



**8011-01**

## **SECURITIES AND EXCHANGE COMMISSION**

17 CFR Chapter II

Release Nos. 33-10576; 34-84640; 39-2523; IA-5067; IC-33298; File No. S7-25-18

### **List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of list of rules scheduled for review.

**SUMMARY:** The Securities and Exchange Commission is publishing a list of rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act. The list is published to provide the public with notice that these rules are scheduled for review by the agency and to invite public comment on whether the rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of such small entities.

**DATES:** Comments should be submitted by [insert date 30 days after publication in the *Federal Register*].

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

*Electronic Comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-XX-18 on the subject line.

*Paper Comments:*

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. S7-XX-18. 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 website (<http://www.sec.gov/rules/other.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Leila Bham, Office of the General Counsel, 202-551-5532.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act ("RFA"), codified at 5 U.S.C. 601-612, requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within ten years of the publication of such rules as final rules. 5 U.S.C. 610(a). The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded . . . to minimize any significant economic impact of the rules upon a substantial number of such small entities." 5 U.S.C. 610(a). The RFA sets forth specific considerations that must be addressed in the review of each rule:

- the continued need for the rule;
- the nature of complaints or comments received concerning the rule from the public;

- the complexity of the rule;
- the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. 5 U.S.C. 610(c).

The Securities and Exchange Commission, as a matter of policy, reviews all final rules that it published for notice and comment to assess not only their continued compliance with the RFA, but also to assess generally their continued utility. When the Commission implemented the Act in 1981, it stated that it “intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission.”

Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981). The list below is therefore broader than that required by the RFA, and may include rules that do not have a significant economic impact on a substantial number of small entities. Where the Commission has previously made a determination of a rule's impact on small businesses, the determination is noted on the list.

The Commission particularly solicits public comment on whether the rules listed below affect small businesses in new or different ways than when they were first adopted. The rules and forms listed below are scheduled for review by staff of the Commission.

Title: **Fund of Funds Investments**

Citation: 17 CFR 270.12d1-1, 17 CFR 270.12d1-2, 17 CFR 270.12d1-3

Authority: 15 U.S.C. 77f, 77g(a), 77j, 77s(a), 80a-6(c), 80a-8(b), 80a-12(d)(1)(J), 80a-24(a), 80a-29, 80a-37(a)

Description: The Commission adopted three new rules under the Investment Company Act of 1940 (“Investment Company Act”) that address the ability of an investment company (“fund”) to acquire shares of another fund. Section 12(d)(1) of the Investment Company Act prohibits, subject to certain exceptions, so-called “fund of funds” arrangements, in which one fund invests in the shares of another. The rules broadened the ability of a fund to invest in shares of another fund in a manner consistent with the public interest and the protection of investors. The Commission also adopted amendments to forms used by funds to register under the Investment Company Act and offer their shares under the Securities Act of 1933 (“Securities Act”). The amendments improved the transparency of the expenses of funds of funds by requiring that the expenses of the acquired funds be aggregated and shown as an additional expense in the fee table of the fund of funds.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission’s adoption of Release No. IC-27399 (June 20, 2006). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IC-26198 (Oct. 1, 2003), but, as stated in the adopting release, received no comments on that analysis.

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Title: **Joint Final Rules: Application of the Definition of Narrow-Based Security Index to Debt Securities Indexes and Security Futures on Debt Securities**

Citation: 17 CFR 41.15, 17 CFR 41.21, 17 CFR 240.3a55-4, 17 CFR 240.6h-2

Authority: 7 U.S.C. 1a(25)(B)(vi) and 2(a)(1)(D); 15 U.S.C. 78c(a)(55)(C)(vi), 78c(b), 78f(h), 78w(a), 78mm

Description: The Commodity Futures Trading Commission (“CFTC”) and the Commission adopted a new rule and amended an existing rule under the Commodity Exchange Act and adopted two new rules under the Securities Exchange Act of 1934 (“Exchange Act”) that modified the applicable statutory listing standards requirements to permit security futures to be based on individual debt securities or a narrow-based security index composed of such securities. In addition, these rules and rule amendment

exclude from the definition of “narrow-based security index” debt securities indexes that satisfy specified criteria. A future on a debt securities index excluded from the definition of narrow-based security index is not a security future and may trade subject to the exclusive jurisdiction of the CFTC.

Prior RFA Analysis: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34-53560 (March 29, 2006). As stated in the adopting release, Release No. 34-54106 (July 6, 2006), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

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Title: **Executive Compensation and Related Person Disclosure**

Citation: 17 CFR 229.201, 17 CFR 229.306, 17 CFR 229.401, 17 CFR 229.402, 17 CFR 229.403, 17 CFR 229.404, 17 CFR 229.407, 17 CFR 229.601, 17 CFR 229.1107, 17 CFR 232.304, 17 CFR 240.13a-11, 17 CFR 240.13a-20, 17 CFR 240.14a-3, 17 CFR 240.14a-6, 17 CFR 240.14c-5, 17 CFR 240.15d-11, 17 CFR 240.16b-3, 17 CFR 240.14a-101, 240 CFR 15d-20, 17 CFR 245.100, 17 CFR 249.308, 17 CFR 249.210, 17 CFR 249.210b, 17 CFR 249.308a, 17 CFR 249.308b, 17 CFR 249.310, 17 CFR 249.310b, 17 CFR 249.220f, 17 CFR 239.11, 17 CFR 239.13, 17 CFR 239.25, 17 CFR 239.18, 17 CFR 239.15A, 17 CFR 274.11A, 17 CFR 239.14, 17 CFR 274.11a-1, 17 CFR 239.17a, 17 CFR 274.11b, 17 CFR 249.331, 17 CFR 274.128

Authority: 15 U.S.C. 77c, 77d, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77s(a), 77z-2, 77z-3, 77aa(25), 77aa(26), 77mm, 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77sss(a), 77ttt, 78a et seq., 78c, 78c(b), 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78o(d), 78p, 78q, 78s, 78u-5, 78w, 78w(a), 78x, 78ll, 78ll(d), 78mm, 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 79t(a), 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-20, 80a-23, 80a-24, 80a-26, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-3, 80b-4, 80b-11, 7201 et seq.; 18 U.S.C. 1350

Description: The Commission adopted amendments to the disclosure requirements for executive and director compensation, related person transactions, director independence and other corporate governance matters and security ownership of officers and directors. These amendments apply to disclosure in proxy and information statements, periodic reports, current reports, and other filings under the Exchange Act and to registration statements under the Exchange Act and the Securities Act. The Commission also adopted a requirement that disclosure under the

amended items generally be provided in plain English. The amendments were intended to make proxy and information statements, reports, and registration statements easier to understand. They were also intended to provide investors with a clearer and more complete picture of the compensation earned by a company's principal executive officer, principal financial officer and highest paid executive officers and members of its board of directors. In addition, they were intended to provide better information about key financial relationships among companies and their executive officers, directors, significant shareholders, and their respective immediate family members.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 33-8732A (Aug. 29, 2006). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 33-8655 (Jan. 27, 2006).

