

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 239, 249, 259, 269, 270 and 274

[Release Nos. 33–8401; 34–49426; 35–27816; 39–2417; IC–26388 File No. S7–16–04]

RIN 3235–AH79

### Rulemaking for EDGAR System

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** We propose to expand the information that we require certain investment company filers to submit to us electronically through our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system and to make certain technical changes to that system. Specifically, we propose that certain open-end management investment companies and insurance company separate accounts identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts). In addition, we are proposing to add several investment company filings to the list of those that must be filed electronically and to make several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR. These proposed amendments are intended to keep EDGAR current technologically and to make it more useful to the investing public and Commission staff.

**DATES:** Comments should be submitted on or before May 24, 2004.

**ADDRESSES:** Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) electronic form on the SEC Web site (<http://www.sec.gov>) or (2) e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to file number S7–16–04; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet Web site (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from

submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about the proposed rules, please contact one of the following members of our staff: in the Division of Investment Management, Ruth Armfield Sanders, Senior Special Counsel; or Carolyn A. Miller, Senior Financial Analyst, at (202) 942–0978; for technical questions relating to the EDGAR system, in the Office of Information Technology, Richard D. Heroux, EDGAR Program Manager, at (202) 942–8800.

**SUPPLEMENTARY INFORMATION:** Today we propose amendments to the following rules relating to electronic filing on the EDGAR system: Rules 11, 102, 201, and 311 of Regulation S–T<sup>1</sup> and Forms SE<sup>2</sup> and TH<sup>3</sup> under the Securities Act of 1933 (Securities Act or 1933 Act),<sup>4</sup> the Securities Exchange Act of 1934 (Exchange Act),<sup>5</sup> the Public Utility Holding Company Act of 1935 (Public Utility Holding Company Act),<sup>6</sup> the Trust Indenture Act of 1939 (Trust Indenture Act),<sup>7</sup> and the Investment Company Act of 1940 (Investment Company Act).<sup>8</sup> We also propose new Rule 312 under Regulation S–T.

Recently, we have initiated a series of amendments to keep EDGAR current technologically and to make it more useful to the investing public and Commission staff. In April 2000, we adopted rule and form amendments in connection with the modernization of EDGAR.<sup>9</sup> In the modernization proposing release, we noted that, as the use of electronic databases grows, it becomes increasingly important for members of the public to have electronic access to our filings. We stated in that release that we were contemplating future rulemaking to bring more of our filings into the EDGAR system on a mandatory basis. In May 2002, we adopted rules requiring foreign private issuers and foreign governments to file most of their

documents electronically.<sup>10</sup> In May 2003, we adopted rules requiring electronic filing of beneficial ownership reports filed by officers, directors and principal security holders under section 16(a)<sup>11</sup> of the Exchange Act.<sup>12</sup>

Today, we propose to require that open-end investment companies and insurance company separate accounts electronically identify in their filings to which of their series and classes (or contracts) the filing relates. We make this proposal, in light of the primary goals of the EDGAR system since its inception, to facilitate the rapid dissemination of financial and business information in connection with filings by investment companies. Requiring these entities to identify the series and classes (or contracts) to which filings relate would benefit members of the investing public and the financial community by making information contained in Commission filings more easily searchable and readily available to them. We also propose to add several investment company filings to the list of filings that must be made electronically and to make a number of technical amendments to rules and forms in connection with filing on the EDGAR system.

### I. Identification of Open-End Management Investment Company Series and Classes and Contracts of Insurance Company Separate Accounts

#### A. Background

In the modernization adopting and proposing releases, we requested comment on the use of eXtensible Markup Language (XML) for EDGAR tagging in EDGAR submissions. We requested comment on the impact of our requiring, where applicable, that filers provide XML tagging concerning fee-related data; for investment companies, identification of individual series (portfolios) and classes; and for variable insurance products, identification of separate accounts. Commenters agreed that XML tagging would be useful and potentially a very powerful tool.<sup>13</sup>

We have moved toward XML tagging of submission header information beginning with EDGAR modernization. Our first step was to provide for XML

<sup>1</sup> 17 CFR 232.11, 232.102, 232.201, and 232.311.

<sup>2</sup> 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

<sup>3</sup> 17 CFR 239.65, 249.447, 259.604, 269.10 and 274.404.

<sup>4</sup> 15 U.S.C. 77a *et seq.*

<sup>5</sup> 15 U.S.C. 78a *et seq.*

<sup>6</sup> 15 U.S.C. 79a *et seq.*

<sup>7</sup> 15 U.S.C. 77sss *et seq.*

<sup>8</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>9</sup> See Rulemaking for EDGAR System, Release No. 33–7855 (Apr. 27, 2000) [65 FR 24788] (the modernization adopting release). See also Release No. 33–7803 (Mar. 3, 2000) [65 FR 11507] (the modernization proposing release).

<sup>10</sup> See Mandated EDGAR Filing for Foreign Issuers, Release No. 33–8099 (May 14, 2002) [67 FR 36678].

<sup>11</sup> 15 U.S.C. 78p(a).

<sup>12</sup> See Mandated EDGAR Filing and Web Site Posting for Forms 3, 4 and 5, Release No. 33–8230 (May 7, 2003) [68 FR 25788] (the EDGAR Section 16 release).

<sup>13</sup> See discussion under “EDGAR Tags” in Section I.L of the modernization proposing release.

tagging in modernized EDGARLink.<sup>14</sup> Next, we required filers to submit both filing and header information for their Section 16 reports on EDGAR in a standard format of XML.<sup>15</sup>

In this age of information, we believe that filings made with us are of much greater use to investors if they are readily available in electronic form. We now, therefore, propose rules to allow the investing public and our staff to track filings made on behalf of series and classes of mutual funds and individual contracts of insurance company separate accounts. Our proposals would accomplish this technologically through expanded use of XML tagging.

Many open-end investment companies (mutual funds) registering on Form N-1A<sup>16</sup> are organized as single registrants with several portfolios (series) under sections 18(f)(1) and (2)<sup>17</sup> of the Investment Company Act and Rule 18f-2 thereunder.<sup>18</sup> Each series may also issue more than one class of securities under Rule 18f-3<sup>19</sup> of the Investment Company Act. Series and classes of a registrant are often marketed separately, without reference to other series or classes or to the registrant's name. The same is true for insurance company separate accounts organized as management investment companies registering on Form N-3.<sup>20</sup>

Insurance company separate accounts register and issue multiple contracts.<sup>21</sup> The individual contracts of insurance company separate accounts registering on Forms N-4 (used by separate accounts that offer variable annuity contracts organized as unit investment trusts)<sup>22</sup> and N-6 (used by separate accounts that offer variable life insurance policies)<sup>23</sup> are also marketed separately and make filings separately

under the name of the Investment Company Act registrant.

Any particular filing for a single registrant may be filed for only some of its series and classes (or contracts, in the case of separate accounts). A single registrant may make multiple filings of the same type (or example, post-effective amendment filings), each covering different series and/or classes (or contracts) of that registrant. We keep records of filings on an investment company registrant basis, but we do not have in place the programming capability needed to keep records on a series, class or contract basis. Funds must currently provide information in the text of their filings identifying for which series or classes (or contracts) their filings are being made, but currently they do not provide this information as part of the electronic identifying data they enter in the EDGAR submission template. We propose to require that open-end management investment companies and separate accounts who register on Forms N-1A, N-3, N-4, and N-6 (collectively, "S/C Funds") obtain identifiers for their series and classes (or contracts, in the case of separate accounts) and electronically identify for which series and classes (or contracts) of the S/C Fund a particular filing is made.

#### Implementation of Requirement for Series and Class (Contract) Identifiers—Existing Series and Classes (Contracts)

We propose to begin implementation of this requirement by having all S/C Funds enter their existing series and class (and contract) identification onto a special section of the EDGAR Filing Web site (the "Series and Classes (Contracts) Information Page.")<sup>24</sup> Each S/C Fund would enter information for each of its existing series and classes (or contract) at this Web site page; each would provide series names,<sup>25</sup> class (or

contract) names,<sup>26</sup> and ticker symbols, if any;<sup>27</sup> after this information is entered, we would issue series and class identifiers. These identifiers would be ten characters in length (nine numbers preceded by an "S" for series identifiers and a "C" for class (contract) identifiers) and would uniquely, and persistently, identify each series and/or class (or contract). These identifiers would be available to the public. Information filed with us containing these identifiers would be searchable by the public and our staff using the series and class (contract) identifiers and also using the series and class (contract) names without the need for reference to the S/C Fund issuing the series and/or class (contract). The information relating to its series and classes (contracts), including their identifiers, would be available to the S/C Fund quickly via e-mail notification following the entering of information and at the EDGAR Filing Web site, from which the S/C Fund may copy it as needed. The S/C Fund would also use the Series and Classes (Contracts) Information Page to update series and class (contract) information as required upon specified events, such as name change and deactivation, liquidation, or other events resulting in the elimination of a series or class or deregistration of the S/C Fund.

