient benefits in terms of furthering the purposes of Form D.[81]

One commenter supported our proposal to delete the appendix portion of current Form D, asserting that it is burdensome and without sufficient benefits, but two other commenters objected.[82] Another commenter, without

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

[72] The aggregate net asset value will be requested as of the most recent practicable date.

[73] See letter from MFA. Similarly, in commenting on Rel. No. 33–8766 (Dec. 27, 2006) [72 FR 399], another commenter stated that it believed it would be useful to the Commission and investors if Form D would require information on pooled investment funds' assets under management. See letter from CPIC.

[74] See letter from NASAA.

[75] See letter from ABA.

[76] See *id*. The ABA also stated that the form should not require asset value information for essentially the same reasons. A third commenter asked whether most private companies would decline to disclose, ''thus calling into question the purpose of [the item].'' The commenter did not suggest deleting the option to decline or deleting the entire requirement. See letter from Connecticut.

[77] 17 CFR 230.504.

[78] 15 U.S.C. 80a–3(c).

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

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

[81] One commenter expressed general agreement with our views regarding ULOE. See letter from ABA.

[82] See letters from ABA, Chris Evans and Connecticut, respectively.

expressly addressing the appendix, suggested that the form require related information.[83] One commenter objected to deleting any part of the appendix, claiming that the information required provides macro-level ownership information valuable to the Commission and other regulators in analyzing fund flows and capital sources in an otherwise opaque area.[84] One commenter stated that it did not advocate retaining the appendix in its current form but that the appendix requires information such as the amount of securities sold by state and the number and type of investors (accredited/non-accredited) that is useful to state regulators for enforcement purposes.[85] Finally, one commenter offered the related suggestion that the form should require issuers to specify the states in which they propose to offer or sell securities because that would provide useful information to state regulators in their efforts to uncover notice filing violations and other problems.[86]

We believe the burden that would be imposed by a requirement to provide all information called for by the appendix or similar information is not justified by the value of the information in furthering the purposes of Form D. In this regard, under appropriate circumstances, state regulators still would be able to require this type of information.[87] At present, the Commission does not require filing of information called for by the appendix, and most Form D filers do not file the appendix with us. They file appendix information only with those states that require it. We assume that states that require filing of appendix information that they are entitled to require may continue to do so. We also assume that the one-stop filing system that we are exploring with NASAA may facilitate the filing of this information with state regulators.

4. Indication of Type of Filing

a. General Requirements

New Item 7 carries over the current Form D requirement to indicate whether the filing is a new filing or an amendment. Including identification of a filing as new or an amendment is appropriate because the form permits amendments and issuers may have valid reasons to wish to update or correct information previously provided in a Form D filing. In addition, as discussed in the section immediately below, we intend to clarify the circumstances where amendments are required. As proposed, Item 7 requires that a new filing specify the date of first sale or indicate that the first sale has yet to occur. We believe that this information will be useful to regulators because it relates to the timeliness of the filing and helps to establish a context in which to evaluate other information provided.

Item 7 will differ from what we proposed in that it will not permit an issuer to designate the states to which the Form D is directed. As more fully discussed above, our system will not be capable of receiving filings directed to specific states when new Form D becomes effective for federal purposes, although we have been working actively with NASAA in an effort to achieve that capability.[88] In the interim, we expect that filers will direct filings to the states by mail, overnight delivery, fax or whatever means are permitted or required by the respective states. We expect that some states may permit issuers to file a printed copy of a new Form D filed with us.

One commenter objected to adding the requirement to report date of first sale information.[89] The commenter asserted that the definition of ''first sale'' is unclear and a failure to file in the timeframe Form D requires may be used by states to extract late filing penalties or attempt to circumvent the limits NSMIA imposes by claiming that an exemption under Rule 506 is unavailable due to non-compliance with the filing requirement of Rule 503(a), even though filing a Form D is not a condition to an exemption under Regulation D. We believe, however, that providing the date of first sale involves little burden and that it is not the reporting of the date that underlies the state-related concerns but rather the date itself in relation to the date of filing.

Two commenters objected to using the date of first sale as the trigger for the Form D filing deadline.[90] Both commenters based their objection on the Commission staff's previously stated view that, solely for purposes of triggering the Form D filing requirement, in a minimum-maximum offering where the subscription funds are held in escrow pending receipt of minimum subscriptions, the date of first sale occurs when the first subscription agreement is received and first funds are deposited into escrow.[91]

We believe that the cited interpretation of the date of first sale is correct for purposes of triggering the Form D filing requirement. We believe the interpretation appropriately focuses on when the purchaser makes an investment decision and commits to purchase the securities offered. We also believe that it can be useful for regulatory purposes if an issuer files a Form D before an offering closes to enable regulators to consider the information provided before the offering process ends. If regulatory action is appropriate, earlier consideration potentially could cause it to be more timely and effective.[92] We have added language to the instructions to Form D clarifying this meaning of date of first sale in accordance with this interpretation. Specifically, the instructions will state that the date of first sale is the date on which the first investor is irrevocably contractually committed to invest, which, depending on the terms and conditions of the contract, could be the date on which the issuer receives the investor's subscription agreement or check.

b. Amendment of Previously Filed Form D

As proposed, we are clarifying Form D to address when, how, and why an amendment to a Form D may or must be filed. Those issues are not addressed expressly in the current form. While both Rule 503 and the instructions to the current Form D discuss the information that is required when an amendment is filed,[93] neither explicitly

[83] See letter from Massachusetts.

[84] See letters from Chris Evans.

[85] See letter from Connecticut.

[86] See letter from Massachusetts.

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

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

[89] See letter from ABA.

[90] See letters from ABA and Society of Corporate Secretaries and Governance Professionals (SCSGP).

[91] See Release No. 33–6455, at Question 82 (Mar. 4, 1983) [48 FR 10045].

[92] For example, one commenter noted that state regulators use Form D information for screening purposes to help prevent offerings by those subject to disqualification and aid enforcement efforts. See letter from NASAA.

[93] Current Rule 503(d) states that amendments to Form D ''need only report the issuer's name and the information required by Part C and any material

Continued

requires the filing of an amendment. In certain offerings and situations, however, an issuer may have made a material mistake of fact or committed another material error in the filed Form D. Situations also arise where changes occur and the initially filed Form D may not be an accurate expression of the current facts in an ongoing offering. Our staff currently interprets Rule 503 and the Form D instructions to require amendments in ongoing offerings where there has been a material change in information filed about the offering and where basic information previously submitted about the issuer has materially changed.

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

We are revising Rule 503 and the instructions to and description of Form D to require amendments to the Form D notice in the following three instances only:

- To correct a material mistake of fact or error in the previously filed notice (as soon as practicable after discovery of the mistake or error);
- To reflect a change in the information provided in a previously filed notice (as soon as practicable after the change), except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information: [94]
  - ○ The address or relationship to the issuer of a related person identified in response to Item 3 of Form D;
  - ○ An issuer's revenues or aggregate net asset value;
  - ○ The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice, does not result in a decrease of more than 10%;
  - ○ Any address or state(s) of solicitation shown in response to Item 12 of Form D;
  - ○ The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%;
  - ○ The amount of securities sold in the offering or the amount remaining to be sold;
  - ○ The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35;
  - ○ The total number of investors who have invested in the offering;
  - ○ The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%; and
- Annually, on or before the first anniversary of the filing of the Form D or the filing of the most recent amendment, if the offering is continuing at that time.

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

The amendment requirements differ from what we proposed in that they will:

- Provide expressly that a mistake of fact or error in the information provided in a previously filed notice only requires an amendment when material;
- Provide exceptions for changes in:
  - ○ The address or relationship to the issuer of a related person identified in response to Item 3 of Form D;
  - ○ An issuer's aggregate net asset value; [95]
  - ○ The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice, does not result in a decrease of more than 10%;
  - ○ Any address or state(s) of solicitation shown in response to Item 12 of Form D;
  - ○ The total offering amount, if the change is a decrease; [96]
  - ○ The amount of securities in the offering that remain to be sold; [97]
  - ○ The total number of investors who have invested in the offering; [98]
  - ○ The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%; [99]
- Require amendments to report the addition of executive officers, directors and promoters in all offerings, and not provide an exception from this requirement for offerings that last more than a year in some circumstances; and
- Prescribe that annual amendments are due on or before the first anniversary of the most recently filed Form D filing or amendment, if the offering is continuing at that time, rather than each year between January 1 and February 14.

change in the facts from those set forth in Parts A and B.'' The current instructions to Form D set forth the information required in an amendment as only ''the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B.''

[94] We believe the specified changes should not require an amendment because the burden would not justify the resulting benefits in terms of furthering the purposes of the form. Consequently, it is not necessary to report them for Form D to serve its primary function as a notice of an exempt offering.

[95] We had proposed an exception for changes in issuer size as measured by revenue consistent with proposed Item 5's requesting that issuers provide their revenue range. We are adopting an exception for changes in issuer size that relates to both revenue and aggregate net asset value to conform the exception to new Item 5. As previously discussed, new Item 5, as adopted, requests that issuers provide either their revenue range or aggregate net asset value, depending on their industry group.

[96] We had proposed an exception for a change in the total offering amount, if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, would not result in an increase of more than 10%. We believe that decreases in the total offering amount need not trigger an amendment requirement.

[97] We had proposed an exception for a change in the amount of securities sold in the offering. An exception is similarly appropriate for the amount of securities that remain to be sold because that amount varies inversely with changes in the amount of securities sold.

[98] We had proposed an exception for changes in the number of accredited investors who have invested in the offering consistent with proposed Item 14's requiring a report of the number of accredited investors who have invested in the offering. We are adopting the exception relating to the total number of investors rather than the number of accredited investors to conform the exception to new Item 14. New Item 14, as adopted, requires disclosure of the total number of investors rather than the number of accredited investors who have invested in the offering.

[99] We believe that the additional specified exceptions should not require an amendment because, similar to the other exceptions proposed and adopted, the burden would not justify the resulting benefits in terms of furthering the purposes of the form. Consequently, it is not necessary to report them for Form D to serve its primary function as a notice of an exempt offering.

We have expressly subjected the mistake of fact or error in information amendment requirements to a materiality standard in response to comments received to make explicit what we intended.[100] We have required amendments upon the addition of related persons (executive officers, directors and promoters) without exception in order to limit the ability to circumvent the purpose of the Form D notice. We have adopted the one calendar year amendment requirement to clarify the due date in response to a comment [101] and provide flexibility.[102]

One commenter supported the amendment provisions as proposed,[103] one commenter objected to the requirement that every amendment contain current information,[104] one commenter both objected to the annual amendment requirement and suggested changes in the other amendment requirements [105] and one commenter said that it would be helpful to state regulators to add a requirement to file an amendment to report termination of offerings that last over a year.[106]

The commenter that objected to the requirement to provide current information in every amendment stated that the requirement seems unnecessary, might cause inadvertent errors in re-entering unchanged information and make it difficult to determine what had changed.[107] The commenter suggested that, instead, amendments only should require information that has changed materially. As discussed above, we believe it will be relatively easy to provide such current information in most instances due to the form's streamlined information requirements, the likelihood that much of the information would not require change, and the fact that the new online filing system will make available to the issuer the version of the Form D to be amended to enable the issuer to respond only to the changed items. We also believe that it will be relatively easy to determine what has changed due to the limited amount of information required by the form and the ability to use the data tagging features to help determine changes. We believe that presentation only of those items that have changed materially would result in information being presented out of context and might transform a relatively light burden on the issuer to a relatively heavier burden on each user who accesses the information.

The commenter that objected to the annual amendment requirement did so primarily based on the commenter's assertions that it would be inconsistent with efforts to ease burdens and simplify. We believe the annual amendment requirement viewed in the context of the online filing system generally is consistent with efforts to ease burdens and simplify. We believe it will be relatively easy to file annual amendments in most instances for the reasons discussed above. We also believe that the express annual amendment requirement is clear and, to that extent, will serve to simplify the form.

The commenter that objected to the annual amendment requirement also stated that amendments should not be required when an issuer adds recipients of sales compensation or related persons.[108] Consistent with the requirements of the current form, we believe that requiring the names of additional recipients of sales compensation and related persons is appropriate for a notice form and provides important information about the offering for regulatory purposes.

The same commenter essentially asked that that the proposed exception from the amendment requirements for additions of related persons be broadened.[109] As proposed, in offerings that last more than a year, a change in information on related persons would not trigger an amendment, if the change was due solely to the filling of a vacant position upon the death or departure in the ordinary course of business of the previous occupant of the position.[110] Upon further consideration, we believe the exception for offerings that last more than a year may permit easy circumvention of the intent of the requirement. As adopted, the rule amendments will require a Form D amendment upon the addition of any related person, but will not require amendments to report changes of addresses of related persons.

The same commenter stated that an amendment should not be needed for an issuer to file with an additional state or states during an ongoing offering.[111] The amendment provisions would not require an amendment solely because an issuer wished to file with an additional state or states.