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Title: **Mutual Fund Redemption Fees**

Citation: 17 CFR 270.22c-2

Authority: 15 U.S.C. 80a-6(c), 80a-22(c), 80a-37(a)

Description: The Commission adopted amendments to a rule under the Investment Company Act. The rule, among other things, requires most open-end investment companies ("funds") to enter into agreements with intermediaries, such as broker-dealers, that hold shares on behalf of other investors in so called "omnibus accounts." These agreements must provide funds access to information about transactions in these accounts to enable the funds to enforce restrictions on market timing and similar abusive transactions. The Commission amended the rule to clarify the operation of the rule and reduce the number of intermediaries with which funds must negotiate shareholder information agreements.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IC-27504 (Sept. 27, 2006). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IC-27255 (Feb. 28, 2006).

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Title: **Definition of Eligible Portfolio Company under the Investment Company Act of 1940**

Citation: 17 CFR 270.2a-46, 17 CFR 270.55a-1

Authority: 15 U.S.C. 80a-2(a)(46)(C)(iv), 80a-6(c), 80a-38(a)

Description: The Commission adopted two new rules under the Investment Company Act. The new rules more closely aligned the definition of eligible portfolio company, and the investment activities of business development companies, with the purpose that Congress intended. The rules expanded the definition of eligible portfolio company in a manner that promotes the flow of capital to certain small, developing and financially troubled companies.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IC-27538 (Oct. 25, 2006). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IC-26647 (Nov. 1, 2004), but, as stated in the adopting release, received no comments that specifically addressed that analysis.

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Title: **Electronic Filing of Transfer Agent Forms**

Citation: 17 CFR 232.101, 17 CFR 232.104, 17 CFR 232.201, 17 CFR 240.17Ac2-1, 17 CFR 240.17Ac2-2, 17 CFR 240.17Ac3-1, 17 CFR 249b.100, 17 CFR 249b.101, 17 CFR 249b.102, 17 CFR 239.63, 17 CFR 249.446, 17 CFR 269.7, 17 CFR 274.402

Authority: 15 U.S.C. 77s(a), 15 U.S.C. 78m(a), 15 U.S.C. 78w(a), 15 U.S.C. 78ll, 15 U.S.C. 77sss, 15 U.S.C. 80a-29, 15 U.S.C. 80a-37, 15 U.S.C. 78q(a), 15 U.S.C. 78q-1(c)

Description: The Commission adopted amendments to the rules and forms to require that the forms filed with respect to transfer agent registration, annual reporting, and withdrawal from registration be filed with the Commission electronically. The forms are required to be filed on the Commission's EDGAR database in XML format and are accessible to Commission staff and the public for search and retrieval. The purpose of the amendments was to improve the Commission's ability to utilize the information reported on the forms in performing its oversight function of transfer agent operations and to publicly disseminate the information on the forms.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. No. 34-54864 (Dec. 4, 2006). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-54356 (Aug. 24, 2006).

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Title: **Internet Availability of Proxy Materials**

Citation: 17 CFR 240.14a-2, 17 CFR 240.14a-3, 17 CFR 240.14a-4, 17 CFR 240.14a-7, 17 CFR 240.14a-8, 17 CFR 240.14a-12, 17 CFR 240.14a-13, 17 CFR 240.14b-1, 17 CFR 240.14b-2, 17 CFR 240.14c-2, 17 CFR 240.14c-3, 17 CFR 240.14c-5, 17 CFR 240.14c-7, 17 CFR 240.14a-101, 17 CFR 240.14c-101, 17 CFR 249.310, 17 CFR 249.308a, 17 CFR 249.330 and 274.101, 17 CFR 240.14a-16.

Authority: 15 U.S.C. 77c, 77d, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77mm, 77sss, 77ttt, 78c, 78c(b), 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78o(d), 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-8, 80a-20, 80a-23, 80a-24, 80a-26, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7202, 7233, 7241, 7262, 7264 and 7265.; and 18 U.S.C. 1350.

Description: The Commission adopted amendments to the proxy rules under the Exchange Act that provide an alternative method for issuers and other persons to furnish proxy materials to shareholders by posting them on an Internet Web site and providing shareholders with notice of the availability of the proxy materials. Issuers must make copies of the proxy materials available to shareholders on request, at no charge to shareholders. The amendments put into place processes that will provide shareholders with notice of, and access to, proxy materials while taking advantage of technological developments and the growth of the Internet and electronic communications. Issuers that rely on the amendments may be able to significantly lower the costs of their proxy solicitations that ultimately are borne by shareholders. The amendments also might reduce the costs of engaging in a proxy contest for soliciting persons other than the issuer. The amendments do not apply to business combination transactions, and also do not affect the availability of any existing method of furnishing proxy materials.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-55146 (Jan. 29, 2007). In the adopting release, the Commission considered

comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-52926 (Dec. 8 2005).

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**Title:** **Covered Securities Pursuant to Section 18 of the Securities Act of 1933**

**Citation:** 17 CFR 230.146(b)

**Authority:** 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a29, 80a-30, and 80a-37

**Description:** The Commission adopted an amendment to Rule 146 under Section 18 of the Securities Act to designate certain securities listed, or authorized for listing, on the Nasdaq Capital Market tier of The NASDAQ Stock Market LLC as covered securities for purposes of Section 18(b) of the Securities Act. Covered securities under Section 18(b) of the Securities Act are exempt from state law registration requirements. The Commission also amended Rule 146 to correct the rule text to conform it to the language of Section 18 of the Securities Act.

**Prior RFA Analysis:** Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 33-8754 (Nov. 22, 2006). As stated in the adopting release, Release No. 33-8791 (Apr. 18, 2007), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

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**Title:** **Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations**

**Citation:** 17 CFR 240.17g-1, 17 CFR 240.17g-2, 17 CFR 240.17g-3, 17 CFR 240.17g-4, 17 CFR 240.17g-5, 17 CFR 240.17g-6, and 17 CFR 249b.300

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

Description: The Commission adopted rules to implement provisions of the Credit Rating Agency Reform Act of 2006 (the “Rating Agency Act”), enacted on September 29, 2006. The Rating Agency Act defines the term “nationally recognized statistical rating organization,” provides authority for the Commission to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies, and directs the Commission to issue final implementing rules.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission’s adoption of Release No. 34-55857 (Jun. 5, 2007). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-55231 (Feb. 2, 2007), but, as stated in the adopting release, received no comments on that analysis.