We propose to keep the Series and Classes (Contracts) Information Page on the EDGAR Filing Web site open for entry of information for existing series and classes for a period of approximately six months before requiring specified filings to include series and class (contract) identifiers. We propose to set a date at the end of the six-month period by which S/C Funds would be required to have entered information for their existing series and classes (contracts) and received their series and class (or contract) identifiers, and after which EDGAR would not accept specified filings without required series and class

<sup>14</sup> EDGARLink users do not insert the XML tagging, since they enter their submission header information using an input screen that does not contain tags. EDGARLink creates and transmits to EDGAR the XML tagged submission.

<sup>15</sup> See Section III of the EDGAR Section 16 release.

<sup>16</sup> 17 CFR 239.15A and 274.11A.

<sup>17</sup> 15 U.S.C. 80a-18(f)(1) and (2).

<sup>18</sup> 17 CFR 270.18f-2.

<sup>19</sup> 17 CFR 270.18f-3.

<sup>20</sup> 17 CFR 239.17A and 274.11b.

<sup>21</sup> The separate account is a registrant under the Investment Company Act. Generally, each contract issued by the separate account is separately registered under the 1933 Act and is assigned a separate 1933 Act file number. Sometimes, however, more than one contract or versions of a contract can be registered in the same 1933 Act registration statement; these contracts are assigned the same 1933 Act file number.

<sup>22</sup> 17 CFR 239.17b and 274.11c.

<sup>23</sup> 17 CFR 239.17c and 274.11d.

<sup>24</sup> Each S/C Fund will enter information on the Series and Classes (Contracts) Information Page concerning only their series and classes (contracts) currently in existence. Series and classes (contracts) which come into existence on or after the Mandatory Series/Class (Contract) Identification Date (discussed below) will enter the information for their new series and classes (contracts) in a separate section of the EDGAR submission template of the initial registration statement or post-effective amendment filing by which they add the new series or class (contract).

A S/C Fund that is not organized as a series company and that has no separate classes would be deemed to have one series and class. See footnote 45 and related text.

<sup>25</sup> A S/C Fund must enter a unique name for each of its series, i.e., a S/C Fund may not enter duplicate series names for its own series (although its series might have the same name(s) as the series of other S/C Funds). For each of its series, the S/C Fund should enter the name by which that series is most commonly known. For example, if the "Acme

Trust" complex has a series named the "Bond Fund" which is known and marketed as "the Acme Bond Fund," the fund should enter the name "Acme Bond Fund" as the name of the series.

<sup>26</sup> A S/C Fund must enter a unique name for each of its classes (contracts) existing under each series, i.e., a S/C Fund may not enter duplicate class (contract) names for classes (contracts) of the same series. Most class names are letters or names such as "Institutional" or "Retail." Insurance company separate accounts must enter unique names for their contracts; if they currently have duplicate names, then the separate accounts should add to the contract name further identifying information, such as number indicating the date of the contract's creation or Securities Act file number issued to that contract.

<sup>27</sup> S/C Funds will enter their ticker symbols, if any, at the class (contract) level (in addition to their class name).

(contract) identifiers (the “Mandatory Series/Class (Contract) Identification Date”). The EDGAR Filer Manual would outline the specifics and formatting requirements of the information the S/C Funds are to enter onto the system and the information that they would need to include in specified filings.

#### Implementation of Requirement for Series and Class (Contract) Identifiers—New Series and Classes (Contracts)

If a S/C Fund adds a new series or class (contract) on or after the Mandatory Series/Class (Contract) Identification Date, the S/C Fund would not enter information concerning the new series or class (contract) on the Series and Classes (Contracts) Information Page on the EDGAR Filing Web site.<sup>28</sup> Instead, the S/C Fund would enter information concerning its new series or classes (contracts) which come into existence on or after the Mandatory Series/Class (Contract) Identification Date in a separate area of the EDGAR submission template as part of the substantive filing by which it adds the new series or class (contract). For example, on and after the Mandatory Series/Class (Contract) Identification Date, a newly registered open-end management investment company (mutual fund) filing on Form N-1A would add its new series and/or classes (contracts) in its initial “N-1A” submission template; an existing mutual fund would add its new series in its “485APOS” template and would add its new classes in a “485APOS” submission template; a newly registered separate account organized as a management investment company filing on Form N-3 would add its new contract information in its initial “N-3” submission template; newly registered separate accounts filing on Forms N-4 and N-6 would add their new contract information in the initial “N-4” or “N-6” submission template, respectively, filed to register the new contract. The identifiers for new series and classes added via the submission template would be available to the S/C Fund quickly via e-mail notification following the filing in which the information was entered. These identifiers would also be available at the EDGAR Filing Web site,

from which the S/C Fund may copy as needed and at which the S/C Fund would update series and class (contract) information as required upon specified events, such as name change and deactivation of a series or class or deregistration of the S/C Fund.

#### Mandatory Series/Class (Contract) Identification Date

We propose to require that funds receive their series and class (contract) identifiers for existing series and classes before the Mandatory Series/Class (Contract) Identification Date. However, we plan to leave the Series and Classes (Contracts) Information Page open for entry of information for existing series and classes for several weeks following the Mandatory Series/Class (Contract) Identification Date, so that S/C Funds which, despite good faith efforts, fail to previously enter the information for all their series and classes (contracts) in existence prior to the Mandatory Series/Class (Contract) Identification Date would still have the opportunity to enter that information. However, since third party filers, including parties to mergers, would need to use this information in filings, all S/C Funds would need to ensure that the information concerning their existing series and classes (contracts) was entered prior to the closing of the Series and Classes (Contracts) Information Page for entry of information.

After the Mandatory Series/Class (Contract) Identification Date, we would give notice as to the date on which we would close the Series and Classes (Contracts) Information Page for entry of information concerning existing series and classes. On and after that date, the Series and Classes (Contracts) Information Page would be used only for retrieving and editing series and class (contract) information. After the closing of the Series and Classes (Contracts) Information Page for entry of data for existing series and classes (contracts), if a S/C Fund fails to enter its information in a timely manner and receive its identifiers, the staff may require the S/C Fund to file a post-effective amendment to generate the identifiers via the submission template. Until the S/C Fund provides the information concerning its series and classes (contracts) and is issued identifiers, it would be unable to make other filings that require series and class (contract) identifiers.

We believe that this method for S/C Funds to obtain identifiers for their existing series and classes (contracts) would provide the most flexibility for S/C Funds. This method would allow S/C Funds an extended period of time in

which to provide the information and obtain the identifiers. A S/C Fund may choose to obtain its identifiers for all its existing series and classes at one time via the Series and Classes (Contracts) Information Page. Or, a S/C Fund may choose to spread out its entering of information and receipt of identifiers through the six-month period during which the Page would be open for entry of information. Each S/C Fund would need to make sure, however, that it has obtained its identifiers for all its series and classes (contracts) in existence prior to the Mandatory Series/Class (Contract) Identification Date before that date.

#### Requirement to Include Series and Class (Contract) Identifiers in EDGAR Filings; Consequence of Non-Compliance

We propose that, on and after the Mandatory Series/Class (Contract) Identification Date, S/C Funds be required to use series and class (contract) identifiers in certain EDGAR submissions specified in the EDGAR Filer Manual. We propose to add the series and class (or contract) identification requirement to the EDGARLink header templates of certain investment company EDGAR submissions.<sup>29</sup> We believe the method we have chosen for S/C Funds to obtain identifiers for their existing series and classes (contracts) would help insure that identifiers are assigned to existing series and classes (contracts) well in advance of EDGAR filings requiring them. The only instances in which identifiers would be generated at the time of a filing by entry of information via the EDGAR submission template would be when a new S/C Fund comes into existence or when an existing S/C Fund adds new series or classes (contracts).<sup>30</sup> The S/C Fund would be able to “cut and paste” the series and

<sup>29</sup> Filings using the following EDGAR submission types would be subject to series and class (contract) identification: N-1A, N-1A/A, N-3, N-3/A, N-4, N-4/A, N-6, N-6/A, 485APOS, 485BPOS, 485BXT, POS AMI, 497, 497K1, 497K2, 497K3A, 497K3B, 497J, 497AD, N-14, N-14/A, N-14AE, N-14AE/A, N-30D, N-30D/A, N-30B-2, N-CSR, N-CSR/A, N-CSR/S, N-CSR/A, NT-NCSR, NT-NCSR/A, N-PX, N-PX/A, 24F-2NT, 24F-2NT/A, NSAR-A, NSAR-A/A, NSAR-AT, NSAR-AT/A, NSAR-B, NSAR-B/A, NSAR-BT, NSAR-BT/A, NSAR-U, NSAR-U/A, NT-NSAR, NT-NSAR/A, N-Q, N-Q/A and all proxy submission types that may be filed by or with respect to investment companies.

<sup>30</sup> The following EDGAR submission types will allow for entry of information for new series: N-1A, N-1A/A, N-3, N-3/A, N-4, N-4/A, N-6, N-6/A, 485APOS, and POS AMI. The following submission types will allow for the entry of information for new classes (contracts): N-1A, N-1A/A, N-3, N-3/A, N-4, N-4/A, N-6, N-6/A, 485APOS, 485BPOS, and POS AMI. We note that these are the characteristics of the EDGAR submission types; nevertheless, S/C Funds should use only those EDGAR submission types that correspond to the form and rule under which the S/C Fund makes its substantive filing.