Finally, one commenter suggested that the new annual and other amendment rules not apply to paper Form D filings, asserting that, as to such filings, filing amendments would be overly burdensome because there would be no existing electronic version on the system to use as a starting point.[112] As further discussed below, there will be a period during which the amendments we adopt in this release would be effective except that electronic filing would be optional rather than mandatory for a period of time after the electronic system becomes available. During that time, in general, an issuer will be able to file new Form D in either paper or electronic format or file current Form D in paper format. Also during that time, the new annual and other amendment rules will apply to all new Form D filings regardless of format and the current amendment requirements will apply to all current Form D filings in paper format. We believe that during the transition period this approach will provide adequate flexibility to issuers and consistency between the current and new versions of Form D and their respective amendment requirements. Once the transition period ends, all federal filings will be required to be on new Form D in electronic format and, accordingly, the new amendment rules will apply. We believe that applying the new amendment rules at that time even as to prior filings of current Form D in paper format would not create a significant additional burden due to the lack of a previous electronic version on the system and that confusion likely would result from the lack of a uniform approach to post-transition period amendments that itself could impose a burden.

[100] Three commenters suggested that we clarify that only a material mistake of fact or change can trigger an amendment requirement. See letters from ABA, MFA and SCSGP. We did not add a materiality reference to the amendment provision regarding changes in the information reported. We believe that such a reference would be inappropriate because any changes other than those specified as not requiring an amendment would be information regulators need to perform their regulatory functions.

[101] One commenter stated that the due date for the proposed annual amendment was unclear. See letter from ABA.

[102] The omission of a January/February filing window from the adopted annual amendment requirement will provide flexibility by, for example, permitting a series of issuers to be placed on the same administratively convenient annual amendment schedule in which they file outside of the January/February window proposed to be mandated.

[103] The commenter stated that the amendment requirements would ensure that available information would be relatively current and enable state regulators to screen, and provide responses to the public regarding, offerings conducted in their states more effectively. See letter from NASAA.

[104] See letter from SCSGP.

[105] See letter from ABA.

[106] See letter from Connecticut.

[107] See letter from ABA.

[108] See letter from ABA.

[109] See letter from ABA.

[110] For example, a change in information regarding related persons that occurs in connection with a change in control would not be in the ordinary course of business.

[111] See letter from ABA.

[112] *Id.*

5. Information About Offering

Items 8 through 16 will require factual information about the offering itself. Most of the information sought currently is required by Sections B and C of Form D.

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

Type of Securities Offered. Item 9 will carry over the current requirement to specify the type of securities being offered, such as debt or equity, with additional categories of securities added. Some of the additional categories will provide more clarity. The rest of the additional categories will identify types of securities, the specification of which we believe will help facilitate our rulemaking efforts.[113] The issuer will be required to specify all categories that apply to the securities that are the subject of the exemption(s) specified in response to Item 6.

Business Combination Transaction. Form D currently requires that the issuer indicate only whether the offering is an exchange offer. New Item 10 will require the issuer to indicate whether the offering is being made in connection with a business combination such as an exchange (tender) offer, a merger or acquisition, regardless of the type of offering.[114] We believe that, for purposes of Form D, it is important to identify whether an offering is being made in connection with a business combination transaction, whether structured as an exchange or in some other manner, because such transactions sometimes give rise to policy concerns.[115]

Minimum Investment Amount. Item 11 will, as proposed, carry over the requirement in Form D to specify the minimum investment amount per investor. We are maintaining this requirement because offerings that have low minimum investment amounts have presented particular enforcement challenges in the past. We have changed Item 11 from what we proposed to require specification of the minimum investment for outside investors only, so as not to affect employee stock ownership incentive plans adversely. Investors will be considered outside investors if they are not employees, officers, directors, general partners, trustees (where the issuer is a business trust), consultants, advisors or vendors of the issuer, its parents, its majority-owned subsidiaries, or majority-owned subsidiaries of the issuer's parent.[116] We believe that low investment amounts are more likely to present enforcement challenges when offered to outside investors, and have changed the requirement as a result.

Sales Compensation. Item 12 generally will carry over but simplify the response to the requirements in Form D related to information on sales compensation, as we proposed. In addition, also as proposed, it will add a requirement to provide the CRD number of each person that is a compensation recipient named in response to Item 12, provided the person has a CRD number.[117] In addition and as a complement to what we proposed, Item 12 also will require that when both a person that receives sales compensation and the person's associated broker-dealer are reported, the issuer must provide the CRD number, if any, for both. Also in addition to what we proposed, the instruction to Item 12 will clarify that the compensation that can result in a reporting requirement can be cash or other consideration; a finder or other person that does not have a CRD number need not obtain one in order to be listed; and, conversely, a finder or other person is required to be listed where called for, regardless whether the finder or other person has a CRD number.[118] A CRD number corresponds to a broker or broker-dealer's record located in the Central Registration Depository, a computer database of brokers and broker-dealers that FINRA maintains. It should be relatively easy for an issuer to obtain the CRD numbers from the brokers and broker-dealers it retains. We have added instructions to Form D informing filers where to obtain CRD numbers on the Internet.[119] Requiring reporting of the CRD numbers will facilitate checking a broker's or broker-dealer's records. Requiring reporting of the CRD numbers of listed persons as well as any associated broker-dealers will enhance the informational value of the item.

Two commenters supported requiring CRD numbers in particular,[120] while one commenter objected to Item 12 as proposed, stating that the item could discourage users from using Regulation D, should not require the names of individual recipients of sales compensation and, if it did require their names, it should not require their CRD numbers.[121] Consistent with current Form D's requirement to name up to five persons associated with a particular broker-dealer that receive compensation in connection with sales of securities in an offering and any associated broker-dealer, we continue to believe that such information is important. Also consistent with current Form D's requirements, we continue to believe that it is useful to have the names of individuals regardless of whether they are associated with a broker-dealer. Once more than five individuals associated with the same broker-dealer otherwise would be named, however, the burden of listing additional names does not justify the benefit and it is sufficient in that case to have the name of the associated broker-dealer alone.

We believe that the new sales compensation disclosure requirements will not discourage issuers from using Regulation D any more than the current sales compensation reporting requirements do. The concern about discouraging issuers from using Regulation D appears to be rooted in a

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

[114] We also are revising Item 10 to enable an issuer to clarify its response. We discuss this change more fully in Part II.C below.

[115] For example, business combination transactions may raise some of the types of policy concerns we intended to address in adopting rules and rule amendments relating to filings by reporting shell companies. Release No. 33–8587 (July 15, 2005) [70 FR 42234].

[116] The standard for determining who is an ''outside investor'' is similar to the standard in Securities Act Rule 701 [17 CFR 230.701] and Securities Act Form S–8 [17 CFR 239.16b] for determining who is an eligible investor, except that for Form D purposes vendors are included and certain family members are excluded.

[117] The instruction to new Item 12 uses the term ''person'' rather than the proposed term ''individual'' to describe the sales compensation recipients that an issuer must list. The term ''person'' is used in order to clarify that, as intended in the proposed instruction, new Item 12 carries over the requirement in current Form D that references the term ''person'' to identify recipients of sales compensation regardless of whether the recipient is a natural person.

[118] We believe this clarification generally would be responsive to several comments related to Item 12. One commenter suggested that the form clarify that cash and non-cash compensation could trigger a reporting requirement and not every person has a CRD number. See letter from Connecticut. Another commenter suggested that the form clarify that issuers must report the names of persons regardless whether they have CRD numbers. See letter from NASAA.

[119] Anyone with access to the Internet can check a broker's CRD number and record by visiting *http://brokercheck.finra.org*. CRD numbers also can be obtained by calling a state regulator or FINRA's public disclosure hotline at 800–289–9999. See *http://www.nasaa.org/Investor_Education/Investor_AlertsTips/292.cfm*.

[120] See letters from Massachusetts and NASAA.

[121] See letter from ABA.

concern about regulator background checks on named persons. In this regard, we note that background checks are possible under the requirements of current Form D, and the only additional sales compensation requirement under the new form, CRD numbers, merely would facilitate that check.

Finally, one commenter asked us to clarify the extent to which new Item 12's sales compensation recipient disclosure requirement will apply to foreign sales.[122] Consistent with Preliminary Note 7 to Regulation D, Regulation D's requirements and, as a result, Form D's requirements, including new Item 12, will apply to foreign sales to the extent the issuer seeks to rely on an exemption under Regulation D for such foreign sales.[123]

Offering and Sales Amounts. Item 13 will carry over the current requirements to provide the amount of total sales and the total offering amount, but in a restructured, simplified format. Instructions have been added to clarify interpretive issues that have arisen in completing the form, such as how to respond to this requirement if the amount of an offering is undetermined when the Form D filing is made.[124] One commenter suggested that the form require a final report of actual sales results and be due not later than 15 business days after the close of the offering.[125] The commenter asserted that this would better meet the practical needs of issuers in terms of determining the trigger date for the Form D filing requirement, coordinating the filing of Form D with the Commission with state filing and fee calculation requirements, and determining the need for amendments as the sales process proceeds. As previously noted, we believe that it can be useful for regulatory purposes if an issuer files a Form D before an offering closes to enable regulators to consider the information provided before the offering process ends. If regulatory action is appropriate, earlier consideration potentially could cause it to be more timely and effective. We also believe that issuers have been and will continue to be able to coordinate their federal Form D and state filings without requiring Form D to contain final sale information rather than offering information as of an earlier time. Finally, we believe that any uncertainties as to when to amend will be substantially resolved by the provisions we are adding to the form requirements.

Investors. Item 14 will elicit information on whether the issuer intends to sell securities to persons who do not qualify as accredited investors and the number of such persons who already have invested. It will elicit information on the total number of investors who already have purchased securities in the offering. The form currently requires this information because it affects how we and state securities regulators evaluate claimed exemptions and allocate enforcement resources. We have modified Item 14 slightly from the proposed version by requiring the issuer to specify the total number of investors in the offering, rather than the number of accredited investors, so that examiners can readily see that number, rather than being required to add the numbers of accredited and non-accredited investors, as was the case in the proposed version.

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

Commenters expressed mixed views on eliminating the requirements for information on expenses and use of proceeds of the offering. One commenter agreed with the Commission's view that the information is not necessary and stated that providing the information is problematic because of issuer burden, lack of applicable accounting standards and category definitions, and estimated amounts.[126] Commenters that objected to deleting the requirements essentially stated that the information helps to enable state regulators to screen offerings for potential problems.[127] One of these commenters addressed the issues of burden and lack of specificity as to use of proceeds information by suggesting that the form provide more checkboxes but exclude from those checkboxes one that provides for general corporate purposes.[128]

We have considered the comments and, as a result, rather than deleting the current expenses and use of proceeds requirements in their entirety, we are deleting most of them and adopting the rest of them in new Items 15 and 16. New Item 15 will require the issuer to provide only the amounts paid for sales commissions and, separately stated, finders' fees in connection with the offering. New Item 16 will require reporting of the amount of the gross proceeds the issuer used or proposes to use for payments to related persons.[129] New Items 15 and 16 will permit clarification where necessary to prevent the information supplied from being misleading.[130] Both items will require substantially less information relating to offering expenses and use of proceeds and, thereby, result in a substantially reduced burden. The information new Items 15 and 16 will require is limited to expenses in connection with the offering process and payments to related persons. We believe that these types of expenses and payments are most likely to be of regulatory interest. Consequently, we believe the benefits from providing this information will justify the burdens in relation to information necessary for regulatory purposes.

6. Signature and Submission

We are combining the federal and state signature requirements currently in Sections D and E of Form D into one signature requirement. This will simplify the filing and make it consistent with other signature requirements of Commission forms. We are incorporating into the signature block a consent to service of process similar to the one currently in Form U–2, which is required to be filed separately but simultaneously with a Form D by many states. Our intention in

[122] See letter from ABA.

[123] Preliminary Note 7 to Regulation D provides as follows: ''Securities offered and sold outside the United States in accordance with Regulation S need not be registered under the [Securities] Act. See Release No. 33–6863. Regulation S may be relied upon for such offers and sales even if coincident offers and sales are made in accordance with Regulation D inside the United States. Thus, for example, persons who are offered and sold securities in accordance with Regulation S would not be counted in the calculation of the number of purchasers under Regulation D. Similarly, proceeds from such sales would not be included in the aggregate offering price. The provisions of this note, however, do not apply if the issuer elects to rely solely on Regulation D for offers or sales to persons made outside the United States.''

[124] We also are revising Item 13 to enable an issuer to clarify its response. We discuss this change more fully in Part II.C below.

[125] See letter from Stephen A. Marcus.

[126] See letter from ABA.

[127] See letters from Connecticut, Massachusetts, NASAA and Pennsylvania.

[128] See letter from NASAA.

[129] For purposes of new Item 15, ''Related Persons'' are those persons new Item 3 requires the issuer to report in the Form D notice.

[130] We discuss the ability to clarify items in Part II.C below.

making these changes is to maintain the usefulness of the signature block to regulators in a manner that is consistent with easing burdens on filers.

The combined signature requirement, in general, provides that each issuer signing the revised Form D [131] has read the Form D, knows the contents to be true, has duly caused the Form D to be signed on its behalf by the undersigned duly authorized person, and is [132]

- Notifying the Commission and the states in which the Form D is filed of the offering and undertaking to furnish to them, on written request, the information provided by each issuer to offerees in accordance with applicable law;
- Consenting to service of process on individuals holding specified positions; and
- Certifying that, if the issuer is claiming a Rule 505 exemption, it is not disqualified from relying on Rule 505 for one of the reasons stated in Rule 505(b)(2)(iii).