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Title: **Regulation SHO and Rule 10a-1**

Citation: 17 CFR 240.10a-1; 17 CFR 242.200; 17 CFR 242.201

Authority: 15 U.S.C. 78b, 78c(b), 78f, 78i(a), 78j(a), 78k-1, 78o, 78o-3, 78q, 78q-1, 78w(a)

Description: The Commission adopted amendments to the short sale price test under the Exchange Act. The amendments are intended to provide a more consistent regulatory environment for short selling by removing restrictions on the execution prices of short sales, as well as prohibiting any self-regulatory organization from having a price test. In addition, the Commission adopted amendments to Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as “short exempt,” if the seller is relying on an exception from a price test.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission’s adoption of Release No. 34-55970 (Jun. 28, 2007). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-54891 (Dec. 7, 2006).

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Title: **Shareholder Choice Regarding Proxy Materials**

Citation: 17 CFR 240.14a-3, 17 CFR 240.14a-7, 17 CFR 240.14a-16, 17 CFR 240.14a-101, 17 CFR 240.14b-1, 17 CFR 240.14b-2, 17 CFR 240.14c-2, and 17 CFR 240.14c-3

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

Description: The Commission adopted amendments to the proxy rules under the Exchange Act to provide shareholders with the ability to choose the means by which they access proxy materials. Under the amendments, issuers and other soliciting persons are required to post their proxy materials on an Internet Web site and provide shareholders with a notice of the Internet availability of the materials. The issuer or other soliciting person may choose to furnish paper copies of the proxy materials along with the notice. If the issuer or other soliciting person chooses not to furnish a paper copy of the proxy materials along with the notice, a shareholder may request delivery of a copy at no charge to the shareholder.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-56135 (Jul. 26, 2007). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-55147 (Jan. 22, 2007).

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Title: **Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles**

Citation: 17 CFR 275.206(4)-8

Authority: 15 U.S.C. 80b-6(4) and 80b-11(a)

Description: The Commission adopted a new rule that prohibits advisers to pooled investment vehicles from making false or misleading statements to, or otherwise defrauding, investors or prospective investors in those pooled vehicles. This rule was designed to clarify, in light of a court opinion prior to the rule adoption, the Commission's ability to bring enforcement actions under the Investment Advisers Act of 1940 against investment advisers who defraud investors or prospective investors in a hedge fund or other pooled investment vehicle.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IA-2628 (Aug. 3, 2007). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IA-2576 (Dec. 27, 2006), but, as stated in the adopting release, received no comments on that analysis.

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Title: **Short Selling in Connection with a Public Offering**

Citation: 17 CFR 242.105

Authority: 15 U.S.C. 77g, 77q(a), 77s, 77s(a), 78b, 78c, 78g, 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, 80a-37

Description: A fundamental goal of Regulation M, Anti-Manipulation Rules Concerning Securities Offerings, is protecting the independent pricing mechanism of the securities market so that offering prices result from the natural forces of supply and demand unencumbered by artificial forces. Rule 105 of Regulation M governs short selling in connection with public offerings and concerns short sales that are effected prior to pricing an offering. The rule is particularly concerned with short selling that can artificially depress market prices which can lead to lower than anticipated offering prices, thus causing an issuer's offering proceeds to be reduced. The rule is intended to foster secondary and follow-on offering prices that are determined by independent market dynamics and not by potentially manipulative activity. Prior to the amendments, there had been non-compliance with the then-current version of Rule 105 and persons engaged in strategies to hide their non-compliance. The Commission observed that these strategies evolved over time, so it adopted the amendments to forestall the continuation of these obfuscating transactions and to cut-off the likely future development of more complex attempts to disguise violations of the Rule. The amendments enhance market integrity by prohibiting conduct that can be manipulative around the time an offering is priced so that market prices can be fairly determined by an independent market. The Commission believes the amendments safeguard the integrity of the capital raising process and protect issuers from potentially manipulative activity that can reduce offering proceeds. The amendments are expected to promote investor confidence in the market which should foster capital formation.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No.

34-56206 (Aug. 6, 2007). In the adopting release, the Commission considered the comment received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-58888 (Dec. 6, 2006).

\* \* \* \* \*

Title: **Amendments to Regulation SHO**

Citation: 17 CFR 242.200; 17 CFR 242.203

Authority: 15 U.S.C. 78b, 78c(b), 78i(h), 78j, 78k-1, 78o, 78q(a), 78q-1, 78w(a)

Description: The Commission adopted amendments to Regulation SHO under the Exchange Act. The amendments were intended to further reduce the number of persistent fails to deliver in certain equity securities by eliminating the grandfather provision of Regulation SHO. In addition, the Commission amended the close-out requirement of Regulation SHO for certain securities that a seller is “deemed to own.” The amendments also updated the market decline limitation referenced in Regulation SHO.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission’s adoption of Release No. 34-56212 (Aug. 7, 2007). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-54154 (Jul. 14, 2006).

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Title: **Definitions of Terms and Exemptions Relating to the “Broker” Exceptions for Banks**

Citation: 17 CFR §§ 247.700, 247.701, 247.721, 247.722, 247.723, 247.740, 247.741, 247.760, 247.771, 247.772, 247.775, 247.776, 247.780, and 247.781

Authority: Pub. L. No. 109-351, 120 Stat. 1966 (2006); Pub. L. No. 106-102, 113 Stat. 1338 (1999); 15 U.S.C. 78c(a)(4), 78c(b), 78o, 78q, 78w(a), and 78mm

Description: Pursuant to the Financial Services Regulatory Relief Act of 2006 (“Regulatory Relief Act”), the Board of Governors of the Federal Reserve System (“Board”) and the Commission jointly adopted Regulation R to implement certain of the exceptions for banks from the definition of the term “broker” under Section 3(a)(4) of the Exchange Act, as amended by

the Gramm-Leach-Bliley Act (“GLBA”). The rules in Regulation R define terms used in these statutory exceptions and include certain related exemptions. Regulation R applies to any “bank” as defined in Section 3(a)(6) of the Exchange Act, as amended by Section 401 of the Regulatory Relief Act to include any Federal savings association or other savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Board and the Commission’s adoption of Regulation R in Release No. 34-56501 (Sept. 24, 2007). In the adopting release, the Board and the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-54946 (Dec. 8, 2006).

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Title: **Exemptions for Banks Under Section 3(a)(5) of the Securities Exchange Act of 1934 and Related Rules**

Citation: 17 CFR §§ 240.3a5-2, 240.3a5-3, and 240.15a-6

Authority: 15 U.S.C. 78c(a)(4), 78c(b), 78o, 78q, 78w(a), and 78mm

Description: The Commission adopted the rules and rule amendments to provide a conditional exemption allowing banks to effect riskless principal transactions with non-U.S. persons pursuant to Regulation S under the Securities Act, to amend and re-designate an exemption from the definition of “dealer” for banks’ securities lending activities as a conduit lender, and to conform a rule that grants a limited exemption from U.S. broker-dealer registration for foreign broker-dealers to the definitions of “broker” and “dealer” in the Exchange Act, as amended by the Gramm-Leach-Bliley Act. The exemptions for banks provided by the rules and rule amendments apply to any “bank” as defined in Section 3(a)(6) of the Exchange Act, as amended by Section 401 of the Financial Services Regulatory Relief Act of 2006 to include any Federal savings association or other savings association the deposits of which are insured by the Federal Deposit Insurance Corporation.