<sup>28</sup> If a S/C Fund makes a filing on behalf of a new series or class (contract) before the Mandatory Series/Class (Contract) Identification Date, the S/C Fund will enter the information concerning that new series or class (contract) on the Series and Classes (Contracts) Information Page on the EDGAR Filing Web site after the first filing made on behalf of the new series or class (contract); this is consistent with the procedure for other series and classes (contracts) in existence before the Mandatory Series/Class (Contract) Identification Date.

class (contract) identifying information from the Web site into filings as needed.<sup>31</sup> We propose to require that S/C Funds include the identifiers in all filings relating to the series and classes (contracts). Indeed, the identifiers would be a substantive requirement of the filing. Consequently, failure of a S/C Fund to include correctly the required identifiers would mean that a filing for that series and/or class (or contract) has not been made.<sup>32</sup> On and after the Mandatory Series/Class (Contract) Identification Date, filings requiring series and class (contract) identifiers would be suspended if the identifiers are not included in the EDGAR filing or if they are not identifiers associated with the CIK<sup>33</sup> of the S/C Fund, necessitating a resubmission of the filing in question.<sup>34</sup>

By requiring that the S/C Fund electronically identify the series and classes (or contracts) for which a filing is made, we would facilitate the ability of the investing public and our staff to search easily for EDGAR filings made on behalf of specified series and classes (contracts). The electronic identification of series and classes (contracts) would enable the investing public to search our Web site for filings covering the series and classes (contracts) they need. We believe that our proposals today recognize that disclosures in filings are only as useful as they are available; we believe our proposals would facilitate substantially the investing public's access to investment company information needed for their investment decisions. To this end, it is critical that S/C Funds obtain and include the correct identifying information in their filings.

<sup>31</sup> Filers will also be able to cut and paste from any compatible source. For example, if filers have a listing of series and classes (contracts) in a word processing document, they should be able to cut and paste from that document. However, if filers do so, they must ensure that the secondary documents are kept up-to-date with the most current series and class data.

<sup>32</sup> See proposed amendments to Rule 11 of Regulation S-T, discussed in Section I.B below. The staff will not have the ability to change series and class data via post-acceptance corrections. The staff will, of course, consider filing date adjustments under Rule 13(b) of Regulation S-T (17 CFR 232.13(b)), and grant relief in appropriate instances, depending on the facts and circumstances of each request.

<sup>33</sup> A filer's CIK (or "central index key") is a ten-digit number uniquely identifying that filer.

<sup>34</sup> Because of the consequences of failure to correctly include identifiers in filings, we note that the duty to insert the identifiers, as well as the duty of electronic filing in general, should not be assigned to the least experienced person in the investment company's organization or delegated exclusively to a filing agent.

#### Requirement To Update Information

S/C Funds would also have a duty to update and keep current their series and class (or contract) information. For example, filers would be required to update their information via the Series and Classes (Contracts) Information Page for series and class (or contract) name changes or deactivation (if a series is never offered or no longer makes filings because of merger, liquidation or other means of elimination or if the S/C Fund has merged out of existence or deregistered).

#### Identification of Investment Company Type; Parties to a Merger

In conjunction with our rules to require the identification of series and classes (contracts), we are also adding to the submission templates of selected filings used by investment companies an additional field for identification of the type of investment company making the filing.<sup>35</sup> Companies may be required to check a box if they are investment companies (for certain submissions) and to select from a pull-down menu in the EDGAR submission template their investment company "type," where type is chosen according to whether a company's last effective registration statement was filed on Form N-1A (open-end management investment companies), N-2 (closed-end management investment companies, including business development companies),<sup>36</sup> N-3 (separate accounts organized as management investment companies that offer variable annuities), N-4 (separate accounts organized as unit investment trusts that offer variable annuities), N-5 (small business investment companies),<sup>37</sup> N-6 (separate accounts organized as unit investment trust that offer variable life insurance policies), S-1 (face amount certificate companies),<sup>38</sup> S-3 (face amount certificate companies),<sup>39</sup> or S-6 (unit investment trusts, other than those filing on Forms N-4 and N-6).<sup>40</sup> S/C Funds would also be required to supply electronic information in the EDGAR template concerning the acquiring fund and the target (and their series and classes or contracts, if any in existence) in connection with merger-related

<sup>35</sup> S/C Funds, which are required to obtain series and class (contract) identifiers via the Series and Classes (Contracts) Information Page, will also enter information concerning their type on that page.

<sup>36</sup> 17 CFR 239.14 and 274.11a-1.

<sup>37</sup> 17 CFR 239.24 and 274.5.

<sup>38</sup> 17 CFR 239.11.

<sup>39</sup> 17 CFR 239.13.

<sup>40</sup> 17 CFR 239.16.

filings on Form N-14,<sup>41</sup> under Rule 425,<sup>42</sup> and under the proxy rules.

#### Identification Requirement Applicable to Non-Registrants Filing Proxies

We also propose to require non-registrant third parties making proxy filings with respect to investment companies to designate "type" of investment company and to include series and/or class (or contract) identifiers in designated proxy submission types. After the Mandatory Series/Class (Contract) Identification Date, when filings are made with series and class (contract) identifiers and specification of investment company type, this information would be available on the EDGAR page of our public Web site (sec.gov), as is currently each entity's CIK. Until our public Web site is populated with series and class information from filings, filers may obtain this information from our public company database site at <http://www.edgarcompany.sec.gov>.

#### Electronic Filing Responsibilities

With respect to these proposed requirements, including the updating requirements, we emphasize that it is the investment company's responsibility to ensure the correctness of this information and its use in each of its filings on the EDGAR system. Each S/C Fund must ensure that it receives all of its series and class (or contract) identifiers for series and classes (contracts) in existence before the Mandatory Series/Class (Contract) Identification Date; that it enters correctly information concerning series and classes coming into existence on or after the Mandatory Series/Class (Contract) Identification Date; and that its filings are made using the correct EDGAR codes, including series and class (or contract) identifiers. A S/C Fund may verify the codes and identifiers under which its filing was made and accepted by reading its electronic notice of acceptance, which would contain the CIK, file number(s) and, where applicable, series and class (or contract) names and identifiers.

#### B. Regulation S-T and Related Form Amendments in Connection With Series and Class (Contract) Identification Requirements

##### New Rule 312 under Regulation S-T

We propose to add new Rule 312 under Regulation S-T in connection with identification of series and classes. New Rule 312 would provide that all S/C Funds (*i.e.*, investment companies

<sup>41</sup> 17 CFR 239.23.

<sup>42</sup> 17 CFR 230.425.

whose last registration statement was filed on Form N-1A, N-3, N-4, or N-6) must obtain identifiers for their constituent series existing under sections 18(f)(1) and (2)<sup>43</sup> of the Investment Company Act and Investment Company Act Rule 18f-2<sup>44</sup> and identify the series for which a particular filing is being made. A S/C Fund that is not organized as a series company would be deemed to have one series and must obtain a series identifier and include that identifier in specified filings.<sup>45</sup> This requirement is to assure that investors, the public, and our staff would be able to electronically search within the same universe of filers for each entity operating as a mutual fund or separate account, whether it is a single S/C Fund separate series (a "stand alone" fund) or a series of a S/C Fund.

Under Rule 312 as proposed, each such investment company or series that has multiple classes under Investment Company Act Rule 18f-3<sup>46</sup> (or that issues multiple contracts, in the case of insurance company separate accounts) would also be required to obtain a class (or contract) identifier for each class (or contract) and include that identifier in specified submission types.<sup>47</sup> S/C Funds or series that are not organized as multiple class companies shall be deemed to have one class and must obtain a class identifier and include that identifier.<sup>48</sup>

Rule 312 as proposed would require that S/C Funds or series provide identifying information when they file certain merger documents (Form N-14,<sup>49</sup> Rule 425,<sup>50</sup> and proxy filings), including information about both the target and acquiring fund or series(s), class, or contract.

Under Rule 312 as proposed, S/C Funds would have a duty to keep the information regarding their series and classes up to date. S/C Funds would update their information via the Series and Classes (Contracts) Information Page if the name of a series or class (or

contract) changed. S/C Funds also would deactivate the identifiers for a series and/or class (or contract) via the Series and Classes (Contracts) Information Page if it was no longer offered by the S/C Fund or the S/C Fund deregistered.

#### Rule 11 Under Regulation S-T

Currently, Rule 11 of Regulation S-T defines the phrase "official filing" to mean any filing that is received and accepted by us, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing. We propose to amend this definition to provide that the electronic identification of investment company type and inclusion of identifiers for series and class (or contract, in the case of separate accounts of insurance companies), as we propose to require under Rule 312 of Regulation S-T, would be deemed part of the official filing. Failure of an investment company to include correctly the required identifiers would mean that a filing for that series and/or class (or contract) has not been made.

