SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231, 241, 271, and 276

Release No. 33-7288; 34-37182; IC-21945; IA-1562 File No. S7-13- 96

May 6, 1996

USE OF ELECTRONIC MEDIA BY BROKER-DEALERS, TRANSFER AGENTS, AND INVESTMENT ADVISERS FOR DELIVERY OF INFORMATION; ADDITIONAL EXAMPLES UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, AND INVESTMENT COMPANY ACT OF 1940

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation; Solicitation of Comments.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing its views with respect to the use of electronic media by broker-dealers, transfer agents, and investment advisers to deliver information as required under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940. This interpretation is intended to provide guidance in using electronic media to fulfill broker-dealers' obligations to deliver information to customers, transfer agents' obligations to deliver information upon written request, and investment advisers' disclosure delivery obligations. The Commission also is supplementing its interpretive release published on October 6, 1995, with seven additional examples illustrating the application of that earlier release to information delivery under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940. Finally, the Commission is seeking comment on the issues discussed in this release.

DATES: This interpretation is effective on [insert date of publication in the Federal Register].

Comments must be received on or before [insert date 45 days after date of publication in the Federal Register].

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6-9, Washington, D.C. 20549. Comments also may be submitted electronically at the following electronic mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7-13-96. This file number should be included on the subject line if comments are submitted using electronic mail. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Elizabeth King, Special Counsel, or Jack Drogin, Special Counsel (concerning Rules 10b-10, 10b-16, 15c1-5, 15c1-6, 15c2-12, and 15g-2 through 15g-9 under the Securities Exchange Act of 1934, and the release generally), 202/942-0073, Office of Chief Counsel, Mail Stop 5-10; Sheila Slevin, Assistant Director (concerning information about technology generally), 202/942- 0796, Mail Stop 5-1; Michael Walinskas, Special Counsel (concerning Rule 9b-1 under the Securities Exchange Act of 1934), 202/942-0188, Mail Stop 5-1; Elizabeth MacGregor, Special Counsel (concerning Rule 11Ac1-3 under the Securities Exchange Act of 1934), 202/942-0158, Mail Stop 5-1; Alan Reed, Attorney (concerning Rules 15c2-8 and 15c2-11 under the Securities Exchange Act of 1934), 202/942-0772, Mail Stop 5-1; Michael A. Macchiaroli, Associate Director (concerning Exchange Act Rules 8c-1, 15c2-5, 15c3-2, 15c3-3, and 17a-5), 202/942-0132, Mail Stop 5-1; Jerry Carpenter, Assistant Director (concerning Exchange Act Rule 17Ad-5), 202/942-4187, Mail Stop 5-1, Division of Market Regulation; Jack W. Murphy, Chief Counsel or Amy Doberman, Assistant Chief Counsel (concerning the Investment Advisers Act of 1940 and the examples illustrating application of electronic delivery to mutual funds), 202/942-0660, Mail Stop 10-6,

Division of Investment Management; Joseph Babits, Special Counsel (concerning the examples regarding application of electronic delivery to issuers other than mutual funds), 202/942-2910, Mail Stop 3-7, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 6, 1995, the Commission published an interpretive release expressing its views on the electronic delivery of documents, such as prospectuses, annual reports to shareholders, and proxy solicitation materials under the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act"), and the Investment Company Act of 1940 ("October Interpretive Release").-[1]- In the October Interpretive Release, the Commission directed the Division of Market Regulation ("Division") to review Rule 10b-10 and other rules it administers under the Exchange Act to determine if and under what conditions electronic delivery of information required by those rules is feasible.-[2]- Accordingly, the Division conducted a review of the rules it administers under the Exchange Act. Based on that review, the Commission is issuing this release, which expresses its views with respect to the delivery of information through electronic media in satisfaction of broker-dealer and transfer agent requirements to deliver information under the Exchange Act and the rules thereunder. In conjunction with the results of that review, the Commission is publishing its views on the use of electronic media with respect to the disclosure delivery obligations of investment advisers and persons acting on their behalf-[3]- under the Investment Advisers Act of 1940 ("Advisers Act").

This release addresses only the procedural aspects under the federal securities laws of the delivery of information by broker- dealers, transfer agents, and investment advisers. It does not affect the rights and responsibilities of any party under the federal securities laws.-[4]- This release also does not address or affect the applicability of any self-regulatory organization ("SRO") rules,-[5]- or of any state laws.