Prior RFA Analysis: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34-54947 (Dec. 18, 2006). As stated in the adopting release, Release No. 34-56502 (Sept. 24, 2007), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

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**Title: Exemption of Compensatory Employee Stock Options From Registration Under 12(g) of the Securities Exchange Act of 1934**

**Citation: 17 CFR 240.12h-1**

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

**Description: The Commission adopted two exemptions from the registration requirements of the Exchange Act for compensatory employee stock options. The first exemption is available to issuers that are not required to file periodic reports under the Exchange Act. The second exemption is available to issuers that are required to file those reports because they have registered under Exchange Act Section 12 a class of security or are required to file reports pursuant to Exchange Act Section 15(d). The exemptions apply only to the issuer's compensatory employee stock options and do not extend to the class of securities underlying those options.**

**Prior RFA Analysis: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the two exemptions from the registration provisions of Exchange Act Section 12(g) for compensatory employee stock options would not have a significant economic impact on a substantial number of small entities. The certification was incorporated into the proposing release, Release No. 34-56010 (Jul. 10, 2007). As stated in the adopting release, Release No. 34-56887 (Dec. 7, 2007), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.**

\* \* \* \* \*

**Title: Revisions to Rules 144 and 145**

**Citation: 17 CFR 230.144, 17 CFR 230.145, 17 CFR 230.190, 17 CFR 230.701, 17 CFR 230.903, 17 CFR 239.144**

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

78ll(d), 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-28, 80a-29, 80a-30, and 80a-37

Description:

Rule 144 under the Securities Act creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. The Commission amended Rule 144 to shorten the holding period requirement for “restricted securities” of issuers that are subject to the reporting requirements of the Exchange Act to six months. Restricted securities of issuers that are not subject to the Exchange Act reporting requirements continue to be subject to a one-year holding period prior to any public resale. The amendments also substantially reduced the restrictions applicable to the resale of securities by non-affiliates. In addition, the amendments simplified the Preliminary Note to Rule 144, amended the manner of sale requirements and eliminated them with respect to debt securities, amended the volume limitations for debt securities, increased the Form 144 filing thresholds, and codified several staff interpretive positions that relate to Rule 144. The Commission also amended Securities Act Rule 145 to eliminate the presumptive underwriter provision, except for transactions involving a shell company, and amended the resale requirements in Rule 145(d).

Prior RFA Analysis:

A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-8869 (Dec. 17, 2007). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 33-8813 (Jun. 22, 2007).

\* \* \* \* \*

Title:

**Shareholder Proposals Relating to the Election of Directors**

Citation:

17 CFR 240.14a-8(i)(8)

Authority:

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

Description:

The Commission adopted amendments to Rule 14a-8 under the Exchange Act to codify the meaning of Rule 14a-8(i)(8). Rule 14a-8 provides shareholders with an opportunity to place certain proposals in a company's proxy materials for a vote at an annual or special meeting of shareholders. Subsection (i)(8) of the Rule permits exclusion of certain shareholder proposals related to the election of directors. The Commission adopted an

amendment to Rule 14a-8(i)(8) to provide certainty regarding the meaning of this provision in response to a ~~recent~~ court decision.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-56914 (Dec. 11, 2007). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-56161 (Jul. 27, 2007).

\* \* \* \* \*

Title: **Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3**

Citation: 17 CFR 239.13, 17 CFR 239.33, 17 CFR 230.401(g)

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-2, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o(d), 78t, 78u-5, 78w, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-28, 80a-29, 80a-30, and 80a-37

Description: The Commission adopted amendments to the eligibility requirements of Form S-3 and Form F-3 to allow certain domestic and foreign private issuers to conduct primary securities offerings on these forms without regard to the size of their public float or the rating of debt they are offering, so long as they satisfy the other eligibility conditions of the respective form, have a class of common equity securities listed and registered on a national securities exchange, and the issuers do not sell more than the equivalent of one-third of their public float in primary offerings over any period of 12 calendar months. The amendments were intended to allow more companies to benefit from the greater flexibility and efficiency in accessing the public securities markets afforded by Form S-3 and Form F-3 without compromising investor protection. The expanded form eligibility does not extend to shell companies, however, which are prohibited from using the new provisions until 12 calendar months after they cease being shell companies. In addition, the Commission adopted an amendment to the rules and regulations promulgated under the Securities Act to clarify that violations of the one-third restriction will also violate the requirements as to proper registration form, even though the registration statement has been declared effective previously.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-8878 (Dec. 27, 2007). In the adopting release, the Commission considered comments

received on the Initial Regulatory Flexibility Analysis including in the proposing release, Release No. 33-8812 (Jun. 20, 2007).

\* \* \* \* \*

Title: **Electronic Shareholder Forums**

Citation: 17 CFR 240.14a-2 and 17 CFR 240.14a-17

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

Description: The Commission adopted amendments to the proxy rules under the Exchange Act to facilitate electronic shareholder forums. The amendments clarified that participation in an electronic shareholder forum that could potentially constitute a solicitation subject to the proxy rules is exempt from most of the proxy rules if all of the conditions to the exemption are satisfied. In addition, the amendments stated that a shareholder, company, or third party acting on behalf of a shareholder or company that establishes, maintains, or operates an electronic shareholder forum is not liable under the federal securities laws for any statement or information provided by another person participating in the forum.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 34-57172 (Jan. 18, 2008). The Commission requested comment on the Initial Regulatory Flexibility Analysis prepared in the proposing release, Release No. 34-56160 (Jul. 27, 2007). As stated in the adopting release, although commenters addressed several aspects of the proposed amendments that potentially could have affected small entities, no commenter specifically discussed the effect of the proposed amendments regarding electronic shareholder forums on small businesses or entities.

\* \* \* \* \*

Title: **Electronic Filing and Revision of Form D**

Citation: 17 CFR 230.502, 17 CFR 230.503, 17 CFR 232.100, 17 CFR 232.101, 17 CFR 232.104, 17 CFR 232.201, 17 CFR 232.202, and 17 CFR 239.500

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77s(a), 77z-2, 77z-3, 77sss, 77sss(a), 78c, 78c(b), 78d, 78j, 78l, 78m, 78n, 78o, 78o(d), 78t, 78u-5, 78w, 78w(a), 78ll, 78ll(d), 78mm, 80a-2(a), 80a-3, 80a-6(c), 80a-8,

80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-28, 80a-29, 80a-30, 80a-37, and 7201 *et seq.*; and 18 U.S.C. 1350

Description: The Commission adopted amendments mandating the electronic filing of information required by Securities Act Form D through the Internet. The Commission also adopted revisions to Form D and to Regulation D in connection with the electronic filing requirement. The revisions simplified and restructured Form D and updated and revised its information requirements.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-8891 (Feb. 6, 2008). The Commission requested comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 33-8814 (Jun. 29, 2007), but, as stated in the adopting release, no commenter responded to the request.