#### Forms TH and SE

Form TH<sup>51</sup> is the form that filers use as a cover for filings made in paper under a temporary hardship exemption pursuant to Rule 201 of Regulation S-T. Under Rule 201, confirming electronic copies of filings made in paper under temporary hardship exemptions must be made within [6] business days of the date of the paper filings. Form SE<sup>52</sup> is the form that electronic filers must use to submit any paper format exhibit permitted under Rule 201, 202, or 311 of Regulation S-T.<sup>53</sup> We propose to amend Forms TH and SE to require the inclusion of series and class (or contract) identifying information for those filings for which the identifiers would be required in the confirming electronic copy or associated electronic filing, respectively.

#### *C. Request for Comment in Connection With Series and Class (Contract) Identification Requirements*

We request comment on the impact and feasibility of our proposal to require certain open-end management investment companies and insurance company separate accounts to identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of

separate accounts). We ask commenters to provide detailed information on any difficulties and considerations unique to these proposed requirements. We ask commenters to address the issues of the general approach of the proposed requirements, the length of time it may take for investment companies to prepare for the proposed requirements, and the language of the new and amended rules. In the event commenters believe that any aspect of the proposed requirements would be burdensome, we ask for specific details and alternative approaches.

## II. Proposed Mandatory Electronic Investment Company Filings

Currently, investment companies must submit in paper filings of fidelity bonds under section 17(g),<sup>54</sup> sales literature filed with us under section 24(b),<sup>55</sup> and litigation material filed under section 33 of the Investment Company Act.<sup>56</sup> We are now proposing to amend Rule 101 to make these submissions mandatory electronic submissions.

Currently, the electronic filing rules do not permit filers to submit electronically on the EDGAR system sales literature filed with us<sup>57</sup> under section 24(b) of the Investment Company Act.<sup>58</sup> Because of the format and graphics which characterize these submissions, at the time of the original adoption of the EDGAR rules, we believed that the burden to registrants of electronically formatting sales literature appeared to outweigh the usefulness of developing an electronic database.<sup>59</sup> Given the advances in technology and the availability of HTML as a format for official EDGAR filings, we now propose to require filers to make these submissions electronically.<sup>60</sup> We note that, for filers who are required to file with us prospectuses submitted under Securities Act Rule 482<sup>61</sup> (482 ads), the

<sup>54</sup> 15 U.S.C. 80a-17(g). See Release No. 33-6978 (Feb. 23, 1993) (58 FR 14848) and Release No. 33-7241 (Nov. 13, 1995) (60 FR 57682) at footnotes 26-32 and accompanying text.

<sup>55</sup> 15 U.S.C. 80a-24(b).

<sup>56</sup> 15 U.S.C. 80a-31.

<sup>57</sup> Most investment company registrants file sales literature with the National Association of Securities Dealers (NASD), in lieu of filing us, as permitted by Rule 24b-3 under the Investment Company Act [17 CFR 270.24b-3]. We are not proposing to change Rule 24b-3; these filers would continue to make their submissions to the NASD only.

<sup>58</sup> See Rules 24b-1, 24b-2, and 24b-3 (17 CFR 270.24b-1, 270.24b-2, and 270.24b-3).

<sup>59</sup> See Release No. 33-6978 at footnotes 51 and 52 and accompanying text.

<sup>60</sup> We are proposing to amend both Rule 101 of Regulation S-T and Rule 24b-2 under the Investment Company Act, which currently provide that filers submit such material to us in paper only.

<sup>61</sup> 17 CFR 230.482.

<sup>43</sup> 15 U.S.C. 80a-18(f)(1) and (2).

<sup>44</sup> 17 CFR 270.18f-2.

<sup>45</sup> This "dummy" series would be assigned the same name as the S/C Fund.

<sup>46</sup> 17 CFR 270.18f-3.

<sup>47</sup> Separate accounts registering on Forms N-4 and N-6 would be deemed to have one "dummy series" assigned the same name as the S/C Fund and would obtain a separate identifier at the "class" level (rather than series identifiers) for each of their contracts.

<sup>48</sup> This "dummy" class would be assigned the same name as the series to which it belonged. "Stand alone" funds with no separate series or classes would be deemed to have one series and one class, each assigned the same name as the S/C Fund.

<sup>49</sup> 17 CFR 230.23.

<sup>50</sup> 17 CFR 230.425.

<sup>51</sup> 17 CFR 239.65, 249.447, 259.604, 269.10 and 274.404.

<sup>52</sup> 17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403.

<sup>53</sup> 17 CFR 232.201, 232.202, or 232.311.

filers must already submit the 482 ads electronically.<sup>62</sup> We request comment on whether we should require filers to submit EDGAR sales literature in HTML format. We also note that, if we were to make mandatory the electronic submission of sales literature, under paragraph (c) of Rule 304 of Regulation S-T,<sup>63</sup> filers would be required to retain copies of sales literature documents including graphic materials for a period of five years and would be required to furnish to the Commission or the staff, upon request, a copy of any or all of such documents.

We still require investment companies to submit in paper format filings under section 17(g)<sup>64</sup> and litigation material filed under section 33 of the Investment Company Act. Filings under section 17(g) consist of the registrant's fidelity bond, which is filed under Rule 17g-1(g)(1),<sup>65</sup> and claims and settlements filed under Rule 17g-1(g)(2) and (3), respectively.<sup>66</sup> Filings of litigation material under section 33 include a wide variety of documents.<sup>67</sup> Since we believe that most filers would have electronic copies of their fidelity bonds and claims and settlements as well as litigation materials, we believe that these filings should be available to the public through our EDGAR system. We therefore propose to make these filings mandatory electronic submissions.

We request comment on the impact and feasibility of our making these

filings under Sections 17(g), 24(b) and 33 mandatory electronic submissions.<sup>68</sup> We ask commenters to provide detailed information on any difficulties and considerations unique to each category. We ask commenters to address the issue of the length of time it may take for investment companies to prepare for the mandatory electronic submission of any category of these filings. We request comment on whether fidelity bonds and claims and settlements as well as litigation materials are generally available electronically and, if not, whether it would be burdensome for us to require filers to file them electronically. In the event commenters believe that electronic filing of any of these categories would be burdensome, we ask for comment on whether we should allow electronic filing on a voluntary basis.

### III. Technical Amendments to EDGAR System Filing Requirements

We propose to make technical corrections to our rules relating to paper exhibits for EDGAR filings and incorporation by reference by investment companies into documents filed on EDGAR, as discussed below.

#### A. Rule 102(d) of Regulation S-T

Currently, paragraph (d) of Rule 102 provides that each electronic filing requiring exhibits must contain an exhibit index. It further requires that, whenever an exhibit is filed in paper pursuant to a temporary or continuing hardship exemption, the filer must place the letter "P" next to the listed exhibit in the exhibit index to reflect that the exhibit was filed in paper pursuant to such exemption. However, the rule does not require the designation "P" for an exhibit filed in paper other than pursuant to a hardship exemption. Nor does the rule require designation of the authority under which a filer was submitting an exhibit in paper. We propose to amend paragraph (d) to require the designation "P" for all exhibits filed in paper, the designation "Rule 311" next to the letter "P" in the exhibit index for exhibits filed pursuant to Rule 311 of Regulation S-T, and the letters "TH" or "CH," respectively, next to the letter "P" in the exhibit index for exhibits filed pursuant to temporary or continuing hardship exemptions.

<sup>68</sup> We anticipate that the EDGAR submission types for these filings would be as follows: 40-17G (fidelity bond filed pursuant to Rule 17g-1(g)(1)); 40-17GCS (notice of claim or settlement filed pursuant to Rule 17g-1(g)(2) or (3)); 40-24B2 (sales literature filed pursuant to Rule 24b-2); and 40-33 (litigation material filed pursuant to section 33 of the Investment Company Act).

The rule also currently requires that, whenever a confirming electronic copy of an exhibit is filed pursuant to a hardship exemption, the exhibit index must specify where the confirming electronic copy can be located and the filer must place the designation "CE" (confirming electronic) next to the listed exhibit in the exhibit index. We request comment on the usefulness of the rule's requirement that the exhibit index must specify where the confirming electronic copy can be located. For example, where an exhibit filed in paper under a temporary hardship exemption is later incorporated by reference into a filing, is the provision useful in locating the electronic confirming copy of the paper exhibit? If commenters find that the provision is not useful, we encourage commenters to provide suggested revisions to make the rule more helpful to users of the information.

#### B. Rule 102(e) of Regulation S-T

Paragraph (e) of Rule 102 provides that any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format. We propose to amend this rule to codify staff interpretation that incorporation by reference in an EDGAR filing by a registered investment company or a business development company must relate only to documents that have been filed in electronic format on the EDGAR system. A filer may not incorporate by reference electronic filings made with us but not made via the EDGAR system.<sup>69</sup>

#### C. Rule 201 of Regulation S-T

Rule 201(a)(1) of Regulation S-T currently provides that, where a filer makes a paper submission pursuant to a temporary hardship exemption, a microfiche copy of the paper document is the official filing of the registrant. Microfiche is no longer the official format for filings made in paper under the temporary hardship exemption; paper filings are now electronically imaged. Accordingly, we propose to amend Rule 201(a)(1) to reflect this change. We are also removing the phrase "of the registrant," since an official filing may be made by a non-registrant third party.