In undertaking to furnish to the states in which the Form D is filed, on written request, the information provided to offerees, the issuer will not be affecting any legal limits on the ability of these states to require information.[133]

The signature requirement will be more extensive than the current federal signature requirement and will differ in various ways from the current state signature requirement. The proposed signature requirement will be more extensive than the current state signature requirement, for example, by including a consent to service of process. The signature requirement also will be less extensive than the current state signature requirement in several ways.[134]

The signature requirement also will differ in several ways from the Form U–2 signature requirement. The principal difference between the signature requirement and the Form U–2 signature requirement is that Form U–2 requires the notarized signature of a corporate officer (or that person's equivalent in the case of other entities) and requires a consent to jurisdiction and venue as well as a consent to service of process.[135]

Some commenters expressly supported a combined signature requirement,[136] but they and other commenters expressed concerns. Two commenters expressed the concern that the undertaking to provide offering materials could be read in a manner inconsistent with NSMIA,[137] one commenter asked for clarification regarding the application of NSMIA,[138] and two commenters expressed the concern that the combined signature requirement was too narrow because it did not contain all that is contained in the current state signature requirement and Form U–2.[139]

The commenters that expressed the concern that the undertaking to provide offering materials could be read in a manner inconsistent with NSMIA stated that the undertaking could be misunderstood to mean that, as a result of the undertaking, states could require the offering materials in all instances regardless of the limits NSMIA otherwise would impose on their ability to do so.[140] Both of these commenters suggested that the Commission could resolve the concern by omitting the undertaking, and one of these commenters [141] suggested that, in the alternative, the Commission could clarify that the undertaking would be inapplicable to offerings under Rule 506. In response to these concerns, the new form will clarify in the context of the offering materials undertaking that where securities that are the subject of the Form D are covered securities under NSMIA, whether in all instances or due to the nature of the offering that is the subject of the Form D, the states cannot routinely require the offering materials under the undertaking or otherwise and can require the offering materials only to the extent Section 18(c)(1) permits them to do so under its preservation of their anti-fraud authority. Also, we have added language to the undertaking specifying that it only applies to written requests made ''in accordance with applicable law.''

The commenter that requested the NSMIA-related clarification asked that we clarify the relationship between Section 18(c)(2)(A) and the new signature requirement's consent to service provision in particular and between Section 18(b)(4)(D) and new Form D in general. Section 18(c)(2)(A) generally provides, in relevant part, that the states retain the right under NSMIA to obtain a consent to service of process from an issuer engaged in an offering under Rule 506 of Regulation D. Section 18(b)(4)(D) generally provides that the states retain the right under NSMIA to impose on an issuer engaged in an offering under Rule 506 ''notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996.'' Similarly to what we noted above in regard to the undertaking to provide offering materials, neither the consent to service provision nor anything else related to new Form D affects any legal limits on the ability of the states to require information.

Both commenters that expressed the narrowness concern addressed the consent to service provision. One commenter stated that the consent to service should be broadened to include consents to jurisdiction and venue as are contained in Form U–2 to eliminate fully the need to file Form U–2 and enable investors to avoid needing to plead and prove jurisdiction as an issuer should that wants to offer or sell in a state.[142] The other commenter stated that the consent to service provision should be broadened to apply to a broader array of acts, as does Form U–2, and to include the Rule 262 disqualification provision we proposed to delete.[143] The commenter reasoned that the form should include the Rule 262 disqualification provision because state bad actor provisions might apply to offerings under Rule 504 or 505.

We believe that the consent to service provision as proposed and adopted strikes the right balance between regulatory benefit and issuer burden. We acknowledge that the consent to service will not be as broad in effect as Form U–2 because that form's consent to service applies to a somewhat broader array of acts and that form also contains

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

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

[133] See Section 18 under the Securities Act as discussed in Part I.B.3.

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

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

[136] See letters from ABA and NASAA.

[137] See letters from ABA and MFA.

[138] See letter from ABA.

[139] See letters from Connecticut and NASAA.

[140] See letters from ABA and MFA.

[141] See letter from ABA.

[142] See letter from NASAA.

[143] See letter from Connecticut.

consents to jurisdiction and venue. We believe, however, that the Form D consent provision's application to a somewhat narrower array of facts is appropriate because the facts it applies to are tailored to the subject matter of Form D. The Form D consent to service provision generally applies to ''any activity in connection with the offering of securities that is the subject of this [Form D].'' In contrast, the Form U–2 consent to service provision generally applies to actions relating to ''the sale of securities.'' Finally, although Form D will not require consents to jurisdiction and venue, we note that under appropriate circumstances, state regulators still would be able to require this type of information.

B. Electronic Filing of Form D

We are amending Regulation S–T,[144] Rule 503 of Regulation D, and Form D to implement the requirement for issuers to file the information required by Form D with us electronically through an online filing system.[145] A large majority of commenters supported electronic filing, but some expressed concern about whether electronic filing would impose more burdens on issuers [146] or raise general solicitation issues.[147] The concerns regarding burdens generally related to the operation of the online system, and we address those concerns below where we discuss the operation of the system in more detail.[148]

One commenter expressed the concern that, even though Forms D currently are publicly accessible, their increased public accessibility as a result of mandated electronic filing would encourage third parties to use Form D for purposes beyond its original intent or current use and might result in issuers making less use of Form D than they do now and, thereby, deprive them of the benefits of the use of Regulation D and cause the Commission to receive less information than it does now.[149] The commenter suggested that, as an alternative, the Commission permit Form D filings to be confidential for a specified amount of time, such as a year, if the issuer has made no public disclosure of the offering. The Form D would, however, be available to the Commission and states with which it was filed during that time. We acknowledge the commenter's concerns. As we discussed in the proposing release and above, however, public availability of Form D provides a measure of investor disclosure and serves other useful purposes. In addition, as a practical matter, even if we were to permit confidential filing, Forms D would be subject to requests under the Freedom of Information Act (''FOIA'').[150]

Rule 101(c)(6) of Regulation S–T [151] currently requires the information required by Form D to be filed in paper format. The amendments will delete the reference to Form D from Rule 101(c)(6) and will revise subparagraph (a)(1) of Rule 101 [152] to add a new subparagraph (xiii) that will add Form D to the rule's list of documents required to be filed electronically.

Rule 100 of Regulation S–T,[153] which specifies the persons or entities subject to the electronic filing requirements of Regulation S–T, expressly includes, among others, Exchange Act reporting companies whose filings (such as Form D) are subject to review by the Division of Corporation Finance. In order to assure that Rule 100 also will apply to non-reporting companies that file Form D, the amendments revise paragraph (a) of Rule 100 of Regulation S–T [154] to add a reference to entities that are not Exchange Act reporting companies but whose filings are subject to review by the Division of Corporation Finance.

We also are amending Regulation S–T, as proposed, to make hardship exemptions unavailable for Form D filings.[155] The amendments revise subparagraph (a) of Rules 201 [156] and 202 [157] to exclude Form D from the filings for which hardship exemptions are available. We believe hardship exemptions should not be available for Form D filings because of the relative ease of electronic filing, the limited value of paper filings and the utility of a uniform, comprehensive database. In adopting the conversion of the Form D filing from a paper system to an electronic system, we assume that issuers will have access to a computer and the Internet. In the absence of an issuer's having a personal or office computer and Internet access, public libraries around the country often have computer and Internet access that an issuer could use. We therefore do not envision the need for a hardship exemption to permit paper filing.[158]

The amendments revise Rule 503 of Regulation D and Form D in several ways related to electronic filing. The amendments delete from Rule 503 references to the paper-based concept of copies in subparagraphs (a) and (b) and a manual signature in subparagraph (b). Subparagraph (a) will continue to specify when a notice on Form D initially must be filed and will be revised to specify also when an amendment to a Form D filing must or could be filed.[159]

One commenter [160] suggested that we ease burdens by extending the filing deadline to at least 30 days from the date of first sale,[161] defining the date of first sale as the consummation of the first closing of a sale of securities in the offering, extending the cut-off time for electronic filing from 5:30 to 10 p.m. Eastern time [162] and providing that

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

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

[146] See letters from ABA, Stephen A. Marcus and SCSGP.

[147] See letters from Connecticut, Massachusetts and NASAA.

[148] We address the concerns relating to general solicitation issues in Part II.C below.

[149] See letter from ABA.

[150] 5 U.S.C. 552 *et seq.* The Commission's regulations that implement that statute are at 17 CFR 200.80 *et seq.*

[151] 17 CFR 232.101(c)(6).

[152] 17 CFR 232.101(a)(1).

[153] 17 CFR 232.100.

[154] 17 CFR 232.100(a).

[155] We note, however, that a filer may request a filing date adjustment under Rule 13(b) of Regulation S–T [17 CFR 232.13(b)]. This rule addresses circumstances where an electronic filer attempts in good faith to file a document with the Commission in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control. In those instances, the filer may request an adjustment of the document's filing date. The staff may grant the request if it appears that the adjustment is appropriate and consistent with the public interest and the protection of investors.

[156] 17 CFR 232.201(a).

[157] 17 CFR 232.202(a).

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

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

[160] See letter from ABA.

[161] As discussed above in connection with Item 13 in Part II.A.5, another commenter suggested that the form require a final report of actual sales results and be due not later than 15 business days after the close of the offering.

[162] Rule 13 of Regulation S–T [17 CFR 232.13] generally provides that a filing by direct transmission beginning on or before 5:30 p.m. Eastern time on a business day is deemed filed that day and, if such a filing were to begin after that time, it would be deemed filed on the next business day. Rule 13 also provides, however, that a 10:00 p.m. deadline applies for registration statements and post-effective amendments filed under Rule 462(b) [17 CFR 230.462(b)] and beneficial ownership reports filed under Section 16(a) [15

Continued

when a Form D otherwise would be due on a weekend or holiday it be deemed due on the next business day. We are not aware of the current deadline's having been difficult to meet in the past and believe that carrying it forward is not likely to cause problems in the future. For the same reasons, we believe that it is not necessary to extend the cut-off time from 5:30 to 10 p.m. In this regard, we note that filings under Rule 462(b) and Section 16(a) to which the extended cut-off time applies typically must be made much more quickly than a filing on Form D.[163] We are, however, further revising Rule 503(a)(1) to provide that when a Form D filing otherwise would be due on a weekend or holiday it will be deemed due on the next business day. This approach is consistent with the way Exchange Act Rule 0–3(a) [164] generally treats filing deadlines under the Exchange Act.[165]

Subparagraph (b) of Rule 503 will continue to require a signature. Rule 302 of Regulation S–T,[166] which governs the manner of signature for electronic filings, will apply to Form D.[167] The amendments also add to subparagraph (b) a statement that electronic Form D filing through our new online filing system is mandatory. In addition, the amendments delete subparagraphs (c), (d), and (e). Subparagraph (c) requires an issuer that makes sales under Rule 505 to provide an undertaking on its Form D to provide specified information to the Commission upon the staff's written request. This paragraph no longer will be necessary because, as noted above, the revised signature requirement will provide that each issuer signing the Form D will be undertaking to furnish to the Commission and the states with which the Form D is filed, on written request, the information provided by each issuer to offerees. Subparagraph (d), regarding amendments, no longer will be necessary because subparagraph (a) will address when to file amendments and the new online filing system will make available to the issuer the version of the Form D to be amended to enable the issuer to key in only the changes. Subparagraph (e), regarding the date a Form D filing is considered filed, no longer will be necessary because Rule 13 of Regulation S–T will specify the way to determine the filing date for a Form D filing as it does for electronic filings generally and new Rule 503(a)(1) will provide that when a Form D otherwise would be due on a weekend or holiday it will be deemed due on the next business day.[168] Finally, the amendments similarly will revise the General Instructions of Form D regarding copies required, manual signatures, amendments, mandatory electronic filing and filing date.

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

Rule 502(c) of Regulation D [169] sets forth the prohibition on general solicitation and general advertising applicable to most Regulation D offerings. Specifically, issuers and persons acting on the issuer's behalf are prohibited from offering or selling securities by any form of general solicitation or general advertising. Information filed using Form D has up to now been available to the general public. The electronic filing and availability of Form D information, however, may present the concern that the filing could be used as a marketing document to generate interest in offerings because the information would be easily and broadly available. This, in turn, may raise concerns regarding compliance with Regulation D's prohibition on the use of general solicitation and general advertising. To address these compliance concerns, we are revising Rule 502(c) to include a safe harbor from the prohibition on ''general solicitation'' and ''general advertising'' for information provided in a Form D filed with the Commission if the information is provided in good faith and the issuer makes reasonable efforts to comply with the requirements of Form D. An issuer that complies with the terms of the safe harbor is assured that the electronic availability of its Form D filing would not, in and of itself, cause the issuer to have violated this prohibition.

Such a safe harbor would not be warranted if it merely shielded activity that is, in fact, intended to generate interest in the offering in violation of law. Accordingly, we are limiting the amount of information submitted on the form and limiting the application of the safe harbor to where the information is provided with a good faith and reasonable effort to comply with the requirements of Form D.[170] Limiting the safe harbor to information provided with a good faith and reasonable effort to comply with the requirements of Form D would be consistent with Preliminary Note 6 [171] to Regulation D, Rule 508,[172] and the ''notification'' nature of Form D's requirements.