\* \* \* \* \*

Title: **Proposed Rule Changes of Self-Regulatory Organizations**

Citation: 17 CFR Part 240.19b-4, 17 CFR Part 240.19b-7, and 17 CFR Part 249.822

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

Description: The Commission adopted rule amendments to require Self-Regulatory Organizations (“SROs”) that submit proposed rule changes pursuant to Section 19(b)(7)(A) of the Exchange Act to file these rule changes electronically. In addition, the Commission adopted rule amendments to require SROs to post all such proposed rule changes on their websites. Together, the amendments are designed to expand the electronic filing by SROs of proposed rule changes, making it more efficient and cost effective, and to harmonize the process of filings made under Section 19(b)(7)(A) with that for filings made by SROs under Section 19(b)(1) of the Act.

Prior RFA Analysis: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34-55341 (Feb. 23, 2007). As stated in the adopting release, Release No. 34-57526 (Mar. 19,

2008), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

\* \* \* \* \*

Title: **Disclosure of Divestment by Registered Investment Companies in Accordance With Sudan Accountability and Divestment Act of 2007**

Citation: 17 CFR 294.331, 17 CFR 274.128, 17 CFR 294.330, and 17 CFR 274.101

Authority: 15 U.S.C. 78j(b), 78m, 78o(d), 78w(a), 78mm, 80a-8, 80a-13(c), 80a-24(a), 80a-29, and 80a-37

Description: The Commission adopted amendments to its forms under the Exchange Act and the Investment Company Act that required disclosure by a registered investment company that divests, in accordance with the Sudan Accountability and Divestment Act of 2007, from securities of issuers that the investment company determines, using credible information that is available to the public, conduct or have direct investments in certain business operations in Sudan. The Sudan Accountability and Divestment Act limits civil, criminal, and administrative actions that may be brought against a registered investment company that divests itself from such securities, provided that the investment company makes disclosures in accordance with regulations prescribed by the Commission.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IC-28254 (Apr. 24, 2008). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IC-28148 (Feb. 11, 2008), but, as stated in the adopting release, received no comments on that analysis.

\* \* \* \* \*

Title: **Definition of Eligible Portfolio Company under the Investment Company Act of 1940**

Citation: 17 CFR 270.2a-46

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

Description: The Commission adopted an amendment to a rule under the Investment Company Act to more closely align the definition of eligible portfolio company, and the investment activities of business development companies ("BDCs"), with the purpose that Congress intended. The amendment expanded the definition of eligible portfolio company to

include certain companies that list their securities on a national securities exchange.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IC-28266 (May 15, 2008). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IC-27539 (Oct. 25, 2006), but, as stated in the adopting release, received no comments on that analysis.

\* \* \* \* \*

Title: **Commission Guidance and Revisions to the Cross-Border Tender Offer, Exchange Offer, Rights Offerings, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions**

Citation: 17 CFR 230.162, 17 CFR 230.800, 17 CFR 230.802, 17 CFR 232.101, 17 CFR 239.25, 17 CFR 239.34, 17 CFR 239.42, 17 CFR 239.800, 17 CFR 240.13d-1, 17 CFR 240.13d-102, 17 CFR 240.13e-3, 17 CFR 240.13e-4, 17 CFR 240.14d-1, 17 CFR 240.14d-11, 17 CFR 240.14d-100, 17 CFR 240.14e-5, 17 CFR 240.16a-1, and 17 CFR 249.480

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77s(a), 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77sss(a), 77ttt, 78c, 78c(b), 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78o(d), 78p, 78q, 78s, 78t, 78u-5, 78w, 78w(a), 78x, 78ll, 78ll(d), 78mm, 80a-2(a), 80a-3, 80a-6(c), 80a-8, 80a-9, 80a-10, 80a-13, 80a-20, 80a-23, 80a-24, 80a-26, 80a-28, 80a-29, 80a-30, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350

Description: The Commission adopted changes to expand and enhance the utility of the cross-border exemptions for business combination transactions and rights offerings and to encourage offerors and issuers to permit U.S. security holders to participate in these transactions on the same terms as other target security holders. The Commission also set forth interpretive guidance on several topics. In two instances, the Commission extended the rule changes adopted in this release to apply to acquisitions of U.S. companies. The Commission also adopted changes to allow certain foreign institutions to file on Schedule 13G to the same extent as would be permitted for their U.S. counterparts, where specified conditions are satisfied. The Commission also adopted a conforming change to Rule 16a-1(a)(1) to include the foreign institutions eligible to file on Schedule 13G.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-8957 (Sept. 19, 2008). The Commission requested comment on the Initial Regulatory Flexibility Analysis (“IRFA”) included in the proposing release, Release No. 33-8917 (May 6, 2008), but, as stated in the adopting release, the Commission did not receive any public comments that responded directly to the IRFA or that dealt directly with the proposal’s impact on small entities.

\* \* \* \* \*

Title: **“Naked” Short Selling Antifraud Rule**

Citation: 17 CFR 240.10b-21

Authority: 15 U.S.C. 78b, 78c(b), 78f, 78i(h), 78j, 78k-1, 78o, 78o-3, 78q, 78q-1, 78s and 78w(a)

Description: The Commission adopted an antifraud rule under the Exchange Act to address fails to deliver securities that have been associated with “naked” short selling. The rule is intended to further evidence the liability of short sellers, including broker-dealers acting for their own accounts, who deceive specified persons about their intention or ability to deliver securities in time for settlement (including persons that deceive their broker-dealer about their locate source or ownership of shares) and that fail to deliver securities by settlement date.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission’s adoption of Release No. 34-58774 (Oct. 14, 2008). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-57511 (Mar. 17, 2008).

\* \* \* \* \*

Title: **Amendments to Regulation SHO**

Citation: 17 CFR 242.203

Authority: 15 U.S.C. 78b, 78c(b), 78i(h), 78j, 78k-1, 78o, 78q(a), 78q-1, 78w(a)

Description: The Commission adopted amendments to Regulation SHO under the Exchange Act. The amendments were intended to further reduce the number of persistent fails to deliver in certain equity securities by eliminating the options market maker exception to the close-out

requirement of Regulation SHO. As a result of the amendments, fails to deliver in threshold securities that result from hedging activities by options market makers are no longer be excepted from Regulation SHO's close-out requirement. The Commission also provided guidance regarding bona fide market making activities for purposes of the market maker exception to Regulation SHO's locate requirement.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 34-58775 (Oct. 14, 2008). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the re-proposing release, Release No. 34-56213 (Aug. 7, 2007).