#### D. Rule 311(h)(1) of Regulation S-T

Rule 311 sets forth the requirements for filers submitting documents in paper under cover of Form SE. Paragraph

<sup>69</sup> For example, a registrant could not incorporate by reference in an EDGAR filing to a document submitted electronically on the IARD system.

<sup>62</sup> See Release No. 33-7122 (Dec. 19, 1994) [59 FR 67752 (Dec. 30, 1994)] at footnote 32 and accompanying text.

<sup>63</sup> 17 CFR 232.304(c).

<sup>64</sup> This includes submission of an investment company's fidelity bond; see Release No. 33-7241 at footnotes 30 and 31 and accompanying text.

<sup>65</sup> 17 CFR 270.17g-1(g)(1).

<sup>66</sup> 17 CFR 270.17g-1(g)(2) and (3).

<sup>67</sup> The documents include the following: (1) All pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim; (2) any proposed settlement, compromise, or discontinuance of such action or claim; and (3) motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. If any of the documents in (1) or (2) above are delivered to the company or party defendant, section 33 requires that the document be filed with the Commission not later than 10 days after receipt. If the document is filed in court or delivered by the company or party defendant, it must be filed with the Commission within five days after the filing or delivery.

We take this opportunity to remind investment companies of their section 33 filing obligations in light recent private law suits brought against certain fund groups in connection with allegations regarding late trading, abusive market timing, and related matters. In connection with staff concerns in this area in the past, see Letters from Kathryn B. McGrath, Director, Division of Investment Management, to Matthew P. Fink, General Counsel, Investment Company Institute, and to Gary Hughes, Chief Counsel, American Council of Life Insurance, each dated October 11, 1985.

(h)(1) of Rule 311 currently provides that, if the subject of a temporary hardship exemption is an exhibit only, a filer must file the exhibit under cover of Form SE no later than one business day after the date the exhibit was to be filed electronically. We propose to amend this provision to clarify the current requirement<sup>70</sup> that the filer must submit the exhibit and a Form TH (the cover form for submitting a filing under a temporary hardship exemption) under cover of Form SE.<sup>71</sup>

#### *E. Form SE*

We propose to make an additional amendment to Form SE that parallels the changes to the exhibit index requirement discussed above. Currently, Form SE does not require the filer to specify under which of these rules the filer is submitting the paper format exhibit. We propose to amend the form to require filers to indicate under which rule they are submitting the paper exhibit, *i.e.*, Rule 201 (Temporary Hardship Exemption), Rule 202 (Continuing Hardship Exemption), or Rule 311 (Permitted Paper Exhibit). We also propose to amend the General Instructions to Form SE to clarify that, if the filer is submitting the exhibit under a temporary hardship exemption, the filer must submit both the exhibit and a Form TH (the cover form for submitting a filing under a temporary hardship exemption) under cover of Form SE. Finally, we propose to add to the General Instructions a statement of the current requirement that exhibits filed under a continuing hardship exemption must include the legend required by Rule 202(c) of Regulation S-T.<sup>72</sup>

#### **IV. General Request for Comment**

You are invited to submit written comments relating to the rule proposals set forth in this release. Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) electronic form on the SEC Web site (<http://www.sec.gov>) or (2) e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to file number S7-16-04; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please

use only one method. The Commission will post all comments on the Commission's internet Web site (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

We request comment not only on the specific issues we discuss in this release, but on any other approaches or issues that we should consider in connection with filing on the EDGAR system, particularly filings by investment companies. We seek comment from any interested persons, including those required to file information with us on the EDGAR system, as well as investors, disseminators of EDGAR data, EDGAR filing agents, and other members of the public who have access to and use information from the EDGAR system.

#### **V. Cost-Benefit Analysis**

We are sensitive to the costs and burdens of our rules. The rules we are proposing today reflect certain changes to the information currently provided in certain investment company submissions and technical amendments to our EDGAR filing rules. Specifically, the proposals would require certain open-end management investment companies and insurance company separate accounts to identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts). This information is already required in the text of the filing itself; the proposals would require this information to be included in an electronically tagged form. In addition, the proposals would add several investment company filings to the list of those that must be filed electronically and make several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR.

##### *A. Expected Benefits*

We expect that the addition of series and class (contract) identifiers ultimately would result in considerable benefits to the securities markets, investors, and other members of the public, by expanding the accessibility of information, and increasing the types of information, filed and made available for public review through the EDGAR system. The primary goal of the EDGAR system since its inception has been to facilitate the rapid dissemination of

financial and business information in connection with filings, including filings by investment companies. Requiring these entities to identify the series and classes (or contracts) to which filings relate would benefit members of the investing public and the financial community by making information contained in Commission filings more easily searchable and readily available to them.

We believe that currently EDGAR can be difficult to use to find filings related to specific series and classes of funds, discouraging both the public and Commission staff from using it. We believe the improvements that would result from the series and class project would induce a substantial amount of new demand for the services provided by the EDGAR system and our public Web site. The proposals would result in the benefit to the public of the EDGAR page of our Web site being a comprehensive source from which to find series and class filings.

We also expect that our proposals for mandatory electronic filing of documents that previously could be filed only in paper format would result in economic benefits to current electronic filers. Investment companies should benefit from the increased efficiencies in the filing process for these filings resulting from the proposed amendments. By electronically transmitting these documents directly to the Commission, investment companies will avoid the uncertainties and delays that can occur with the manual delivery of paper filings. Filers also will benefit from no longer having to submit multiple copies of paper documents to the Commission.

The proposed amendments should benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating fidelity bonds, litigation materials, and sales literature (for non-NASD) filed with the Commission. The mandated electronic transmission of these documents will enable investors to access them more quickly. Instead of having to come in person or through an agent to the Commission's public reference room to conduct a search for a particular filing that is in paper or microfiche, an investor will be able to find and review the filing on any computer with an Internet connection by accessing the EDGAR system through the Commission's Web site or through a third party Web site that links to EDGAR. The proposed amendments will also enable financial analysts and others to retrieve, analyze and disseminate more rapidly this information. An investor should be able to form more

<sup>70</sup> See Release No. 33-6977 (Feb. 23, 1993) [58 FR 14628] at footnote 213 and accompanying text.

<sup>71</sup> We also propose to make conforming amendments to Note 1 to Rule 201(a) of Regulation S-T (17 CFR 232.201(a)).

<sup>72</sup> 17 CFR 232.202(c).



efficient investment decisions about particular investment companies. Both filers and investors should benefit from increased efficiencies in the Commission's storage, retrieval, and analysis of these filings which would result from the proposed amendments. Mandated EDGAR filing of these documents would result in their addition to the Commission's central electronic repository of filings that is free to anyone that has access to a computer linked to the Internet. Because the Commission's staff will be able to retrieve and analyze information contained in these filings more readily than under our current paper system, mandated electronic filing of these documents should facilitate the staff's retrieval and review of a particular document.

#### *B. Expected Costs*

We believe that the rules we propose today for identification of series and classes (contracts) impose few or no costs related to substantive disclosure. Rather, the proposals may result in initial costs in connection with entering information onto the EDGAR filing Web site to obtain identifiers. Filers may experience some minimal costs in initially keying in data on their series and classes (contracts) when they obtain their identifiers. Additionally, they may experience minimal programming costs in including the identifying data in specified filings and, when necessary, obtaining identifiers for new series and classes (contracts). Disseminators of EDGAR data and EDGAR filing agents may incur some transitional costs as they revise their software and, in some instances, hardware to accommodate the proposed tagging changes to keep track of series and class identifiers for certain investment company filings. Disseminators may choose to reprogram their systems to take advantage of the new tagging scheme for identifying series and classes of mutual funds and contracts of insurance company separate accounts. As a result, disseminators may incur additional costs for processing.

We expect that the proposed amendments to make certain filings mandatory electronic submissions will result in some costs to issuers. However, for the following reasons, we also expect that filers should not bear the full range of costs resulting from adoption of the proposed amendments. The expected costs consist of ongoing costs, but not initial costs. Initial costs are those associated with the purchase of compatible computer equipment and software, including EDGAR software if obtained from a third-party vendor and not from the Commission's Web site.

Initial costs also include those resulting from the training of existing employees to be EDGAR proficient or the hiring of additional employees or agents that are already skilled in EDGAR processing. Initial costs further include those associated with the formatting and transmission of a foreign issuer's first document filed on EDGAR. These transmission costs may include those related to subscribing to an Internet service provider. All filers who would be affected by these proposals are current EDGAR filers who will experience no additional initial costs. Ongoing costs are those associated with the electronic formatting and transmission of subsequent EDGAR filings. Filers may also incur future costs resulting from the training or hiring of employees regarding updated EDGAR filing requirements. The magnitude of these costs will depend on filers' levels of technological proficiency and their previous familiarity with EDGAR filing requirements. They will incur the costs associated with formatting and transmitting their documents on EDGAR. These filers have already incurred initial costs associated with the preparation of most of their filings in an electronic format. They have already trained their employees or hired an in-house information technology team or a third party agent, such as an Internet services company or financial printer, to format electronically their financial statements and other documents of interest to investors. These filers should be capable of electronically processing these documents for the EDGAR system. Consequently, the mandated EDGAR requirements should result only in costs related primarily to the electronic formatting of these documents in a format compatible with EDGAR, and transmission of the EDGAR formatted documents to the Commission.