As proposed, electronic Form D would not have contained any place where ''free writing'' could occur.[173] When submitting a paper filing, filers may insert information that is not required by the form, but that could be a vehicle for soliciting investors illegally. Prohibiting free writing in the electronic form would prevent such misuse. One commenter favored the total bar against free writing as necessary to safeguard against this misuse.[174] Another commenter, however, favored allowing issuers to clarify responses, asserting that permitting issuers to do so would avoid a disincentive to filing by enabling issuers to present more accurate information that would be more

U.S.C. 78p(a)], in general, by officers, directors and principal security holders of reporting companies that have a class of equity securities registered under Section 12 [15 U.S.C. 78*l*] of the Exchange Act.

[163] For example, Section 16(a)(2)(C) [15 U.S.C. 78p(a)(2)(C)] generally requires that insiders file reports of changes in beneficial ownership within two business days of the change.

[164] 17 CFR 240.0–3(a).

[165] As the commenter that raised the weekend/holiday issue pointed out, current Rule 503(e)(2) addresses the issue by providing that a Form D we do not physically receive by the end of the 15-day period is deemed filed on the date it is sent by certified or registered U.S. mail. Consequently, an issuer currently may send a Form D as late as the end of the 15-day period. In proposing to delete Rule 503(e)(2), it was not our intention to shorten the Form D filing deadline.

[166] 17 CFR 232.302.

[167] Rule 302 requires, in general, that electronic filings contain typed signatures, that each signer manually sign a signature page or other document confirming the typed signature by the time the filing is made, and that the issuer maintain the manually signed document for five years and make it available to the Commission and its staff upon their request. We also are adding to Form D's signature instruction a summary of Rule 302's requirements as a convenience.

[168] The description of Form D at 17 CFR 239.500 is similar to Rule 503 and is being amended similarly.

[169] 17 CFR 230.502(c).

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

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

[172] 17 CFR 230.508. Rule 508 provides, in part, that ''A failure to comply with a term, condition or requirement of [specified rules under Regulation D] will not result in the loss of [an] exemption * * * if the person relying on the exemption shows * * * [a] good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of [such rules].''

[173] As proposed and adopted, however, Form D will require an issuer to provide further detail in a textual response if the issuer must choose ''Other'' in response to Item 1 regarding legal entity type or Item 9 regarding security type.

[174] See letter from NASAA.

useful.[175] The commenter also asserted that permitting clarification to ensure accuracy would not transform the Form D into a marketing document and would be consistent with the proposed safe harbor because the information would be provided with a good faith and reasonable effort to comply with the requirements of Form D.

We are persuaded that, on balance, it is appropriate to permit issuers to engage in a limited amount of free writing to the extent necessary to clarify responses as consistent with the safe harbor. In order to limit the amount of free writing, however, we are reducing the need for it by offering additional response choices for some items [176] and permitting free writing to clarify responses in separate fields using a limited number of characters only for those items for which it seems appropriate. Accordingly, and as noted above in the context of discussing particular items of new Form D, we will permit free writing to clarify responses to the following items:

- Item 3—Related Persons;
- Item 10—Business Combination Transactions;
- Item 13—Offering and Sales Amounts;
- Item 15—Sales Commissions and Finders' Fee Expenses; and
- Item 16—Use of Proceeds.[177]

Two commenters urged that we provide additional safeguards to support the ban on general solicitation and general advertising.[178] Both commenters suggested prominent warnings in connection with the display of Form D information. One of them also favored limiting public access to some types of information, clarifying in connection with adopting the amendments that electronic filing does not eliminate the ban and amending Regulation D to require companies to return any unsolicited payments submitted to purchase securities.[179] We believe that limiting the types and amount of information in Form D filings and providing a carefully tailored safe harbor should prevent the electronic availability of Form D filings from undermining the ban.

III. Electronic Filing Procedure

We are mandating electronic filing of the Form D notice through an online filing system in development that will be accessible from any computer with Internet access. The information filed will be available on our Web site and, because the online filing system will automatically capture and tag data items, the data will be interactive and searchable. Our Web site will enable users to view the information in an easy-to-read format, download the information into an existing application, or create an application to use the information. As discussed above, our objectives in converting Form D filings to an electronic format include lessening the burden on issuers of filing the Form D notice, enhancing federal and state coordination, increasing the information available regarding the effectiveness of our Securities Act exemptions and increasing the information available to researchers using Form D data to conduct empirical research aimed at improving the efficiency and effectiveness of our private markets.

We believe our approach to filing and dissemination formats will make it relatively easy to file, access and analyze Form D information. As discussed in the proposing release, using this system will result in the Form D information being filed in the standard format of eXtensible Markup Language (XML) and we would disseminate the information in a format that provides normal text for reading and XML-tagged data for analysis. Three commenters suggested that the system tag the Form D information with the eXtensible Business Reporting Language (XBRL) system rather than the standard format of XML.[180] XBRL is an XML-based language that is intended to tag a wide range of business data. Because Form D information consists of relatively simple facts, XML is a sufficient technological solution, and we expect the information tagged in XML will be compatible with systems designed for more sophisticated XBRL reporting. The Commission can also take advantage of its experience in developing data tags for information filed under Section 16, which is currently filed with the Commission using XML technology.

A. Mechanics

The new online filing system for Form D information will be accessible from any computer with Internet access. An issuer will be able to both submit and amend its Form D filing through this system.[181] The Form D itself will include guidance functions to assist in completing the form.[182]

In order to file, issuers will need the same codes as are required to file on our electronic filing system, EDGAR, today. An issuer that does not already have EDGAR filing codes, and to which the Commission has not previously assigned a user identification number, which we call a ''Central Index Key (CIK)'' code, will obtain the codes by filing electronically a Form ID [183] at *https://www.filermanagement.edgarfiling.sec.gov* and filing, in paper by fax within two business days before or after filing the Form ID, a notarized authenticating document. The authenticating document will be manually signed by the applicant over the applicant's typed signature, include the information contained in the Form ID, confirm the authenticity of the Form ID [184] and, if filed after electronically filing the Form ID, include the accession number assigned to the electronically filed Form ID as a result of its filing.[185] Under the online system, if the Form D filing is made on behalf of multiple issuers, each issuer will be required to have its own CIK code and a confirming code, which we call a ''CIK Confirmation Code (CCC),'' for validation.

Two commenters expressed concern about the need for an issuer to obtain access codes through the Form ID process in order to file through the new online system.[186] We plan to consider

[175] See letter from ABA.

[176] For example, we have modified the proposed version of Item 1 to permit an issuer to choose ''yet to be formed'' instead of providing a year of organization in response to that item.

[177] The commenter that suggested that we permit free writing cited Items 1, 3, 9, 10 and 13 as examples of items for which it may be appropriate to permit free writing. See letter from ABA. As noted, we have added an additional response choice to the proposed version of Item 1 and Items 3, 10 and 13 all will permit free writing to clarify responses. In that regard, we choose not to revise further Item 9, regarding security type, because it already requires an issuer to provide further detail in a textual response if the issuer must choose ''Other'' as its initial response.

[178] See letters from Connecticut and NASAA.

[179] See letter from NASAA.

[180] See letters from Center for Audit Quality, EDGAR Online, Inc. and XBRL US, Inc.

[181] In the proposing release, we stated our expectation that the system would permit an issuer, in Item 7, to designate the states to which the Form D is directed on the assumption that some states would adopt one-stop filing and allow filings that specify that they are directed to those states to constitute filings with them. As discussed above in more detail in Part I.B.3, we have been working actively with NASAA to achieve one-stop filing capability but it would not be available when electronic filing of Form D begins.

[182] For example, the system might use drop-down menus as a guidance function.

[183] 17 CFR 239.63, 249.446, 269.7 and 274.402.

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

[185] 17 CFR 232.10(b). An ''accession number'' is a unique number generated by EDGAR for each electronic submission. Assignment of an accession number does not mean that EDGAR has accepted a submission.

[186] See letters from ABA (focusing particularly on the burden on non-reporting companies) and Stephen A. Marcus.

ways to simplify the authentication process in order to replace the requirement to fax the notarized authenticating document, and expect that a more simplified process may be available by the time electronic Form D filing is mandated.[187]

To access and file a Form D through the new online system, issuers will begin by having a valid identification number, confirming code and separate password, which we call a ''Password'' and logging on to the system. The identification number, confirming code and password, together with a password modification authorization code, are referred to as ''EDGAR access codes.'' Data entry will be required to be performed quickly enough to avoid time-outs that end the session. A time-out most likely will occur no less than one hour following the user's last activity on the system. Time-outs will be implemented due to cost and technical limitations, but it would be possible to extend a session with any keystroke.[188]

Two commenters suggested that the system provide a way to save an incomplete form and one of them stated that it would be desirable as a practical matter for the system to enable an issuer to prepare a filing offline and then access the system to submit it.[189] One commenter stated that a saving feature was needed to avoid time-outs.[190] The other commenter stated that the absence of a saving feature would virtually require that a careful filer prepare a Form D offline on a specially created template and then input all the information again online and, as a result, would risk inputting incorrect information and waste time and money.[191]

We agree that it would be useful to filers to be able to avoid the need to provide all of the required information both online and in a single session. Contrary to our earlier expectation, we anticipate that the system will provide a way to avoid the need to provide all of the required information both online and in a single session. For example, the system may permit the issuer to prepare the filing offline and submit it online or to save an incomplete form online from session to session for a short period of time, such as six calendar days, between sessions.[192]

An issuer will be able to prepare an amendment based on the content of a previously filed form.[193] The system will validate as many fields as possible for data type and required fields while the filer fills in the fields on the screen. Issuers will have an opportunity to correct errors and verify the accuracy of the information before submitting the filing. Links will be available to enable issuers to access information, such as the instructions to Form D.

The issuer will be able to download and print the filing before and after submission.[194] Once the filing is submitted, the system will indicate receipt of the filing. In many cases, the system will display a unique number assigned to the submission, which we call an ''accession number'' but, in any event, the accession number will follow in an e-mail notification to the filer. A filer will be able to see the filing on our Web site shortly after filing.

Upon filing of the Form D notice with the Commission, state securities regulators will be able to identify on our Web site Form D filings that specify their states.[195] Filers generally would specify one or more states in response to proposed Items 1 (jurisdiction of incorporation or organization), 2 (principal place of business and contact information), 3 (related person addresses) and 12 (addresses of recipients of sales compensation) of Form D.[196] State specification information will be interactive and searchable because the new online filing system will automatically capture and tag that information as it will other Form D filing information.

Most Form D filings currently are made by law firms on behalf of issuers.[197] We expect that the simplification and restructuring of Form D and the conversion of Form D filings to an electronic system may decrease legal fees to make Form D filings and perhaps allow more issuers to file a Form D notice themselves without the assistance of a law firm.

B. Database Capabilities of Electronic Form D Repository

A review of Form D filings by our Division of Corporation Finance uncovered errors and omissions in the information provided.[198] In an effort to enhance the quality of the data collected by the proposed electronic Form D, we are including internal checks in the new online system that should decrease the number of errors and omissions in Form D filings. The system will prevent an issuer from submitting Form D information electronically unless all necessary data fields are completed in a manner consistent with the nature of

[187] In the proposing release, we solicited comment on whether issuers that only file Form D with the Commission should be able to authenticate a Form ID by providing to the Commission a copy of a local business license rather than by faxing the otherwise required notarized authenticating document. We received no responses to this question.

[188] The new online filing system technically will be part of EDGAR but likely in some respects will be similar to the online filing system for Forms 3 [17 CFR 249.103 and 274.202], 4 [17 CFR 249.104 and 274.203], and 5 [17 CFR 249.105] filed under Section 16(a) of the Exchange Act, in general, by officers, directors and principal security holders of reporting companies that have a class of equity securities registered under Section 12 of the Exchange Act. Form D filers will access the online filing system and, essentially, prepare the filing by responding to questions and filling in blanks. The online filing system for Forms 3, 4 and 5 does not provide a way to save an incomplete form, but does provide the alternative of preparing filings before accessing the system and then submitting them through, rather than preparing them on, the online system.

[189] See letters from ABA and SCSGP.

[190] See letter from SCSGP.

[191] See letter from ABA.

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

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

[194] We believe the ability to download and print the filing before and after submission meets the concerns of the commenter that asked that the system allow the user to view the information before submission and print an as-filed version after submission. See letter from ABA.

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

[196] As discussed above in more detail, we no longer contemplate effectuating a one-stop filing system by giving filers an opportunity to direct their filings to designated states as provided by proposed Item 7, but we have been working actively with NASAA in an effort to accomplish this in a different manner. Consequently, Item 7 does not provide for designation of states.

[197] Our Division of Corporation Finance conducted a one-month review of Form D filings and determined that, based primarily on the cover letters that accompany most paper Form D filings, about 75% of the filings were made by law firms on behalf of issuers.

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

each field [199] and the logical relationships between or among the fields.[200] This will not only promote the integrity of the data collected by the Form D repository, but also will make it easier for issuers to complete or amend their filings.