\* \* \* \* \*

Title: **Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E**

Citation: 17 CFR 232.101, 17 CFR 232.201, and 17 CFR 270.0-2

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

Description: The Commission adopted several amendments to rules regarding the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Specifically, the Commission amended rules to make mandatory the electronic submission on EDGAR of applications for orders under any section of the Investment Company Act as well as Regulation E filings of small business investment companies and business development companies. The Commission also amended the electronic filing rules to make the temporary hardship exemption unavailable for submission of applications under the Investment Company Act. Finally, the Commission amended Rule 0-2 under the Investment Company Act, eliminating the requirement that certain documents accompanying an application be notarized and the requirement that applicants submit a draft notice as an exhibit to an application.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IC-28476 (Oct. 29, 2008). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IC-28042 (Nov. 1, 2007), but, as stated in the adopting release, received no comments on that analysis.

\* \* \* \* \*

Title: **Amendment to Municipal Securities Disclosure**

Citation: 17 CFR 240.15c2-12

Authority: 15 U.S.C. 78b, 78c(b), 78j, 78o(c), 78o-4, and 78w(a)(1)

Description: The Commission adopted amendments to Rule 15c2-12 under the Exchange Act relating to municipal securities disclosure. The amendments change certain requirements regarding the information that the broker, dealer, or municipal securities dealer acting as an underwriter in a primary offering of municipal securities must reasonably determine that an issuer of municipal securities or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the issuer's municipal securities, to provide. Specifically, the amendments require the broker, dealer, or municipal securities dealer to reasonably determine that the issuer or obligated person has agreed to provide the information covered by the written agreement to the Municipal Securities Rulemaking Board ("MSRB"), instead of to multiple nationally recognized municipal securities information repositories and state information depositories; and to provide such information in an electronic format and accompanied by identifying information as prescribed by the MSRB.

Prior RFA Analysis: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34-58255 (August 7, 2008). As stated in the adopting release, Release No. 34-59062 (December 15, 2008), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

\* \* \* \* \*

Title: **Modernization of Oil and Gas Reporting**

Citation: 17 CFR 210.4-10, 17 CFR 229.102, 17 CFR 229.801, 17 CFR 229.802, 17 CFR 229.1201, 17 CFR 229.1202, 17 CFR 229.1203, 17 CFR 229.1204, 17 CFR 229.1205, 17 CFR 229.1206, 17 CFR 229.1207, 17 CFR 229.1208, and 17 CFR 249.220f

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nmn, 77sss, 78a *et seq.*, 78c, 78i, 78j, 78j-1, 78l, 78m, 78n, 78o, 78o(d), 78q, 78u-5, 78w, 78w(a), 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31,

80a–31(c), 80a–37, 80a–37(a), 80a–38(a), 80a–39, 80b–3, 80b–11, 7201 *et seq.*, 7202, and 7262; and 18 U.S.C. 1350

Description: The Commission adopted revisions to its oil and gas reporting disclosures in Regulation S-K and Regulation S-X under the Securities Act and the Exchange Act, as well as Industry Guide 2. The revisions were intended to provide investors with a more meaningful and comprehensive understanding of oil and gas reserves to help them evaluate the relative value of oil and gas companies. The amendments were designed to modernize and update the oil and gas disclosure requirements to align them with current practices and changes in technology. The amendments concurrently aligned the full cost accounting rules with the revised disclosures. The amendments also codified and revised Industry Guide 2 in Regulation S-K. In addition, they harmonized oil and gas disclosures by foreign private issuers with the disclosures for domestic issuers.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-8995 (Dec. 31, 2008). The Commission requested comment on the Initial Regulatory Flexibility Analysis (“IFRA”) prepared in the proposing release, Release No. 33-8935 (Jun. 27, 2008), but, as stated in the adopting release, did not receive comments specifically addressing the impact of the proposed rules and amendments on small entities. However, several comments related to burdens that would be placed on all companies affected by the proposals and the Commission considered those comments.

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Title: **Indexed Annuities and Certain Other Insurance Contracts**

Citation: 17 CFR 240.12h-7

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

Description: The Commission adopted a new rule that exempts insurance companies from filing reports under the Exchange Act with respect to indexed annuities and other securities that are registered under the Securities Act, provided that certain conditions are satisfied, including that the securities are regulated under state insurance law, the issuing insurance company and its financial condition are subject to supervision and examination by a state insurance regulator, and the securities are not publicly traded.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 34-59221 (Jan. 8, 2009). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-58022 (June 25, 2008).

\* \* \* \* \*

Title: **Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies**

Citation: 17 CFR 230.159A, 17 CFR 230.482, 17 CFR 230.485, 17 CFR 230.497, 17 CFR 230.498, 17 CFR 232.304, 17 CFR 232.401, 17 CFR 232.10 et seq., 17 CFR 239.15A and 274.11A, 17 CFR 239.17b and 274.11c, and 17 CFR 239.23

Authority: 15 U.S.C. 77e, 77f, 77g, 77j, 77s, 77s(a), 77z-3, 80a-8, 80a-24(a), 80a-24(g), 80a-29, and 80a-37

Description: The Commission adopted amendments to the form used by mutual funds to register under the Investment Company Act and to offer their securities under the Securities Act in order to enhance the disclosures that are provided to mutual fund investors. The amendments require key information to appear in plain English in a standardized order at the front of the mutual fund statutory prospectus. The Commission also adopted rule amendments that permit a person to satisfy its mutual fund prospectus delivery obligations under Section 5(b)(2) of the Securities Act by sending or giving the key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet Web site. Upon an investor's request, mutual funds are also required to send the statutory prospectus to the investor. These amendments were intended to improve mutual fund disclosure by providing investors with key information in plain English in a clear and concise format, while enhancing the means of delivering more detailed information to investors. Finally, the Commission adopted additional amendments that were intended to result in the disclosure of more useful information to investors who purchase shares of exchange-traded funds on national securities exchanges.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IC-28584 (Jan. 13, 2009). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IC-28064 (Nov. 21, 2007), but, as stated in the adopting release, received no comments on that analysis.