We expect the technical corrections to the Regulation S-T provisions should be beneficial to filers inasmuch as they, as have previous technical corrections, would clarify existing rules and make the filing community at large more aware of current practices and interpretations.

#### *C. Comment Solicited*

We solicit comment on the costs and benefits of the proposed amendments. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of these proposals. Please identify any costs or benefits associated with the rule proposals relating to series and class (contract) identifiers, proposed categories of

additional mandatory electronic filings, and technical corrections to our electronic filing rules governing the EDGAR system and any impact that the rule proposals may have on the ease of locating and using EDGAR data. In particular, what are the benefits that investors, financial analysts, other members of the financial community, and foreign issuers should realize from these proposals? Will the proposed amendments help an investor to form more efficient investment decisions about investment companies? What are the expected initial and ongoing costs of series and class (contract) identification and the added categories of mandated EDGAR filing? Will the magnitude of these costs depend on filers' levels of technological proficiency and their previous familiarity with EDGAR filing requirements? Are there costs in addition to those discussed above? Are there unidentified costs associated with the proposed technical amendments and, if so, what are they?

We encourage commenters to identify any costs or benefits associated with the rule proposals. We also request data to quantify the costs and value of the benefits identified.

### **VI. Analysis of Burdens on Competition, Capital Formation and Efficiency**

Section 23(a)(2) of the Exchange Act requires us, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules that we adopt thereunder. Furthermore, section 2(b) of the Securities Act,<sup>73</sup> section 3(f) of the Exchange Act,<sup>74</sup> and section 2(c)<sup>75</sup> of the Investment Company Act require us, when engaging in rulemaking, and considering or determining whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation and to consider any anti-competitive effects of proposed rules. In compliance with our responsibilities under these sections, we request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation. We encourage commenters to provide empirical data or other facts to support their views.

In compliance with our responsibilities under the previously mentioned provisions, we considered preliminarily whether the amendments would promote efficiency, competition and capital formation. We ask for

<sup>73</sup> 15 U.S.C. 77b(h).

<sup>74</sup> 15 U.S.C. 78c(f).

<sup>75</sup> 15 U.S.C. 80a-2(c).



comment on whether filing agents and information disseminators would be disparately affected depending on whether they choose to reprogram their systems to use the additional EDGAR tagging information available for investment companies. However, as a preliminary matter, we believe that the proposed rules would not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the securities laws.

Preliminarily, we believe it is likely that the proposed rules if adopted would not have any adverse effect on capital formation. We believe they would promote efficiency by making the information investors can receive electronically easier to find. The proposed rules would apply equally to all entities of the same types currently required to file on EDGAR. Because the proposed rules and amendments are designed to require filers to provide information in a format that would be more useful to investors, we believe, as a preliminary matter, that the amendments are appropriate in the public interest and for the protection of investors.

## VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (Analysis) has been prepared in accordance with 5 U.S.C. 603 and relates to our proposed rule and form amendments under the Securities Act, the Exchange Act, the Investment Company Act, the Trust Indenture Act, and the Public Utility Holding Company Act to require that open-end investment companies and insurance company separate accounts electronically identify in their filings to which of their series and classes (or contracts) the filing relates; to add several investment company filings to the list of filings that must be made electronically; and to make a number of technical amendments to rules and forms in connection with filing on the EDGAR system. Specifically, the proposals would require certain open-end management investment companies and insurance company separate accounts to identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts). In addition, they would add several investment company filings to the list of those that must be filed electronically and make several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR.

### A. Reasons for, and Objectives of, Proposed Amendments

Many open-end investment companies (mutual funds) registering on Form N-1A are organized as single registrants with several portfolios (series) under sections 18(f)(1) and (2) of the Investment Company Act and Rule 18f-2 thereunder. Each series may also issue more than one class of securities under Rule 18f-3 of the Investment Company Act. Series and classes of a registrant are often marketed separately, without reference to other series or classes or to the registrant's name. The same is true for insurance company separate accounts organized as management investment companies registering on Form N-3.

Insurance company separate accounts register and issue multiple contracts. The individual contracts of insurance company separate accounts registering on Forms N-4 (funded by separate accounts organized as unit investment trusts) and N-6 (funded by separate accounts organized as unit investment trust that offer variable life insurance policies)<sup>76</sup> are also marketed separately and make filings separately under the name of the Investment Company Act registrant.

Any particular filing for a single registrant may be filed for only some of its series and classes (or contracts, in the case of separate accounts). A single registrant may make multiple filings of the same type (or example, post-effective amendment filings), each covering different series and/or classes (or contracts) of that registrant. We keep records of filings on an investment company registrant basis, but we do not keep records on a series, class or contract basis. Our objective is to be able to track filings on a series and class (contract) basis by requiring that open-end management investment companies and separate accounts who register on Forms N-1A, N-3, N-4, and N-6 (collectively, "S/C Funds") obtain identifiers for their series and classes (or contracts, in the case of separate accounts) and electronically identify for which series and classes (or contracts) of the S/C Fund a particular filing is made.

On and after the Mandatory Series/Class (Contract) Identification Date, S/C Funds would have to use series and class (contract) identifiers in certain EDGAR submissions specified in the EDGAR Filer Manual. The series and class (or contract) identification would be added as a requirement to the EDGARLink header templates of certain

investment company EDGAR submissions.

The proposals would also require certain current paper filings to be submitted electronically. Currently, investment companies must submit in paper filings under section 17(g),<sup>77</sup> sales literature filed with us under section 24(b),<sup>78</sup> and litigation material filed under section 33 of the Investment Company Act.<sup>79</sup> We recommend that the Commission propose to amend Rule 101 to make these submissions mandatory electronic submissions.

Finally, the proposals would modify Rule 102(d) of Regulation S-T regarding references to paper filings in the electronic filings' exhibit indices to require references to all exhibits filed in paper and make changes to Form SE to make it more useful (e.g., identify the applicable rule in Regulation S-T allowing the exhibit to be filed in paper).

### B. Legal Basis

We are proposing amendments to Rules 11, 102, 201, and 311 of Regulation S-T and Forms SE and TH under the Securities Act, the Securities Exchange Act, the Public Utility Holding Company Act, the Trust Indenture Act, and the Investment Company Act, and are proposing new Rule 312 under Regulation S-T, pursuant to authority set forth in sections 6, 7, 8, 10 and 19(a) of the Securities Act (15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a)), sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act (15 U.S.C. 78c, 78l, 78m, 78n, 78o(d), 78w(a) and 7878ll), sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Holding Company Act (15 U.S.C. 79c, 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, and 79t), section 319 of the Trust Indenture Act (15 U.S.C. 77sss), and sections 8, 30, 31 and 38 of the Investment Company Act (15 U.S.C. 80a-8, 80a-29, 80a-30, 80a-37).

### C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>80</sup> Approximately 145 out of 5,025 investment companies registered on

<sup>77</sup> 15 U.S.C. 80a-17(g). See Release No. 33-6978 and Release No. 33-7241 at footnotes 26-32 and accompanying text.

<sup>78</sup> 15 U.S.C. 80a-24(b).

<sup>79</sup> 15 U.S.C. 80a-31.

<sup>80</sup> 17 CFR 270.0-10.

<sup>76</sup> 17 CFR 239.17c and 274.11d.

Form N-1A meet this definition.<sup>81</sup> We estimate that few, if any, separate accounts registered on Form N-3, N-4, or N-6 are small entities.<sup>82</sup>

#### *D. Reporting, Recordkeeping, and Other Compliance Requirements*

The proposed amendments would require S/C funds to include in their EDGAR filings identification of their series and classes (contracts). It would also require them to provide information concerning the type of investment company and information about the other party to a merger filing.

The Commission estimates some one-time formatting and on-going burdens that would be imposed on all funds, including funds that are small entities. We note, however, that funds currently must keep track of their series and classes (or contracts) and that the addition of a number assigned to each should create only a de minimus burden. We solicit comment on the effect the proposed amendments would have on small entities.

#### *E. Duplicative, Overlapping or Conflicting Federal Rules*

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

#### *F. Significant Alternatives*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the proposed rules and rule and form amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part

thereof, for small entities. The proposals would require S/C funds to include in their EDGAR filings identification of their series and classes (contracts). They would also require them to provide information concerning the type of investment company and information about the other party to a merger filing.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. Different requirements for funds that are small entities may create the risk that the shareholders in these funds would not be as able as investors in larger funds to locate Commission filings and disclosure documents. We believe it is important that the benefits resulting from the be provided to investors in all investment companies, not just investors in investment companies that are not considered small entities.

We have endeavored through the proposed amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the proposed amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection.