C. System Implementation

The new online system is expected to be available to receive filings on a voluntary basis on September 15, 2008. Electronic filing will be required for all filings on or after March 16, 2009. We are treating the period between the two dates as a transition period during which electronic filing of Form D information with us using the new online filing system will be voluntary. Issuers may also file a paper version of the new Form D with us during the transition period, without using the online filing system.

The transition period serves several purposes. It should both enable issuers to become familiar with the new Form D and online filing system and help alert us to any problems. One commenter suggested that we permit voluntary filing for a period of at least a year to work out any issues that arise and provide time to allow states to adopt conforming one-stop filing rules and set up a central payment system.[201] We believe that a shorter period of time should be adequate for discovering and addressing any issues in the new form or system that might arise. We also believe mandating electronic filing of Form D as soon as feasible even without a one-stop filing capability in place is preferable, in order to realize without unnecessary delay the many benefits we believe mandated electronic filing will provide separate and apart from the benefits that one-stop filing would provide. In this regard, we believe that beginning to mandate electronic filing without one-stop filing in place will not delay, and in fact will facilitate, the development of one-stop filing on which we are working actively with NASAA.

Issuers that choose not to file electronically during the transition period may use either the current paper form or a paper version of the new Form D. Although the information in new Form D is somewhat different from that in current paper Form D, we believe a short period when either version of the form can be used is appropriate. Similarly, we will permit an amendment to be filed in paper format using either version of the form until electronic filing becomes mandatory. As previously discussed, however, the new annual and other amendment rules will apply to all new Form D filings regardless of format and the current amendment requirements will apply to all current Form D filings in paper format. By the time electronic filing is mandated, however, we believe an adequate amount of time will have passed since electronic filing will have become voluntary for Form D filings that it would be appropriate to require electronic filing using new Form D of initial filings and all amendments applying the new amendment rules regardless whether the filing being amended was filed on current or new Form D.

We are establishing the transition period by delaying until the end of the period the effective date of new Item 101(a)(1)(xiii), which mandates electronic filing of new Form D, and adopting temporary provisions that will apply only during the transition period.[202] We are adopting temporary Item 101(b)(10) of Regulation S–T to permit but not require electronic filing of new Form D during the period. We are adopting temporary Rule 503T and Temporary Form D, which are similar to current Rule 503 and Form D, respectively, and, in general, will enable filers to file current or new Form D in paper format during the transition period.[203]

Two commenters addressed the question in the proposing release as to whether, in the future, public companies should be exempted from the Form D filing requirement in Rule 503 and instead be required to file Form D information as part of a periodic or current report.[204] Both commenters suggested that we defer consideration of such an exemption. One commenter cited concerns with the potential for confusion and problems with differing formats and retrieval.[205] The other commenter cited risks to uniformity between federal and state requirements, additional costs and potential inadvertent violations.[206] We intend to consider in the future the issues that these comments raise.

IV. Paperwork Reduction Act Analysis

A. Background

The amendments will affect two forms that contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[207] The titles of the affected information collections are Form D (OMB Control No. 3235–0076) and Form ID (OMB Control No. 3235–0328). The purposes of the amendments are, in general, to clarify, simplify and update the information requirements of Form D and modernize the related information capture process. We published a notice requesting 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 under 44 U.S.C. 3507(d) and 5 CFR 1320.11. As we discuss in more detail below, we have withdrawn that request and plan to replace it in order to reflect a new estimate based on the most recently ended fiscal year that had not yet ended at the time we submitted the original request to OMB. 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, a collection of information requirement unless it displays a currently valid control number. Compliance with the collections of information as revised will be mandatory. The information required by the collection of information in Form D as revised will not be kept confidential by the Commission; the information required by Form D will be kept non-public, subject to a request under FOIA.

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

Form ID is filed by registrants, individuals, transfer agents, third-party

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

[200] Where, for example, the filer claims a Rule 505 or Rule 506 exemption in response to Item 6 and specifies that more than 35 non-accredited investors have invested in response to Item 14, a pop-up or other feature will warn that only 35 non-accredited investors are permitted in these types of offerings and require the filer to select ''OK'' before proceeding.

[201] See letter from ABA.

[202] Most of the provisions we adopt today will be effective on September 15, 2008 when the transition period begins. We are, however, providing earlier effective dates for the changes to Items 101(c)(6) and 201(a) of Regulation S–T. The change to Item 101(c)(6) will remove Form D from the list of documents that cannot be filed electronically and the change to Item 201(a) will add Form D to the list of documents for which a temporary hardship exemption from electronic filing will not be available. The earlier effective date will have no practical effect on the Form D filing requirements but will facilitate the Commission's consideration and potential adoption of other revisions to Items 101(c)(6) and 201(a) that it proposed in Release No. 33–8859 (Nov. 1, 2007) [72 FR 63513].

[203] Among the differences between the current and temporary versions of Rule 503 and Form D is a reduction in the number of paper copies required to be filed from five to two (one of which, in each case, must be a manually signed original).

[204] See letters from Connecticut and NASAA.

[205] See letter from Connecticut.

[206] See letter from NASAA.

[207] 44 U.S.C. 3501 *et seq.*

filers or their agents to request the assignment of access codes that permit the filing of securities documents on EDGAR. This form enables the Commission to assign an identification number (CIK), confirmation code (CCC), password and password modification authorization code to each EDGAR filer, each of which is designed to protect the security of the EDGAR system.

B. Estimated Collection of Information Burdens

As we previously expected and discussed in the proposing release as to the proposed amendments, we expect that the adopted amendments will not affect the overall collection of information burden of Form D but will cause additional respondents to file a Form ID each year and, as a result, will increase the annual collection of information burden. We have, however, as further discussed below, refined and updated the information we used to arrive at our estimate of the effect of the amendments. As a result, we have revised our estimate of the current number of respondents that file Form ID each year without the effect of the amendments and the additional number of respondents that will file Form ID each year as a result of the amendments.

We expect that the amendments will not affect the number of Form D filings made and, on balance, will obligate issuers to report on Form D essentially the same amount of information as they are required to report on Form D today. As previously noted, we are adopting the amendments substantially as proposed. We expect nearly all of the variations between what we expressly proposed and what we adopted to lessen the collection of information burden or not affect it. We expect a small minority of variations to increase the collection of information burden. On balance, however, we expect the variations will not increase the collection of information burden.

We expect that the following variations from the proposals will lessen the collection of information burden of Form D:

- Provide that if a Form D filing otherwise is due on a Saturday, Sunday or holiday, it will be due on the first business day following;
- Eliminate the proposed requirement to provide the issuer's Commission file number (if any);
- Provide additional exceptions from the requirement to amend Form D for changes in:
  - The address or relationship to the issuer of a related person identified in response to Item 3 of Form D;
  - The minimum investment amount, if the change is an increase, or if the change, together with all other changes in the amount since the previously filed notice, does not result in a decrease of more than 10%;
  - Any address or state(s) of solicitation shown in response to Item 12 of Form D;
  - The total offering amount (if the change is a decrease); and
  - The amount of securities in the offering that remain to be sold; and
- Prescribe that annual amendments are due on or before the first anniversary of the most recently filed Form D filing or amendment, if the offering is continuing at that time, rather than each year between January 1 and February 14.

We expect that the following variations from the proposals will not affect the collection of information burden of Form D:

- Provide clarifications;
- Permit issuers to provide information that is not required;
- Permit issuers to clarify information;
- Request but not require that issuers in specified industry groups provide their aggregate net asset value range (and provide an additional exception from the requirement to amend Form D for changes in aggregate net asset value);
- Eliminate the ability to specify states to which the Form D is directed;
- Prescribe that the minimum investment amount relates to outside investors rather than all investors;
- Prescribe disclosure of the total number of investors rather than the number of accredited investors; and
- Provide temporary rules that, in conjunction with varied effective dates, establish the transition period during which electronic filing of Form D proceeds from prohibited to optional to mandated.

Finally, we expect that the following variations from the proposals will increase the collection of information burden of Form D:

- Require amendments to report the addition of executive officers, directors and promoters in all offerings, and not provide an exception from this requirement for offerings that last more than a year in some circumstances;
- Require that when both an individual and the individual's associated broker-dealer are disclosed, the issuer must present the CRD number, if any, for both rather than just one; and
- Require disclosure of the following amounts or, if not known, an estimate:
  - Expenses for amounts paid for sales commissions and, separately stated, finders' fees; and
  - Use of proceeds but only as to the amount used to make payments to executive officers, directors and promoters.[208]

As noted above, we expect that, on balance, the variations from the proposals will not increase the collection of information burden. Consequently, we continue to believe that the overall information collection burden of Form D will remain approximately the same as it is today.[209]

In the proposing release, we stated our then current estimate that, without the effect of the amendments, 196,800 respondents file Form ID each year at an estimated burden of .15 hours per response, all of which is borne internally by the respondent for a total annual burden of 29,520 hours. We later refined the estimate to the extent that we reduced from 196,800 to 46,400 the estimated number of respondents that file Form ID each year resulting in a total annual burden of 6960 hours. We reduced the estimate primarily based on the actual number of Forms ID per year we recently have received. We reflected the new estimate in the request we submitted to OMB rather than the estimate used in the proposing release.

Also in the proposing release, we stated our then current estimate that an additional 18,600 respondents would file Form ID each year and, as a result, would cause an additional annual burden of 2790 hours. We now are revising that estimate as a result of using updated information for our most recently ended fiscal year that ended after we issued the proposing release and submitted the related request to OMB.[210] Our new estimate is that, as a result of the amendments, an additional 19,300 respondents will file a Form ID each year and, consequently, will cause

[208] While we expect the requirement to disclose these expense and use of proceeds amounts will increase the collection of information burden of Form D, we also expect that our adoption of an additional exception from the requirement to amend Form D for specified changes in these amounts will limit the increase.

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

[210] Also after we issued the proposing release and submitted the related request to OMB, we obtained slight corrections to the fiscal year 2006 data we provided in the proposing release and request. The corrected data for fiscal year 2006 is that 16,879 companies made 25,717 Form D filings and, of these companies, 15,969 (94.6%) did not report under the Exchange Act and 910 (5.4%) did report under the Exchange Act. If we had calculated the estimate in the proposing release using the corrected figures for fiscal year 2006, we would have estimated that, as a result of the proposed amendments, an additional 18,700 respondents would file a Form ID each year and, as a result, would cause an additional burden of 2805 hours.

an additional burden of 2895 hours.[211] Accordingly, we have withdrawn the request we submitted to OMB and plan to replace it with a new request.

Consistent with our belief that the variations between what we expressly proposed and what we adopted will not affect the number of Forms D filed, we believe that the variations will not affect our estimate of the Form ID collection of information burden.

C. Comments on Collection of Information Burdens

We solicited comment in the proposing release on the PRA estimates we provided there and we solicit comment on the revised estimates we now provide in this release.

One commenter expressly addressed our PRA estimate of the amount of the estimated burden per response for Form ID and that commenter[212] and another commenter[213] expressed concern about the potential burdens resulting from the requirement to file Form ID in order to obtain the access codes necessary to file a Form D on EDGAR. The commenter that expressly addressed our PRA estimate of .15 hours per response for Form ID stated that the estimate is not consistent with the experiences of several members of the committees that together provided the comment. We are not aware of respondents generally incurring response time in excess of our estimate of .15 hours per response for Form ID and continue to believe the estimate to be appropriate. We acknowledge the general concerns with the Form ID process but we believe it should be required for Form D filers as it is for other filers on EDGAR.

We believe that the new online system should be as secure as our EDGAR system in general because it will be a part of the EDGAR system and, as such, its filings will be disseminated on EDGAR and displayed on the Commission's public Web site. In order to achieve that uniform degree of security, we believe it is appropriate to require issuers that seek to file Form D to complete the same Form ID authentication process to obtain the same access codes as those persons or entities who seek to file with the Commission for many other reasons.

We solicit comment on the expected PRA effects of the amendments, including the following:

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

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

V. Cost-Benefit Analysis

A. Background

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

We solicited comment on the expected benefits and costs and on any others that may result from adoption of the proposed changes as well as suggested alternatives. We also requested that commenters provide empirical data and other factual support for their views to the extent possible. No commenter expressly addressed the cost-benefit analysis in the proposing release but some commenters cited benefits consistent with those described immediately above in the course of making a variety of suggestions and observations. We discuss these comments throughout the release as applicable.[214]

[211] We arrived at our revised estimate that an additional 19,300 respondents would file a Form ID each year based on the following information and analysis. In fiscal year 2007, 17,519 companies made 27,843 Form D filings. Of these companies, 16,655 (95.1%) did not report under the Exchange Act and 864 (4.9%) did report under the Exchange Act. The annual number of Form D filings rose from 17,390 in fiscal year 2002 to 27,843 in fiscal year 2007 for an average increase of approximately 2100 Form D filings per year. Assuming the number of Form D filings continues to increase by 2100 filings per year for each of the next three years, the average number of Form D filings in each of the next three years would be about 32,100. Assuming that the ratio of the number of companies that make a Form D filing to the number of Form D filings in fiscal year 2007 remains constant over the next three years, an average of about 20,200 companies would make Form D filings in each of the next three years. Assuming also that the ratio between the number of non-reporting and reporting companies under the Exchange Act that made Form D filings in fiscal year 2007 remains constant over the next three years, an average of about 19,300 non-reporting and 900 reporting companies would make Form D filings in each of the next three years. Assuming further that all non-reporting companies that would make a Form D filing would not already have EDGAR access codes and, as a result, would be required to file a Form ID, the number of companies that would need to file a Form ID as a result of the amendments would on average be about 19,300 per year over the next three years. Because each Form ID filing is estimated to require .15 hours, the total additional burden would, on average, be about 2895 hours per year over the next three years (19,300 Forms ID × .15 hours per Form ID). We consider the average number of Form ID filings expected to be made per year over the next three years because the PRA requires that our estimates represent the average yearly burden over a three-year period.