\* \* \* \* \*

Title: **Interactive Data to Improve Financial Reporting**

Citation: 17 CFR 229.601, 17 CFR 232.11, 17 CFR 232.201, 17 CFR 232.202, 17 CFR 232.305, 17 CFR 232.401, 17 CFR 232.402, 17 CFR 230.144, 17 CFR 240.12b-25, 17 CFR 240.13a-14, 17 CFR 240.15d-14, 17 CFR 239.13, 17 CFR 239.16b, 17 CFR 239.33, 17 CFR 239.39, 17 CFR 239.40, 17 CFR 249.308a, 17 CFR 249.310, 17 CFR 249.322, 17 CFR 249.220f, 17 CFR 249.240f, 17 CFR 249.306, 17 CFR 232.405, 17 CFR 232.406T

Authority: 15 U.S.C. 77b, 77c, 77d, 77e, 77f, 77g, 77h, 77j, 77k, 77r, 77s, 77s(a), 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77sss(a), 77ttt, 78(a) *et seq.*, 78c, 78c(b), 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78o(d), 78p, 78q, 78s, 78t, 78u-5, 78w, 78w(a), 78x, 78ll, 78ll(d), 78mm, 80a-2(a), 80a-3, 80a-6(c), 80a-8, 80a-9, 80a-10, 80a-13, 80a-20, 80a-23, 80a-24, 80a-26, 80a-28, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350

Description: The Commission adopted rules requiring companies that prepare their financial statements in accordance with U.S. generally accepted accounting principles (U.S. GAAP), and foreign private issuers that prepare their financial statements using International Financial Reporting Standards as issued by the International Accounting Standards Board, to provide their financial statement information in interactive data format using the eXtensible Business Reporting Language. The interactive data is provided as an exhibit to periodic and current reports and registration statements, as well as to transition reports for a change in fiscal year. The format is intended to make financial information easier for investors to analyze, and also to help in automating regulatory filings and business information processing.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-9002 (Jan. 30, 2009). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Act Analysis included in the proposing release, Release No. 33-8924 (May 30, 2008).

\* \* \* \* \*

Title: **Amendments to Rules for Nationally Recognized Statistical Rating Organizations**

Citation: 17 CFR 240.17g-2, 17 CFR 240.17g-3, 17 CFR 240.17g-5, and 17 CFR 249b.300.

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350; and 15 U.S.C. 78a *et seq.*

Description: The Commission adopted amendments to certain rules and to a form applicable to nationally recognized statistical rating organizations (“NRSROs”). The amendments established additional recordkeeping and disclosure requirements for NRSROs, required NRSROs to furnish the Commission with an additional annual report, prohibited NRSROs from issuing or maintaining credit ratings subject to certain conflicts of interest, and required NRSROs to disclose additional information regarding the performance data for credit ratings and the procedures and methodologies used to determine credit ratings

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission’s adoption of Release No. 34-59342 (Feb. 2, 2009). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-57967 (June 16, 2008), but, as stated in the adopting release, received no comments on that analysis.

\* \* \* \* \*

Title: **Interactive Data for Mutual Fund Risk/Return Summary**

Citation: 17 CFR 230.485, 17 CFR 230.497, 17 CFR 232.11, 17 CFR 232.202, 17 CFR 232.401, 17 CFR 232.405, 17 CFR 232.10 et seq., 17 CFR 239.15A, and 17 CFR 232.274.11A

Authority: 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a), 77z3, 78c, 78l, 78m, 78n, 77nnn, 77sss, 78o(d), 78w(a), 78ll, 78mm, 80a-6(c), 80a-8, 80a-24, 80a-29, and 80a-37

Description: The Commission adopted rule amendments requiring mutual funds to provide risk/return summary information in a form that is intended to improve its usefulness to investors. Under the rules, risk/return summary information could be downloaded directly into spreadsheets, analyzed in a variety of ways using commercial off-the-shelf software, and used within investment models in other software formats. Mutual funds provide the risk/return summary section of their prospectuses to the Commission and on their Web sites in interactive data format using the eXtensible Business

Reporting Language (“XBRL”). The interactive data is provided as exhibits to registration statements and as exhibits to prospectuses with risk/return summary information that varies from the registration statement. The rules were intended not only to make risk/return summary information easier for investors to analyze but also to assist in automating regulatory filings and business information processing. Interactive data has the potential to increase the speed, accuracy, and usability of mutual fund disclosure, and eventually reduce costs. The Commission also adopted rules to permit investment companies to submit portfolio holdings information in the interactive data voluntary program without being required to submit other financial information.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission’s adoption of Release No. IC-28617 (Feb. 11, 2009). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IC-28298 (June 10, 2008).

\* \* \* \* \*

Title: **Amendments to Regulation SHO**

Citation: 17 CFR 242.204; 17 CFR 200.30-3

Authority: 15 U.S.C. 77g, 77o, 77q(a), 77s, 77s(a), 77sss, 78b, 78c, 78d, 78d-1, 78d-2, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78l(d), 78m, 78mm, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w, 78w(a), 78dd-1, 78mm, 80a-23, 80a29, 80a-37, 80b-11, and 7202

Description: The Commission adopted amendments to help further the goal of reducing fails to deliver by maintaining the reductions in fails to deliver achieved by the adoption of temporary Rule 204T, as well as other actions taken by the Commission. In addition, these amendments are intended to help further the goal of addressing abusive “naked” short selling in all equity securities. These goals will be furthered by requiring that, subject to certain limited exceptions, if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency it must immediately purchase or borrow securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the settlement day following the day the participant incurred the fail to deliver position. Failure to comply with the close-out requirement of this final rule is a violation of the rule. In addition, a participant that does not comply with this closeout requirement, and any broker-dealer from which it receives trades for clearance and settlement, will not be able to short sell the security either for itself or for the account of another, unless it has

previously arranged to borrow or borrowed the security, until the fail to deliver position is closed out.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission’s adoption of Release No. 34-60388 (Jul. 27, 2009). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-58773 (Oct. 14, 2008).

\* \* \* \* \*

Title: **Regulation S-AM: Limitations on Affiliate Marketing**

Citation: 17 CFR 248.101-128

Authority: Pub. L. No. 108-159, 117 Stat. 1952 (2003); 15 U.S.C. 78q, 78w, 78mm, 80a-30, 80a-37, 80b-4, and 80b-11

Description: The Commission adopted Regulation S-AM pursuant to Section 214 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), which required the Commission and other federal agencies to adopt rules implementing limitations on a person’s use of certain information received from an affiliate to solicit a consumer for marketing purposes, unless the consumer has been given notice and a reasonable opportunity and a reasonable and simple method to opt out of such solicitations. Regulation S-AM applies to investment advisers and transfer agents registered with the Commission, as well as brokers, dealers and investment companies.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission’s adoption of Regulation S-AM in Release Nos. 34-60423, IC-28842, and IA-2911 (Aug. 4, 2009). The Commission requested comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release Nos. 34-49985, IC-26494, and IA-2259 (July 8, 2004), but, as stated in the adopting release, received no comments concerning the impact on small entities or the Initial Regulatory Flexibility Analysis.