#### *G. Solicitation of Comments*

The Commission encourages the submission of written comments with respect to any aspect of this analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed rules and rule and form amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed rules and rule and form amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC Web site (<http://www.sec.gov>) or (2) e-mail to

[rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to file number S7-16-04; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

#### **VIII. Paperwork Reduction Act**

The proposed rule amendments would affect two forms that contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>83</sup> The title of the affected information collections are the EDGAR Forms SE and TH.

Form SE (OMB Control Number 3235-0327) is used by electronic filers to submit exhibits in paper to the extent permitted under Rules 201, 202 and 311 of Regulation S-T; Form TH (Control Number 3235-0425) is used by electronic filers to submit paper filings pursuant to a temporary hardship exemption to the extent permitted under Rule 201 under Regulation S-T.

Compliance with the proposed amendments would be mandatory. The information required by the proposed amendments would not be kept confidential. The above forms would not impose a retention period for any recordkeeping requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. We expect that, if adopted, the proposed amendments would obligate applicants to disclose on Forms SE and TH essentially the same information that they are required to disclose today. We therefore believe that the overall information collection burden of Forms SE and TH would remain approximately the same. As a result, we have not submitted the revisions to the collections of information to the Office of Management and Budget for review

<sup>81</sup> This estimate is based on analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers, including Morningstar, Inc. and Lipper.

<sup>82</sup> This estimate is based on figures compiled by the Division of Investment Management staff regarding separate accounts registered on Forms N-3, N-4, and N-6. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Rule 0-10(b) under the Investment Company Act (17 CFR 270.0-10(b)).

<sup>83</sup> 44 U.S.C. 3501 *et seq.*

under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

We are soliciting comment on the expected Paperwork Reduction Act effects of the proposed rule amendments. In particular, we solicit comment on the accuracy of our estimate that no additional burden would result from the proposed amendments. We further request comment on whether the proposed changes to the collection of information are necessary for the proper performance of the Commission's functions, including whether the additional information garnered would have practical utility. In addition, we solicit comment on whether there are ways to enhance the quality, utility, and clarity of the information to be collected. We further solicit comment on whether there are ways to minimize the burden of information collection on those applicants who file Forms SE and TH, including through the use of automated collection techniques or other forms of information technology. Finally, we solicit comment on whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

## IX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>84</sup> a rule is "major" if it results or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumer of individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on and information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, comments should address whether the proposed changes, if adopted, would have a \$100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovation. We request commenters to empirical data to support their views.

## X. Statutory Basis

We propose the rule amendments outlined above under sections 6, 7, 8, 10 and 19(a) of the Securities Act, sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility

Holding Company Act, section 319 of the Trust Indenture Act, and sections 8, 30, 31 and 38 of the Investment Company Act.

### List of Subjects

#### 17 CFR Part 232

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

#### 17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

#### 17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

#### 17 CFR Part 259

Electric utilities, Holding companies, Reporting and recordkeeping requirements, Securities.

#### 17 CFR Part 269

Securities, Trusts and trustees.

#### 17 CFR Part 270

Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

#### 17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

### Text of the Proposed Rule and Form Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

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

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

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

\* \* \* \* \*

2. Amend § 232.11 by revising the definition of "official filing" to read as follows:

#### § 232.11 Definition of terms used in part 232.

\* \* \* \* \*

**Official filing.** The term *official filing* means any filing that is received and accepted by the Commission, regardless of filing medium and exclusive of header information, tags and any other technical information required in an electronic filing; except that electronic identification of investment company

type and inclusion of identifiers for series and class (or contract, in the case of separate accounts of insurance companies) as required by rule 312 of Regulation S-T (§ 232.312) are deemed part of the official filing.

\* \* \* \* \*

3. Amend § 232.101 by revising paragraphs (a)(1)(iv) and (c)(7) to read as follows:

#### § 232.101 Mandated electronic submissions and exceptions.

(a) \* \* \*

(1) \* \* \*

(iv) Documents filed with the Commission pursuant to sections 8, 17, 20, 23(c), 24(b), 24(e), 24(f), 30, and 33 of the Investment Company Act (15 U.S.C. 80a-8, 80a-17, 80a-20, 80a-23(c), 80a-24(b), 80a-24(e), 80a-24(f), 80a-29, and 80a-32); *provided, however* that submissions under section 6(c) of that Act (15 U.S.C. 80a-6(c)) and documents related to applications for exemptive relief under any section of that Act, shall not be made in electronic format;

\* \* \* \* \*

(c) \* \* \*

(7) Promotional and sales material submitted pursuant to Securities Act Industry Guide 5 (§ 229.801(e) of this chapter) or otherwise supplementally furnished for review by the staff of the Division of Corporation Finance;

\* \* \* \* \*

4. Amend § 232.102 by revising paragraphs (d) and (e) to read as follows:

#### § 232.102 Exhibits.

\* \* \* \* \*

(d) Each electronic filing requiring exhibits must include an exhibit index which must immediately precede the exhibits filed with the document. The index must list each exhibit filed, whether filed electronically or in paper. Whenever a filer files an exhibit in paper pursuant to a temporary or continuing hardship exemption (§ 232.201 or § 232.202) or pursuant to rule 311 (§ 232.311), the filer must place the letter "P" next to the listed exhibit in the exhibit index of the electronic filing to reflect the fact that the filer filed the exhibit in paper. In addition, if the exhibit is filed in paper pursuant to rule 311 (§ 232.311), the filer must place the designation "Rule 311" next to the letter "P" in the exhibit index. If the exhibit is filed in paper pursuant to a temporary or continuing hardship exemption, the filer must place the letters "TH" or "CH," respectively, next to the letter "P" in the exhibit index. Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or

<sup>84</sup> Pub. L. 104-21, title II, 110 Stat. 857 (1996).

§ 232.202(d)), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation "CE" (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format on the EDGAR system, unless the document has been filed in paper under a hardship exemption (§ 232.201 or § 232.202) and any required confirming electronic copy has been submitted.

\* \* \* \* \*

5. Amend § 232.201 by revising paragraph (a)(1), revising the note heading following paragraph (a)(4), and revising Note 1 to read as follows:

**§ 232.201 Temporary hardship exemption.**

(a) \* \* \*

(1) An electronic imaged copy of the paper format document shall be the official filing for purposes of the federal securities laws.

\* \* \* \* \*

*Notes to paragraph (a):*

1. Where a temporary hardship exemption relates to an exhibit only, the filer must file the paper format exhibit and a Form TH (§§ 239.65, 249.447, 259.604, 269.10 and 274.404 of this chapter) under cover of Form SE (§§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter).

\* \* \* \* \*

6. Amend § 232.311 by revising paragraph (h)(1) to read as follows:

**§ 232.311 Documents submitted in paper under cover of Form SE.**

\* \* \* \* \*

(h) \* \* \*

(1) If the subject of a temporary hardship exemption is an exhibit only, the filer must file the exhibit and a Form TH (§§ 239.65, 249.447, 259.604, 269.10 and 274.404 of this chapter) under cover of Form SE (§§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter) no later than one business day after the date the exhibit was to be filed electronically.

\* \* \* \* \*

7. Section 232.312 is added to read as follows:

**§ 232.312 Identification of investment company type and series and/or class (or contract).**

(a) Registered investment companies and business development companies must indicate their investment company type, based on whether the registrant's last effective registration statement or

amendment was filed on Form N-1A (§§ 239.15A and 274.11A of this chapter), Form N-2 (§§ 239.14 and 274.11a-1 of this chapter), Form N-3 (§§ 239.17A and 274.11b of this chapter), Form N-4 (§§ 239.17b and 274.11c of this chapter), Form N-5 (§§ 239.24 and 274.5 of this chapter), Form N-6 (§§ 239.17c and 274.11d of this chapter), Form S-1 (§ 239.11 of this chapter), Form S-3 (§ 239.13 of this chapter), or Form S-6 (§ 239.16 of this chapter) in those EDGAR submissions identified in the EDGAR Filer Manual.

(b) Registered investment companies whose last effective registration statement or amendment was filed on Form N-1A (§§ 239.15A and 274.11A of this chapter), Form N-3 (§§ 239.17A and 274.11b of this chapter), Form N-4 (§§ 239.17b and 274.11c of this chapter), or Form N-6 (§§ 239.17c and 274.11d of this chapter) must, under the procedures set forth in the EDGAR Filer Manual:

(1) Provide electronically, and keep current, information concerning their existing and new series and/or classes (or contracts, in the case of separate accounts), including series and/or class name and ticker symbol, if any, and be issued series and/or class (or contract) identification numbers;

(2) Deactivate for EDGAR purposes any series and/or class (or contract, in the case of separate accounts) that are no longer offered, go out of existence, or deregister following the last filing for that series and/or class (or contract, in the case of separate accounts), but the registrant must not deactivate the last remaining series unless the registrant deregisters; and

(3) For those EDGAR submissions identified in the EDGAR Filer Manual, include all series and/or class (or contract) identifiers of each series and/or class (or contract) on behalf of which the filing is made.