[212] See letter from ABA (focusing particularly on the burden on non-reporting companies).

[213] See letter from Stephen A. Marcus.

[214] As to benefits, for example, we noted that one commenter stated that if one-stop filing were

Continued

B. Benefits

We expect the amendments to benefit issuers, regulators and members of the public. In particular, the amendments should:

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

The amendments should ease filing burdens because filers should find it easier to respond to the revised information requirements of Form D.[215] It should be easier to respond to the revised information requirements of Form D because they would be clarified, simplified and updated. It should be easier to file the responsive information because issuers will be able to use efficient modern methods of information transfer through electronic filing. Issuers will provide the information in data fields by responding to a series of discrete requests for information. The fields will be checked automatically for appropriate characters and consistency with other fields and the questions will be accompanied by links to clear instructions, definitions, and other helpful information. These system features, among others, should help to facilitate a relatively easy-to-use filing process that will deliver accurate information quickly, reliably, and securely.

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

For over 20 years, Form D has served as a means to promote federal and state uniformity and coordination in securities regulation by providing a uniform notification form that can be filed with the Commission and with state securities regulators. The contemplated electronic filing system for Form D information will continue that tradition and can enhance the utility of Form D as a means to promote uniformity and coordination between federal and state securities regulation.

The availability of Form D information filed with us through a searchable electronic database will enable both federal and state securities regulators to monitor the exempt securities transaction markets more effectively. The system also will permit improved coordination among federal and state regulators, which is essential to efficient and effective capital formation through exempt transactions, especially by smaller companies, and to investor protection. State securities regulators will be able to access the information on our Web site to learn if new Form D information of interest to them has been filed.

The system will enhance uniformity and coordination even more if it results in ''one-stop filing,'' as we and NASAA are exploring. One-stop filing will enable companies to file Form D information both with us and with the states they designate in one electronic transaction. While that capability will not be available when Form D electronic filing with the Commission begins, we have been working actively with NASAA to achieve that capability as soon as practicable. We understand that NASAA is considering establishing its own new electronic system that would interface with our system and would receive filings and collect fees on behalf of participating state securities regulators.[216] One-stop filing will reduce significantly the costs and burdens of preparing and filing Form D information with the Commission and with state securities regulators. This could represent a substantial savings for small businesses and others filing Form D information.

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

C. Costs

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

Initial costs will be associated with filing a Form ID in order to obtain the access codes needed to file Form D information electronically and otherwise preparing to make an initial filing of Form D information.[217] To file a Form ID, an issuer must learn the related electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Commission's EDGAR Filer Management Web site, respond to Form ID's information requirements and fax to the Commission a notarized authenticating document.[218] Similarly,

implemented properly, it would reduce significantly the costs and burdens of preparing and filing Form D with the Commission and the states. See letter from ABA. As to costs, for example, we noted that the same commenter stated that the absence of a saving feature in the Form D filing system would virtually require that a careful filer prepare a Form D offline on a specially created template and then input all the information online and, as a result, would risk inputting incorrect information and waste time and money.

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

[216] The Commission's electronic filing system will not collect fees on behalf of any states.

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

[218] As discussed in Part IV regarding the PRA, the Commission estimates that approximately 46,400 respondents file Form ID each year at an estimated burden of .15 hours per response, all of which is borne internally by the respondent, for a total annual burden of 6960 hours. As also discussed in Part IV, we expect that the amendments will cause an additional 19,300 respondents to file a Form ID each year and, as a result, cause an additional annual burden of 2895 hours. Assuming a cost of $175 per hour for in-house professional staff, we

in order otherwise to prepare to make an initial electronic filing of Form D information, an issuer must learn about the revised Form D information content and electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Form D filing system and respond to Form D's information requirements.

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

We expect that the vast majority of issuers will incur few, if any, additional costs related to obtaining computer and Internet access. We believe that the vast majority of issuers already will have access to a computer and the Internet.[219]

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

Section 23(a)(2) of the Exchange Act[220] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act,[221] Section 3(f) of the Exchange Act,[222] and Section 2(c) of the Investment Company Act[223] require us, when engaged in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The amendments will restructure and mandate the electronic filing of the information required by Form D after a period of time during which electronic filing is voluntary. We believe the amendments, in general, will provide benefits by clarifying, simplifying and updating the information requirements of Form D and modernizing the related information capture process. In particular, as discussed in further detail above, the amendments should:

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

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

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

Improved collection of data for Commission enforcement and rulemaking efforts resulting from the amendments will create a Form D information database that will allow us to better evaluate our exemptive schemes on a continuing basis in order to facilitate capital formation in a manner consistent with investor protection and the evaluation may lead to improvements that will promote our capital markets. Similarly, the enhanced utility of Form D as a means to promote federal and state uniformity and coordination resulting from the amendments, and in the future, ''one-stop'' filing as we and NASAA are exploring, should lead to improved coordination which will promote capital formation.

In the proposing release, we considered the amendments in light of the standards set forth in the above statutory sections. We requested comment on whether the proposed amendments, if adopted, would impose a burden on competition or promote efficiency, competition and capital formation. No commenter expressly addressed competition. Commenters generally addressed issues relating to the content and mandated electronic filing of information required by Form D. As a result, the comments generally related to efficiency and capital formation. We discuss these comments throughout this release, as applicable.

VII. 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 regarding the content and mandated electronic filing of information required by Form D.

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

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

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Act Analysis (''IRFA'') appeared in the proposing release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, and how to

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estimate the current Form ID burden cost at $1,218,000 per year (6960 hours per year × $175 per hour), the additional Form ID burden cost resulting from adoption of the amendments at $506,625 per year (2895 hours per year × $175 per hour) and the total Form ID burden cost that will result from adding the estimated additional Form ID burden cost to the estimated current Form ID burden cost will be $1,724,625 per year ((6960 hours per year + 2895 hours per year) = 9855 hours per year; 9855 hours per year × $175 per hour = $1,724,625 per year).

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

[220] 15 U.S.C. 78w(a)(2).

[221] 15 U.S.C. 77b(b).

[222] 15 U.S.C. 78c(f).

[223] 15 U.S.C. 80a–2(c).

quantify the impact of the proposals. No commenter responded to the request.

C. Small Entities Subject to the Amendments

The amendments will affect issuers that are small entities. Exchange Act Rule 0–10(a) [224] 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.[225] Investment Company Act Rule 0–10(a) defines an investment company as a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it, together with other investment companies in the same group of related investment companies, had net assets of $50 million or less as of the end of its most recent fiscal year.[226] The amendments will apply to all issuers that file Form D.

As previously noted, in fiscal year 2007, 17,519 issuers made Form D filings. We believe that many of these issuers are small entities but currently we do not collect information on total assets to determine if they are small entities for purposes of this analysis.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

Before the effective date of the rule and form amendments adopted in this release, issuers must file Form D information in paper. The amendments will require all issuers, including small entities, to submit somewhat different Form D information online using the Internet after a phase-in period during which electronic filing is optional. All issuers filing electronically will need to file a Form ID electronically to obtain the access codes needed to use the Form D filing system if they do not already have the codes.[227] The only additional professional skills required will be those required to file electronically.[228]

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

Initial costs are those associated with filing a Form ID in order to obtain the access codes needed to file Form D information electronically and otherwise preparing to make an initial filing of Form D information. To file a Form ID, an issuer must learn the related electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Commission's EDGAR Filer Management Web site, respond to Form ID's information requirements and fax to the Commission a notarized authenticating document.[229] Similarly, in order otherwise to prepare to make an initial electronic filing of Form D information, an issuer must learn about the revised Form D information content and electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Form D filing system and respond to Form D's information requirements.

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

We expect that the vast majority of small entities will need to incur few, if any, additional costs related to obtaining computer and Internet access. We believe that the vast majority of small entities already will have access to a computer and the Internet.[230]

E. Agency Action To Minimize Effect on Small Entities

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

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

We believe that, as to small entities, differing compliance, reporting or timetable requirements, a partial or complete exemption from the requirements or the use of performance rather than design standards would be inappropriate because these approaches would detract from the completeness and uniformity of the Form D database and, as a result, reduce the expected benefits of better public availability of Form D information, enhanced utility of Form D as a means to promote federal and state uniformity, and improved collection of data for Commission enforcement and rulemaking efforts. Further, we believe the adopted Form D filing system will be relatively easy to use.

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

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 addressing deficiencies in the Form D data collection process. We also solicited comment on the availability of technology to complete Form D online and whether public companies should

[224] 17 CFR 240.0–10(a).

[225] 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 VII 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.

[226] 17 CFR 270.0–10(a).

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

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

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

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

be phased in to mandated electronic Form D filing sooner than private companies. No commenter responded to these requests. As discussed previously in this release, however, we are providing a period during which issuers, regardless of size, will have the option of filing electronically or in paper.

VIII. Statutory Basis and Text of Amendments

We are adopting the amendments this release describes under the authority in sections 2(a), 3(b), 4(2), 19(a), 19(d), and 28 of the Securities Act,[231] sections 3(b), 23(a), and 35A of the Exchange Act,[232] section 319(a) of the Trust Indenture Act,[233] and section 38 of the Investment Company Act.[234]

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

Reporting and recordkeeping requirements, Securities.

Text of Amendments

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

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

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

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 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.

* * * * *

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

§ 230.502 General conditions to be met.

* * * * *

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

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

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

* * * * *

■ 3. Add § 230.503T to read as follows:

§ 230.503T Filing of notice of sales.

Note to Rule 503T: This is a special temporary section that applies instead of § 230.503 only to issuers that file with the Commission a notice on Temporary Form D (17 CFR 239.500T) or Form D (17 CFR 239.500) or an amendment to such a notice in paper format on or after September 15, 2008 but before March 16, 2009.

(a) An issuer offering or selling securities in reliance on § 230.504, § 230.505, or § 230.506 shall file with the Commission at its principal office at 100 F Street, NE., Washington, DC 20549 two copies in paper format of a notice on Temporary Form D (17 CFR 239.500T) or Form D (17 CFR 239.500) in paper format no later than 15 days after the first sale of securities.

(b) One copy of every notice on Form D shall be manually signed by a person duly authorized by the issuer.

(c) If sales are made under § 230.505 and the issuer files Temporary Form D (17 CFR 239.500T), the filing shall contain an undertaking by the issuer to furnish the Commission, upon the written request of its staff, the information furnished by the issuer under § 230.502(b)(2) to any purchaser that is not an accredited investor.

(d) Amendments in paper format:

(1) To the notices described in paragraphs (d)(1)(i) and (ii) of this section, must use Temporary Form D (17 CFR 239.500T) but need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B:

(i) Notices filed before September 15, 2008; and

(ii) Notices filed on or after September 15, 2008 in paper format under paragraph (a) of this § 230.503T using Temporary Form D (17 CFR 239.500T).

(2) To a notice filed in paper or electronic format on or after September 15, 2008 using Form D (17 CFR 239.500), must use Form D (17 CFR 239.500) and comply with § 230.503 regarding when an amendment can or must be filed and what an amendment must contain.

(e) A notice on Form D shall be considered filed with the Commission under paragraph (a) of this section:

(1) As of the date on which it is received at the Commission's principal office in Washington, DC; or

(2) As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's principal office in Washington, DC, if the notice is delivered to such office after the date on which it is required to be filed.

(f) This temporary § 230.503T and accompanying note will expire on March 16, 2009.

■ 4. Revise § 230.503 to read as follows:

§ 230.503 Filing of notice of sales.

(a) *When notice of sales on Form D is required and permitted to be filed.*

(1) An issuer offering or selling securities in reliance on § 230.504, § 230.505, or § 230.506 must file with the Commission a notice of sales containing the information required by Form D (17 CFR 239.500) for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

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

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

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

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

(A) The address or relationship to the issuer of a related person identified in

[231] 15 U.S.C. 77b(a), 77c(b), 77d(2), 77s(a), 77s(d), and 77z–3.

[232] 15 U.S.C. 78c(b), 78w(a), and 78*ll*.

[233] 15 U.S.C. 77sss(a).

[234] 15 U.S.C. 80a–37.

response to Item 3 of the notice of sales on Form D;

(B) An issuer's revenues or aggregate net asset value;

(C) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than 10%;

(D) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

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

(F) The amount of securities sold in the offering or the amount remaining to be sold;

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

(H) The total number of investors who have invested in the offering; or

(I) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%; and

(iii) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

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

(b) *How notice of sales on Form D must be filed and signed.*

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

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

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

■ 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 § 232.100 by revising paragraph (a) to read as follows:

§ 232.100 Persons and entities subject to mandated electronic filing.