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Title: **References to Ratings of Nationally Recognized Statistical Rating Organizations**

Citation: 17 CFR 240.3a1-1; 17 CFR 242.300; 17 CFR 242.301; 17 CFR 249.638 (Form ATS-R); 17 CFR 249.821 (Form PILOT); 17 CFR 270.5b-3; and 17 CFR 270.10f-3

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77q(a), 77s, 77s(a), 77z-2, 77z-3, 77eee, 77ggg, 77nmn, 77sss, 77ttt, 78a et seq., 78b, 78c, 78d, 78e, 78f, 78g, 78g(c)(2), 78i, 78i(a), 78j, 78j-1, 78k, 78k-1, 78k-1(c), 78l, 78m, 78n, 78o, 78o(b), 78o(c), 78o(g), 78p, 78q, 78q(a), 78q(b), 78q(h), 78s, 78u-5, 78w, 78w(a), 78x, 78dd-1, 78ll, 78mm, 80a-1 et seq., 80a-20, 80a-23, 80a-29, 80a-34(d), 80a-37, 80a-39, 80b-3, 80b-4, 80b-11, 7201 et seq., and 18 U.S.C. 1350

Description: The Commission adopted amendments to the rules and forms noted above that removed references to credit ratings issued by NRSROs. As stated in Securities Exchange Act Release No. 34-60789 (Oct. 5, 2009), the Commission believes that the references to credit ratings in these rules and forms no longer serve their intended purpose, and that such references might have contributed to undue reliance on those ratings by market participants.

Prior RFA Analysis: Pursuant to Section 605(b) of the Regulatory Flexibility Act, the Commission certified that the rule would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the proposing release, Release No. 34-58070 (July 1, 2008). As stated in the adopting release, Release No. 34-60789 (Oct. 5, 2009), the Commission received no comments concerning the impact on small entities or the Regulatory Flexibility Act certification.

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Title: **Final Model Privacy Form under the Gramm-Leach-Bliley Act**

Citation: 17 CFR Part 248, Subpart A, and Appendix A to Subpart A

Authority: Pub. L. 109-351, 120 Stat. 1966 (2006); 15 U.S.C. 6804; 15 U.S.C. 78w, 80a-37(a), and 80b-11(a)

Description: The Commission adopted the Final Model Privacy Form under the GLBA pursuant to Section 728 of the Financial Services Regulatory Relief Act of 2006, which required the Commission and other federal agencies to jointly develop a comprehensible, clear and conspicuous, and succinct model form to provide customers of financial institutions a means of easily identifying a financial institution's information sharing practices and comparing those practices with others, and to provide financial institutions a safe harbor for satisfying disclosure requirements of rules implementing GLBA provisions under which financial institutions must provide initial and annual privacy notices to their customers. In connection with adopting the Model Privacy Form, the Commission also adopted a new Appendix A to Regulation S-P and amendments to Regulation S-P's

provisions regarding privacy notices provided by broker-dealers, investment advisers registered with the Commission, and investment companies.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of the Model Privacy Form as Form S-P in Release Nos. 34-61003, IA-2950, IC-28997 (Nov. 16, 2009). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release Nos. 34-55497, IA-2598, IC-27755 (Mar. 20, 2007).

\* \* \* \* \*

Title: **Amendments to Rules for Nationally Recognized Statistical Rating Organizations**

Citation: 17 CFR 240.17g-2, 17 CFR 240.17g-5, and 17 CFR 243.100

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

Description: The Commission adopted amendments to certain rules applicable to nationally recognized statistical rating organizations NRSROs. The amendments identify an additional conflict of interest relating to the issuance and maintenance of a credit rating of an asset-backed security that was paid for by an issuer, sponsor, or underwriter of the asset-backed security. The amendments specify that an NRSRO subject to this conflict of interest is prohibited from issuing a credit rating for the asset-backed security unless it takes certain actions designed to make the information given to the NRSRO hired to issue the rating available to NRSROs that were not hired to issue the rating. The information is intended to make it possible for non-hired NRSROs to determine credit ratings on asset-backed securities that are rated by hired NRSROs. The amendments also expanded disclosure requirements with respect to rating action histories of NRSROs.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. 34-61050 (Nov. 23, 2009). The Commission solicited comment on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. 34-59343 (Feb. 2, 2009), but, as stated in the adopting release, received no comments on that analysis.

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**Title: Proxy Disclosure Enhancements**

**Citation:** 17 CFR 229.401, 17 CFR 229.402, 17 CFR 229.407, 17 CFR 240.14a-101, 17 CFR 249.308, 17 CFR 249.308a, 17 CFR 249.310, 17 CFR 239.15A and 274.11A, 17 CFR 239.14 and 274.11a-1, and 17 CFR 239.17a and 274.11b

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78c(b), 78i, 78j, 78l, 78m, 78n, 78o, 78o(d), 78u-5, 78w, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-20, 80a-24, 80a-26, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350

**Description:** The Commission adopted amendments to enhance disclosure provided in connection with proxy solicitations and other reports. These amendments require new or revised disclosures with regard to compensation policies and practices that present material risks to the company; stock and option awards of executives and directors; director and nominee qualifications and legal proceedings; board leadership structure; the board's role in risk oversight; and potential conflicts of interest of compensation consultants that advise companies and their boards of directors. The amendments apply to disclosure provided in proxy and information statements, annual reports and registration statements under the Exchange Act, and registration statements under the Securities Act as well as the Investment Company Act. The amendments also transferred from Forms 10-Q and 10-K to Form 8-K the requirement to disclose shareholder voting rights.

**Prior RFA Analysis:** A Final Regulatory Flexibility Act Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the adoption of Release No. 33-9089 (Dec. 16, 2009). The Commission requested comment on the Initial Regulatory Flexibility Act Analysis included in the proposing release, Release No. 33-9052 (July 10, 2009), but received no comments specifically addressing it. Other comments received that addressed aspects of the proposed rule that could potentially affect small entities were considered in the proposing release, however.

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**Title: Custody of Funds or Securities of Clients by Investment Advisers**

**Citation:** 17 CFR 275.204-2, 17 CFR 275.206(4)-2, 17 CFR 279.1, and 17 CFR 279.8

Authority: 15 U.S.C. 80b-6(4) 80b-3(c)(1), 80b-4, 80b11 and 80b-11(a)

Description: The Commission adopted amendments to the custody and recordkeeping rules under the Investment Advisers Act of 1940 and related forms. The amendments were designed to provide additional safeguards under the Advisers Act when a registered adviser has custody of client funds or securities by requiring such an adviser, among other things: to undergo an annual surprise examination by an independent public accountant to verify client assets; to have the qualified custodian maintaining client funds and securities send account statements directly to the advisory clients; and unless client assets are maintained by an independent custodian (i.e., a custodian that is not the adviser itself or a related person), to obtain, or receive from a related person, a report of the internal controls relating to the custody of those assets from an independent public accountant that is registered with and subject to regular inspection by the Public Company Accounting Oversight Board. Finally, the amended custody rule and forms provide the Commission and the public with better information about the custodial practices of registered investment advisers.

Prior RFA Analysis: A Final Regulatory Flexibility Analysis was prepared in accordance with 5 U.S.C. 604 in conjunction with the Commission's adoption of Release No. IA-2968 (Dec. 30, 2009). In the adopting release, the Commission considered comments received on the Initial Regulatory Flexibility Analysis included in the proposing release, Release No. IA-2876 (May 20, 2009).

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By the Commission.

Brent J. Fields  
Secretary

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