(c) Registered investment companies whose last effective registration statement or amendment was filed on Form N-1A (§§ 239.15A and 274.11A of this chapter), Form N-3 (§§ 239.17A and 274.11b of this chapter), Form N-4 (§§ 239.17b and 274.11c of this chapter), or Form N-6 (§§ 239.17c and 274.11d of this chapter) must provide electronically, as specified in the EDGAR Filer Manual, in the EDGAR submission identifying information concerning the acquiring fund and the target fund (and the series and/or classes(es), if any, of each if in existence at the time of the filing) in connection with merger filings on Form N-14 (§ 239.23 of this chapter), under Securities Act rule 425 (§ 230.425 of this chapter), and in compliance with

Regulation 14A (§ 240.14a-1 of this chapter), Schedule 14A (§ 240.14a-101 of this chapter), and all other applicable rules and regulations adopted pursuant to section 14(a) of the Exchange Act, as referenced in Investment Company Act rule 20a-1 (§ 270.20a-1 of this chapter).

(d) Non-registrant third party filers making proxy filings with respect to investment companies must designate in the EDGAR submission the type of investment company (as referenced in paragraph (a) of this section) and include series and/or class (or contract) identifiers in designated EDGAR proxy submission types, in accordance with the EDGAR Filer Manual.

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

8. 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, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-26, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

\* \* \* \* \*

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

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

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

\* \* \* \* \*

**PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

10. The authority citation for Part 259 continues to read as follows:

**Authority:** 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

**PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939**

11. The authority citation for Part 269 continues to read as follows:

**Authority:** 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78ll(d), unless otherwise noted.

**PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

12. The authority citation for Part 270 continues to read in part as follows:

**Authority:** 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, unless otherwise noted.

\* \* \* \* \*

13. Section 270.24b-2 is revised to read as follows:

**§ 270.24b-2 Filing copies of sales literature.**

Copies of material filed with the Commission for the sole purpose of complying with section 24(b) of the Act (15 U.S.C. 80a-24(b)) either shall be accompanied by a letter of transmittal which makes appropriate references to said section or shall make such appropriate reference on the face of the material.

**PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

14. The authority citation for Part 274 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

\* \* \* \* \*

15. Revise Form SE (referenced in §§ 239.64, 249.444, 259.603, 269.8 and 274.403) to read as follows:

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

**OMB APPROVAL**

OMB Number: 3235-xxxx

Expires: xxxxxxxxxxxxxxxxx

Estimated average burden hours per response: xxxx

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION,  
Washington, DC**

**FORM SE—FORM FOR SUBMISSION OF PAPER FORMAT EXHIBITS BY EDGAR ELECTRONIC FILERS**

Exact name of registrant as specified in charter

Registrant CIK Number

Electronic report, schedule or registration statement

SEC filer number, of which the documents are a part if available

S—

(Series identifier(s) and names(s), if applicable; add more lines as needed)  
C—

(Class identifier(s) and names(s), if applicable; add more lines as needed)

Report period (if applicable)

Name of person filing this exhibit (if other than the registrant)

Identify the provision of Regulation S-T (§ 232 of this chapter) under which this exhibit is being filed in paper (check only one):

Rule 201 (Temporary Hardship Exemption)

Rule 202 (Continuing Hardship Exemption)

Rule 311 (Permitted Paper Exhibit)  
**SIGNATURES**

Filings Made by the Registrant:  
The registrant has duly caused this form to be signed on its behalf by the undersigned, duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on \_\_\_\_\_ 20 \_\_\_\_.

Registrant  
By:

(Name)

(Title)

Filings Made by Person Other than the Registrant:

After reasonable inquiry and to the best of my knowledge and belief, I certify on \_\_\_\_\_ 20 \_\_\_\_\_, that the information set forth in this statement is true and complete.

By:

(Name)

(Title)

**FORM SE—GENERAL INSTRUCTIONS**

**1. Rule as to Use of Form SE.**

A. Electronic filers must use this form to submit any paper format exhibit under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, or the Investment Company Act of 1940, provided that the submission of such exhibit in paper is permitted under Rule 201, 202, or 311 of Regulation S-T (§ 232.201, 232.202, or 232.311 of this chapter).

B. Electronic filers are subject to Regulation S-T (Part 232 of this chapter) and the EDGAR Filer Manual. We direct your attention to the General Rules and Regulations under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the electronic filing rules and regulations under these Acts.

**2. Preparation of Form SE.**

Submit in paper format four complete copies of both the Form SE and the exhibit filed under cover of the Form SE.

**3. Filing of Form SE**

A. If you are filing the exhibit under a temporary hardship exemption, submit the exhibit and a Form TH (§§ 239.65, 249.447, 259.604, 269.10 and 274.404 of this chapter) under cover of this Form SE no later than one business day after the date on which the exhibit was to have been filed electronically. See Rule 201 of Regulation S-T (§ 232.201 of this chapter).

B. If you are filing the exhibit under a continuing hardship exemption under Rule 202 of Regulation S-T, or as allowed by Rule 311 of Regulation S-T, you may file the exhibit in paper under cover of Form SE up to six business days before or on the date of filing of the electronic format document to which it relates; you may not file the exhibit after the filing date of the electronic document to which it relates. Exhibits filed under a continuing hardship exemption must include the legend required by Rule 202(c). If you submit the paper exhibit in this manner, you will have satisfied any requirements that you file the exhibit with, provide the document with, or have the document accompany the electronic filing. This instruction does not affect any requirement that you deliver or furnish the information in the exhibit to persons other than the Commission.

C. Identify the exhibit being filed. Attach to the Form SE the paper format exhibit and an exhibit index if required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

**4. Signatures**

A. Submit one copy signed by each person on whose behalf you are submitting the form or by that person's authorized representative. If the form is signed by the authorized representative of a person (other than an executive officer or general partner), file with the form the evidence of the authority of the representative to sign on behalf of such person, except that you may incorporate by reference a power of attorney for this purpose that is already on file with the Commission.

B. Signatures may be in typed form rather than manual format.

16. Revise Form TH (referenced in §§ 239.65, 249.447, 259.604, 269.10 and 274.404 of this chapter) to read as follows:

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

**OMB APPROVAL**

OMB Number: 3235-xxxx

Expires: xxxxxxxxxxxxxxxxx

Estimated average burden hours per response: xxxx

**United States Securities and Exchange Commission, Washington, DC****Form TH—Notification of Reliance on Temporary Hardship Exemption**

Report, schedule or registration statement to which the hardship exemption relates (give period of report, if applicable)

SEC file number(s) under which filing made (Required, if assigned)

CIK of filer or subject company CIK, as applicable

Name of Filer or subject company, as applicable

Filed-by CIK (for subject company filings only)

Name of "filed-by" entity (for subject company filings only)

S—

(Series identifier(s) and names(s), if applicable; add more lines as needed)  
C—

(Class identifier(s) and names(s), if applicable; add more lines as needed)

**Part I—Filer Information**

Full Name of Filer

Address of Principal Office

Street and Number

City, State, and Postal Code; Country, if other than US

**Part II—Information Relating to the Hardship**

Furnish the following information:

1. A description of the nature and extent of the temporary technical difficulties experienced by the electronic filer in attempting to submit the document in electronic format.

2. A description of the extent to which the electronic filer has successfully submitted documents previously in electronic format with the same hardware and software, in test of required filings.

3. A description of the burden and expense involved to employ alternative means to submit the electronic submission in a timely manner.

Any other reasons an exemption is warranted.

**Part III—Representation of Intent to Submit Confirming Electronic Copy**

The filer shall include a representation that it shall cause to be filed a confirming electronic copy of the document file in paper under cover of the Form TH and that its filing will be in accordance with Rule 201(b) of Regulation S-T (232.201(b)) and appropriately designated as a "confirming electronic copy" in accordance with the requirements of the EDGAR Filer Manual.

**Part IV—Contact Person**

Name, telephone number, and e-mail address of person to contact in regard to this filing under Form TH:

Name \_\_\_\_\_

(Area code) (\_\_\_\_\_) \_\_\_\_\_

Phone number \_\_\_\_\_

e-mail address \_\_\_\_\_

**Part V—Signature**

Name of Filer (if registrant, name as it appears in charter) has caused this Form TH to be signed on its behalf by the undersigned, being duly authorized:

Date: \_\_\_\_\_

By: \_\_\_\_\_

*Instruction:* This form may be signed by an executive officer of the registrant or by any other duly authorized representative.**General Instructions**

1. Rule 201(a) of Regulation S-T requires an electronic filer relying on a temporary hardship exemption to file this Form TH in addition to filing a paper copy of a document otherwise required to be filed in electronic format.

2. Four signed copies of this Form TH must accompany the paper format document being filed pursuant to Rule 201; filers must file under Form TH within one business day after the date upon which the filer was originally to file the document electronically.

3. Signatures to the paper format document being filed with Form TH may be in typed form rather than in manual format. See Rule 302 of Regulation S-T (§ 232.302 of this chapter). Filers must satisfy all other requirements relating to paper format filings, including number of copies to be filed.

By the Commission.

Dated: March 16, 2004.

**Jill M. Peterson,***Assistant Secretary.*

[FR Doc. 04-6404 Filed 3-22-04; 8:45 am]

**BILLING CODE 8010-01-P**