* * * * *

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

* * * * *

■ 7. Amend § 232.101 by:

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

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

■ c. Adding paragraph (a)(1)(xiii);

■ d. Removing the word ''and'' at the end of paragraph (b)(8)(ii);

■ e. Removing the period and adding ''; and'' at the end of paragraph (b)(9);

■ f. Adding paragraph (b)(10); and

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

The added paragraphs read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

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

* * * * *

(b) * * *

(10) Form D (§ 239.500 of this chapter) but this temporary § 232.101(b)(10) will expire on March 16, 2009.

* * * * *

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

§ 232.104 Unofficial PDF copies included in an electronic submission.

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

* * * * *

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

§ 232.201 Temporary hardship exemption.

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

* * * * *

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

§ 232.202 Continuing hardship exemption.

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

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 11. 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, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*, 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.

* * * * *

■ 12. Add § 239.500T and Temporary Form D (referenced in § 239.500T) to read as follows:

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

Note to § 239.500T: This is a special temporary section that applies instead of § 239.500 only to issuers that file with the Commission a notice on Temporary Form D (17 CFR 239.500T) or an amendment to such

a notice in paper format on or after September 15, 2008 but before March 16, 2009. During that period, an issuer also may file in paper format an initial notice using Form D (17 CFR 239.500) but, if it does, the issuer must file amendments using Form D (17 CFR 239.500) and otherwise comply with all the requirements of § 230.503T.

(a) Two copies of a notice on this form shall be filed with the Commission no later than 15 days after the first sale of securities in an offering under Regulation D (§§ 230.501–230.508 of this chapter) or under section 4(6) of the Securities Act of 1933.

(b) One copy of every notice on Form D shall be manually signed by a person duly authorized by the issuer.

(c) When sales are made under § 230.505, the notice shall contain an undertaking by the issuer to furnish to the Commission, upon the written request of its staff, the information furnished to non-accredited investors.

(d) Amendments to notices filed under paragraph (a) need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

(e) A notice on Form D shall be considered filed with the Commission under paragraph (a) of this section:

(1) As of the date on which it is received at the Commission's principal office in Washington, DC; or

(2) As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's principal office in Washington, DC, if the notice is delivered to such office after the date on which it is required to be filed.

(f) This temporary § 239.500T and accompanying note will expire on March 16, 2009.

Note: The text of Temporary Form D (referenced in § 239.500T) does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL
OMB Number: 3235-0076 Expires: April 30, 2008 Estimated average burden hours per response 16.00

TEMPORARY

FORM D

NOTICE OF SALE OF SECURITIES PURSUANT TO REGULATION D, SECTION 4(6), AND/OR UNIFORM LIMITED OFFERING EXEMPTION

Name of Offering (☐ check if this is an amendment and name has changed, and indicate change.)	
Filing Under (Check box(es) that apply): ☐ Rule 504 ☐ Rule 505 ☐ Rule 506 ☐ Section 4(6) ☐ ULOE Type of Filing: ☐ New Filing ☐ Amendment	
A. BASIC IDENTIFICATION DATA	
1. Enter the information requested about the issuer	
Name of Issuer (☐ check if this is an amendment and name has changed, and indicate change.)	
Address of Executive Offices (Number and Street, City, State, Zip Code)	Telephone Number (Including Area Code)
Address of Principal Business Operations (Number and Street, City, State, Zip Code) (if different from Executive Offices)	Telephone Number (Including Area Code)
Brief Description of Business	
Type of Business Organization ☐ corporation ☐ limited partnership, already formed ☐ other (please specify) ☐ business trust ☐ limited partnership, to be formed	
Actual or Estimated Date of Incorporation or Organization: Month ☐☐ Year ☐☐ ☐ Actual ☐ Estimated	
Jurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State; CN for Canada; FN for other foreign jurisdiction) ☐☐	

GENERAL INSTRUCTIONS

Note: This is a special Temporary Form D (17 CFR 239.500T) that is available to be filed instead of Form D (17 CFR 239.500) only to issuers that file with the Commission a notice on Temporary Form D (17 CFR 239.500T) or an amendment to such a notice in paper format on or after September 15, 2008 but before March 16, 2009. During that period, an issuer also may file in paper format an initial notice using Form D (17 CFR 239.500) but, if it does, the issuer must file amendments using Form D (17 CFR 239.500) and otherwise comply with all the requirements of § 230.503T.

Federal:

Who Must File: All issuers making an offering of securities in reliance on an exception under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

When To File: A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice is deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

Where To File: U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549.

Copies Required: Two (2) copies of this notice must be filed with the SEC, one of which must be manually signed. The copy not manually signed must be a photocopy of the manually signed copy or bear typed or printed signatures.

Information Required: A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

Filing Fee: There is no federal filing fee.

State:

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE must file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix to the notice constitutes a part of this notice and must be completed.

ATTENTION

Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption unless such exemption is predicated on the filing of a federal notice.

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

A. BASIC IDENTIFICATION DATA

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or more of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partner of partnership issuers.

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

B. INFORMATION ABOUT OFFERING

1. Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering? ☐ Yes ☐ No
   Answer also in Appendix, Column 2, if filing under ULOE.
2. What is the minimum investment that will be accepted from any individual? $_____
3. Does the offering permit joint ownership of a single unit? ☐ Yes ☐ No
4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only.

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) ☐ All States

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) ☐ All States

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) ☐ All States

AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID
IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA
RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	PR

(Use blank sheet, or copy and use additional copies of this sheet, as necessary.)

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if the answer is "none" or "zero." If the transaction is an exchange offering, check this box ☐ and indicate in the columns below the amounts of the securities offered for exchange and already exchanged.

Type of Security	Aggregate Offering Price	Amount Already Sold
Debt	$_____	$_____
Equity	$_____	$_____
☐ Common ☐ Preferred		
Convertible Securities (including warrants)	$_____	$_____
Partnership Interests	$_____	$_____
Other (Specify _____)	$_____	$_____
Total	$_____	$_____

Answer also in Appendix, Column 3, if filing under ULOE.

2. Enter the number of accredited and non-accredited investors who have purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero".

	Number of Investors	Aggregate Dollar Amount of Purchases
Accredited Investors	_____	$_____
Non-accredited Investors	_____	$_____
Total (for filings under Rule 504 only)	_____	$_____

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, in the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C—Question 1.

Type of Offering	Type of Security	Dollar Amount Sold
Rule 505	_____	$_____
Regulation A	_____	$_____
Rule 504	_____	$_____
Total	_____	$_____

4. a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the issuer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate.

Transfer Agent's Fees	☐	$_____
Printing and Engraving Costs	☐	$_____
Legal Fees	☐	$_____
Accounting Fees	☐	$_____
Engineering Fees	☐	$_____
Sales Commissions (specify finders' fees separately)	☐	$_____
Other Expenses (identify) _____	☐	$_____
Total	☐	$_____

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

b. Enter the difference between the aggregate offering price given in response to Part C—Question 1 and total expenses furnished in response to Part C—Question 4.a. This difference is the "adjusted gross proceeds to the issuer." ..... $_____

5. Indicate below the amount of the adjusted gross proceed to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C—Question 4.b above.

		Payments to Officers, Directors, & Affiliates		Payments to Others
Salaries and fees	☐	$_____	☐	$_____
Purchase of real estate	☐	$_____	☐	$_____
Purchase, rental or leasing and installation of machinery and equipment	☐	$_____	☐	$_____
Construction or leasing of plant buildings and facilities	☐	$_____	☐	$_____
Acquisition of other businesses (including the value of securities involved in this offering that may be used in exchange for the assets or securities of another issuer pursuant to a merger)	☐	$_____	☐	$_____
Repayment of indebtedness	☐	$_____	☐	$_____
Working capital	☐	$_____	☐	$_____
Other (specify): _____	☐	$_____	☐	$_____
_____				
_____				
Column Totals	☐	$_____	☐	$_____
Total Payments Listed (column totals added)		☐	$_____	

D. FEDERAL SIGNATURE

The issuer has duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

Issuer (Print or Type)	Signature	Date
Name of Signer (Print or Type)	Title of Signer (Print or Type)	

ATTENTION

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

E. STATE SIGNATURE

1. Is any party described in 17 CFR 230.262 presently subject to any of the disqualification provisions of such rule? ..... Yes ☐ No ☐

See Appendix, Column 5, for state response.

2. The undersigned issuer hereby undertakes to furnish to any state administrator of any state in which this notice is filed a notice on Temporary Form D (17 CFR 239.500T) at such times as required by state law.

3. The undersigned issuer hereby undertakes to furnish to the state administrators, upon written request, information furnished by the issuer to offerees.

4. The undersigned issuer represents that the issuer is familiar with the conditions that must be satisfied to be entitled to the Uniform limited Offering Exemption (ULOE) of the state in which this notice is filed and understands that the issuer claiming the availability of this exemption has the burden of establishing that these conditions have been satisfied.

The issuer has read this notification and knows the contents to be true and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Issuer (Print or Type)	Signature	Date
Name (Print or Type)	Title (Print or Type)	

Instruction:
Print the name and title of the signing representative under the representative's signature for the state portion of this form. One copy of every notice on Form D must be manually signed. A copy not manually signed must be a photocopy of the manually signed copy or bear typed or printed signatures.

APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-Item 1)		Type of security and aggregate offering price offered in state (Part C-Item 1)	Type of investor and amount purchased in State (Part C-Item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item I)	
State	**Yes**	**No**		**Number of Accredited Investors**	**Amount**	**Number of Non-Accredited Investors**	**Amount**	**Yes**	**No**
AL									
AK									
AZ									
AR									
CA									
CO									
CT									
DE									
DC									
FL									
GA									
HI									
ID									
IL									
IN									
IA									
KS									
KY									
LA									
ME									
MD									
MA									
MI									
MN									
MS									

APPENDIX

1	2		3	4				5	
	Intend to sell to non-accredited investors in State (Part B-Item 1)		Type of security and aggregate offering price offered in state (Part C-Item 1)	Type of investor and amount purchased in State (Part C-Item 2)				Disqualification under State ULOE (if yes, attach explanation of waiver granted) (Part E-Item I)	
State	**Yes**	**No**		**Number of Accredited Investors**	**Amount**	**Number of Non-Accredited Investors**	**Amount**	**Yes**	**No**
MO									
MT									
NE									
NV									
NH									
NJ									
NM									
NY									
NC									
ND									
OH									
OK									
OR									
PA									
RI									
SC									
SD									
TN									
TX									
UT									
VT									
VA									
WA									
WV									
WI									
WY									
PR									

BILLING CODE 8011–01–C

■ 13. Revise § 239.500 and Form D (referenced in § 239.500) to read as follows:

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

(a) *When notice of sales on Form D must be filed.*

(1) An issuer offering or selling securities in reliance on § 230.504, § 230.505, or § 230.506 of this chapter or section 4(6) of the Securities Act of 1933 must file with the Commission a notice of sales containing the information required by this form for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

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

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

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

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

(A) The address or relationship to the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(B) An issuer's revenues or aggregate net asset value;

(C) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than 10%;

(D) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

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

(F) The amount of securities sold in the offering or the amount remaining to be sold;

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

(H) The total number of investors who have invested in the offering;

(I) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%; and

(iii) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

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

(b) *How notice of sales on Form D must be filed and signed.*

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

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

Note The text of Form D (referenced in § 239.500) does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

OMB APPROVAL
OMB Number: 3235-0076
Expires: April 30, 2008
Estimated average burden hours per response: . .4.00

FORM D

NOTICE OF EXEMPT OFFERING OF SECURITIES

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

You must follow the accompanying instructions in submitting this notice.

---

1. Issuer's Identity

Name of Issuer _____

Previous Name(s) _____ ☐ None

Jurisdiction of Incorporation/Organization (dropdown or other list selection feature)

Entity Type (dropdown or other list selection feature)

Year of Incorporation/Organization (dropdown or other list selection feature to select year or "Yet to Be Formed")

Add Issuer

2. Principal Place of Business and Contact Information

Street Address _____

City _____ **State/Province** __ (dropdown or other list selection feature)

Zip/Postal Code _____

Country
- ⦿ U.S.
- ⦿ Canada
- ⦿ Other (dropdown or other list selection feature for countries if answer is "Other" than U.S. or Canada)

Telephone Number _____

Add Information for Additional Issuer(s)

3. Related Persons

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

Clarification of Response (if Necessary): _____

Add Related Person

4. Industry Group (dropdown or other list selection feature)

5. Issuer Size

Revenue Range (for issuers that do not specify "Hedge Fund" or "Other Investment Fund" in response to Item 4)

- ⦿ No Revenues
- ⦿ $1 - $1,000,000
- ⦿ $1,000,001 - $5,000,000
- ⦿ $5,000,001 - $25,000,000
- ⦿ $25,000,001 - $100,000,000
- ⦿ Over $100,000,000
- ⦿ Decline to Disclose
- ⦿ Not Applicable

Aggregate Net Asset Value Range (for issuers that specify "Hedge Fund" or "Other Investment Fund" in response to Item 4)

- ⦿ No Aggregate Net Asset Value
- ⦿ $1 - $5,000,000
- ⦿ $5,000,001 - $25,000,000
- ⦿ $25,000,001 - $50,000,000
- ⦿ $50,000,001 - $100,000,000
- ⦿ Over $100,000,000
- ⦿ Decline to Disclose
- ⦿ Not Applicable

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

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

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

7. **Type of Filing**

[ ] New Notice (dropdown or other feature to select "Date of First Sale" or "First Sale Yet to Occur")
[ ] Amendment

8. **Duration of Offering**

Does the issuer intend this offering to last more than one year?
⊙ Yes
⊙ No

9. **Type(s) of Securities Offered (select all that apply)**

[ ] Equity
[ ] Debt
[ ] Option, Warrant or Other Right to Acquire Another Security
[ ] Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security
[ ] Pooled Investment Fund Interests
[ ] Tenant-in-Common Securities
[ ] Mineral Property Securities
[ ] Other (Describe: _____)

10. **Business Combination Transaction**

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer?
⊙ Yes
⊙ No
Clarification of Response (if Necessary): _____

11. **Minimum Investment**

Minimum investment accepted from any outside investor $_____

12. **Sales Compensation**

Recipient	Recipient CRD Number	Associated Broker or Dealer	Broker or Dealer CRD Number	Street Address	State(s) of Solicitation
					(dropdown or other list selection feature)

Add Recipient

13. **Offering and Sales Amounts**

Total Offering Amount $_____or [ ] Indefinite
Total Amount Sold $_____

Total Remaining to be Sold $[auto subtract]_____ or [ ] Indefinite
Clarification of Response (if Necessary): _____

14. Investors

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

Regardless whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering: _____

15. Sales Commissions and Finders' Fees Expenses

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount(s).

Sales Commissions $_____[ ] Estimate
Finders' Fees $_____[ ] Estimate
Clarification of Response (if Necessary): _____

16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

$_____[ ] Estimate
Clarification of Response (if Necessary): _____

Signature and Submission

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

Printable Version

In submitting this notice, each issuer named above is:

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

* This undertaking does not affect any limits Section 102(a) of the National Securities Markets Improvement Act of 1996 ("NSMIA") [Pub. L. No. 104-290, 110 Stat. 3416 (Oct. 11, 1996)] imposes on the ability of States to require information. As a result, if the securities that are the subject of this Form D are "covered securities" for purposes of NSMIA, whether in all instances or due to the nature of the offering that is the subject of this Form D, States cannot

- Irrevocably appointing each of the Secretary of the SEC and the Securities Administrator or other legally designated officer of the State in which the issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against the issuer in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes; or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that, if the issuer is claiming a Rule 505 exemption, the issuer is not disqualified from relying on Rule 505 for one of the reasons stated in Rule 505(b)(2)(iii).

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

Signature

Signature: _____ Title: _____ Date:_____

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

SUBMIT

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

Instructions for Submitting Notice

General Instructions

- **Who must file:**

routinely require offering materials under this undertaking or otherwise and can require offering materials only to the extent NSMIA permits them to do so under NSMIA's preservation of their anti-fraud authority.

- Each issuer of securities that sells its securities in reliance on an exemption provided in Regulation D or Section 4(6) of the Securities Act of 1933 must file this notice containing the information requested with the U.S. Securities and Exchange Commission (SEC) and with the state(s) requiring it. If more than one issuer has sold its securities in the same transaction, all issuers should be identified in one filing with the SEC, but some states may require a separate filing for each issuer or security sold.

- **When to file:**
  - An issuer must file a new notice with the SEC for each new offering of securities no later than 15 calendar days after the "date of first sale" of securities in the offering as explained in Instruction 7. For this purpose, the date of first sale is the date on which the first investor is irrevocably contractually committed to invest, which, depending on the terms and conditions of the contract, could be the date on which the issuer receives the investor's subscription agreement or check. An issuer may file the notice at any time before that if it has determined to make the offering. An issuer must file a new notice with each state that requires it at the time set by the state. For state filing information, go to www.NASAA.org. A mandatory capital commitment call does not constitute a new offering, but is made under the original offering, so no new Form D filing is required.
  - An issuer may file an amendment to a previously filed notice at any time.
  - An issuer must file an amendment to a previously filed notice for an offering:
    - to correct a material mistake of fact or error in the previously filed notice, as soon as practicable after discovery of the mistake or error;

- to reflect a change in the information provided in the previously filed notice, except as provided below, as soon as practicable after the change; and
- annually, on or before the first anniversary of the most recent previously filed notice, if the offering is continuing at that time.

- **When amendment is not required:** An issuer is not required to file an amendment to a previously filed notice to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:
  - the address or relationship to the issuer of a related person identified in response to Item 3;
  - an issuer's revenues or aggregate net asset value;
  - the minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice, does not result in a decrease of more than 10%;
  - any address or state(s) of solicitation shown in response to Item 12;
  - the total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%;
  - the amount of securities sold in the offering or the amount remaining to be sold;
  - the number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35;
  - the total number of investors who have invested in the offering;
  - the amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the

change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%.

- **Saturdays, Sundays and Holidays:** If the date on which a notice or an amendment to a previously filed notice is required to be filed falls on a Saturday, Sunday or holiday, the due date is the first business day following.
- **Amendment content:** An issuer that files an amendment to a previously filed notice must provide current information in response to all items of this Form D, regardless of why the amendment is filed.
- **How to File:** Issuers must file this notice with the SEC in electronic format. For state filing information, go to www.NASAA.org.
- **Filing Fee:** There is no federal filing fee. For information on state filing fees, go to www.NASAA.org.
- **Definitions of Terms:** Terms used but not defined in this form that are defined in Rule 405 and Rule 501 under the Securities Act of 1933, 17 CFR 230.405 and 230.501, have the meanings given to them in those rules.

Item-by-Item Instructions

1. **Issuer's Identity.** Identify each legal entity issuing any securities being reported as being offered by entering its full name; any previous name used within the past five years; and its jurisdiction of incorporation or organization, type of legal entity, and year of incorporation or organization within the past five years or status as formed over five years ago or not yet formed. If more than one entity is issuing the securities, identify a primary issuer in the first fields shown and identify additional issuers in the fields that appear.

2. **Principal Place of Business and Contact Information.** Enter a full street address of the issuer's principal place of business. Post office box numbers and "In care of" addresses are not acceptable. Enter a contact telephone number for the issuer. If you identified more than one issuer in response to Item 1, enter the requested information for the primary issuer you identified in response to that item and, at your option, for any or all of the other issuers you identified in the fields that appear.

3. **Related Persons.** Enter the full name and address of each person having the specified relationships with any issuer and identify each relationship:

   - Each executive officer and director of the issuer and person performing similar functions (title alone is not determinative) for the issuer, such as the general and managing partners of partnerships and managing members of limited liability companies; and
   - Each person who has functioned directly or indirectly as a promoter of the issuer within the past five years of the later of the first sale of securities or the date upon which the Form D filing was required to be made.

   If necessary to prevent the information supplied from being misleading, also provide a clarification in the space provided.

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

5. **Issuer Size.**

- Revenue Range (for issuers that do not specify "Hedge Fund" or "Other Investment Fund" in response to Item 4): Enter the revenue range of the issuer or of all the issuers together for the most recently completed fiscal year available, or, if not in existence for a fiscal year, revenue range to date. Domestic SEC reporting companies should state revenues in accordance with Regulation S-X under the Securities Exchange Act of 1934. Domestic non-reporting companies should state revenues in accordance with U.S. Generally Accepted Accounting Principles (GAAP). Foreign issuers should calculate revenues in U.S. dollars and state them in accordance with U.S. GAAP, home country GAAP or International Financial Reporting Standards. If the issuer(s) declines to disclose its revenue range, enter "Decline to Disclose." If the issuer's(s')business is intended to produce revenue but did not, enter "No Revenues." If the business is not intended to produce revenue (for example, the business seeks asset appreciation only), enter "Not Applicable."
- Aggregate Net Asset Value (for issuers that specify "Hedge Fund" or "Other Investment Fund" in response to Item 4): Enter the aggregate net asset value range of the issuer or of all the issuers together as of the most recent practicable date. If the issuer(s) declines to disclose its aggregate net asset value range, enter "Decline to Disclose."

6. **Federal Exemption(s) and Exclusion(s) Claimed.** Select the provision(s) being claimed to exempt the offering and resulting sales from the federal registration requirements under the Securities Act of 1933 and, if applicable, to exclude the issuer from the definition of "investment company" under the Investment Company Act of 1940. Select "Rule 504(b)(1) (not (i), (ii) or (iii))" only if the issuer is relying on the

exemption in the introductory sentence of Rule 504 for offers and sales that satisfy all the terms and conditions of Rules 501 and 502(a), (c) and (d).

7. **Type of Filing**. Indicate whether the issuer is filing a new notice or an amendment to a notice that was filed previously. If this is a new notice, enter the date of the first sale of securities in the offering or indicate that the first sale has "Yet to Occur." For this purpose, the date of first sale is the date on which the first investor is irrevocably contractually committed to invest, which, depending on the terms and conditions of the contract, could be the date on which the issuer receives the investor's subscription agreement or check.

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

9. **Type(s) of Securities Offered.** Select the appropriate type or types of securities offered as to which this notice is filed. If the securities are debt convertible into other securities, however, select "Debt" and any other appropriate types of securities except for "Equity." For purposes of this filing, use the ordinary dictionary and commonly understood meanings of these categories. For instance, equity securities would be securities that represent proportional ownership in an issuer, such as ordinary common and preferred stock of corporations and partnership and limited liability company interests; debt securities would be securities representing money loaned to an issuer that must be repaid to the investor at a later date; pooled investment fund interests would be securities that represent ownership interests in a pooled or collective investment vehicle; tenant-in-common securities would be securities that include an undivided fractional interest in real property other than a mineral property; and mineral property securities would be securities that include an undivided interest in an oil, gas or other mineral property.

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

11. **Minimum Investment.** Enter the minimum dollar amount of investment that will be accepted from any outside investor. If the offering provides a minimum investment amount for outside investors that can be waived, provide the lowest amount below which a waiver will not be granted. If there is no minimum investment amount, enter "0." Investors will be considered outside investors if they are not employees, officers, directors, general partners, trustees (where the issuer is a business trust), consultants, advisors or vendors of the issuer, its parents, its majority owned subsidiaries, or majority owned subsidiaries of the issuer's parent.

12. **Sales Compensation.** Enter the requested information for each person that has been or will be paid directly or indirectly any commission or other similar compensation in cash or other consideration in connection with sales of securities in the offering, including finders. Enter the CRD number for every person identified and any broker and dealer listed that has a CRD number. CRD numbers can be found at http://brokercheck.finra.org. A person that does not have a CRD number need not obtain one in order to be listed, and must be listed when required regardless of whether the person has a CRD number. In addition, enter the State(s) in which the named person has solicited or intends to solicit investors. If more than five persons to be listed are associated persons of the same broker or dealer, enter only the name of the broker or

dealer, its CRD number and street address, and the State(s) in which the named person has solicited or intends to solicit investors.

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

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

15. **Sales Commission and Finders' Fees Expenses.** The information on sales commissions and finders' fees expenses may be given as subject to future contingencies.

16. Use of Proceeds. No additional instructions.

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

Each individual must:

- sign with a typed signature; and
- manually sign a signature page or other document authenticating, acknowledging or otherwise adopting the signature that appears in typed form in the Form D filing on or before the time of filing the Form D.

Each issuer must:

- retain the manually signed document signed on its behalf for five years; and
- provide a copy of the manually signed document to the SEC or its staff upon request.

Entity Type (for Item 1)

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

Year of Incorporation/Organization (for Item 1)

[ ] Yet to Be Formed
[ ] Within Last Five Years (Specify Year)
[ ] Over Five Years Ago

Industry Groups (for Item 4)

[ ] Agriculture

Banking & Financial Services

[ ] Commercial Banking
[ ] Insurance

[ ] Investing
[ ] Investment Banking
[ ] Pooled Investment Fund*
[ ] Hedge Fund
[ ] Private Equity Fund
[ ] Venture Capital Fund
[ ] Other Investment Fund
[ ] Other Banking & Financial Services

[ ] Business Services

Energy

[ ] Coal Mining
[ ] Electric Utilities
[ ] Energy Conservation
[ ] Environmental Services
[ ] Oil & Gas
[ ] Other Energy

Health Care

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

[ ] Manufacturing

Real Estate

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

* If the Pooled Investment Fund checkbox is selected, pop-ups or other features also will require the filer to select one of the lower level checkboxes designating a specific type of investment fund and select a "yes" or "no" checkbox as to whether the filer is registered as an investment company under the Investment Company Act of 1940. If the "Hedge Fund" or "Other Investment Fund" option is selected, the filer will be asked to specify its aggregate net asset value range or to "Decline to Disclose" that value or specify that the information request is "Not Applicable."

[ ] Retailing

[ ] Restaurants

Technology

[ ] Computers
[ ] Telecommunications
[ ] Other Technology

Travel

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

[ ] Other

Dated: February 6, 2008.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E8–3545 Filed 2–26–08; 8:45 am]

BILLING CODE 8011–01–C