Broker-dealers, transfer agents, and investment advisers, therefore, are reminded to consider the applicability of SRO rules and state laws in connection with delivering information electronically.-[6]- The release further does not affect any rules promulgated under the Exchange Act by agencies other than the Commission.-[7]-

Finally, this interpretation does not address the existing paper filing requirements with the Commission,-[8]- other regulatory authorities,-[9]- and other third parties.-[10]- II. Use of Electronic Media

In the October Interpretive Release, the Commission noted that the electronic distribution of information provides numerous benefits and that the use of this type of medium is growing among all participants in the securities industry. The Commission concluded that issuers, third parties (such as persons making tender offers or soliciting proxies), and persons acting on behalf of such third parties may use electronic media, in accordance with the guidance provided in the October Interpretive Release, to deliver information. In addition, the Commission believes that broker-dealers, transfer agents, and investment advisers may satisfy their delivery obligations under the Exchange Act and the Advisers Act by using electronic media as an alternative to paper-based media.-[11]-

This interpretation is intended to provide broker-dealers, transfer agents, and investment advisers with guidance in using electronic media to satisfy delivery requirements under the federal securities laws. This release generally covers those requirements that obligate broker-dealers to deliver information to customers, obligate transfer agents to deliver information upon written request, and obligate investment advisers to deliver information to their clients or prospective clients. Broker- dealers and investment advisers also may rely on this interpretation in obtaining customers' and clients' consents as required under certain provisions of the Exchange and Advisers Acts and the rules thereunder.-[12]- A discussion of the information delivery requirements covered by this interpretation is provided in section III of this release ("Covered Delivery Requirements"). Unless the Commission indicates otherwise, this interpretive release also is intended to apply to all rules promulgated under the Exchange and Advisers Acts,

including rules promulgated subsequent to the issuance of this release, requiring broker-dealers or investment advisers to deliver information to customers or clients, and to rules requiring transfer agents to deliver information in response to written requests.

A. General

This discussion is intended to complement the discussion in the October Interpretive Release and to provide general guidance concerning issues under the Exchange and Advisers Acts. The Commission believes that broker-dealers, transfer agents, and investment advisers should be able to satisfy their obligations under the federal securities laws to deliver information required under the Covered Delivery Requirements by electronic distribution. The framework set forth in the October Interpretive Release is applicable to such electronic distribution.

In the October Interpretive Release, the Commission stated that it would view information distributed through electronic means as satisfying the delivery or transmission requirements of the federal securities laws if such distribution results in the delivery to the intended recipients of substantially equivalent information as such recipients would have if the required information were delivered to them in paper form.-[13]- The Commission is not specifying the electronic medium or source that broker-dealers, transfer agents, and investment advisers may use. Like paper documents, electronically delivered documents must be prepared and delivered in a manner consistent with the federal securities laws. Regardless of whether information is delivered in paper form or by electronic means, it should convey all material and required information. If a paper document is required to present information in a certain order, for instance, then the information delivered electronically should be in substantially the same order.-[14]-

Moreover, regardless of whether information is delivered in paper or electronic form, broker-dealers and investment advisers must reasonably supervise firm personnel with a view to preventing violations.-[15]- Thus, broker-dealers and investment advisers should consider the need for systems and procedures to deter or detect misconduct by firm personnel in connection with the delivery of information, whether by electronic or paper means.-[16]-

The Commission believes that, as a matter of policy, a person who has a right to receive a document under the federal securities laws and chooses to receive it electronically, should be provided with the information in paper form whenever specifically requesting paper.-[17]-

In the October Interpretive Release, the Commission discussed issues of notice and access that should be considered in determining whether the legal requirements pertaining to delivery or transmission of documents have been satisfied,-[18]- and stated that persons using electronic delivery of information should have reason to believe that any electronic means so selected will result in the satisfaction of the delivery requirements.-[19]- The Commission believes that broker-dealers, transfer agents, and investment advisers should apply the same considerations in using electronic media to satisfy their delivery obligations under the Covered Delivery Requirements.

1. Notice

Broker-dealers, transfer agents, and investment advisers providing information electronically should consider the extent to which electronic communication provides timely and adequate notice that such information is available electronically.-[20]- When information is delivered on paper through the postal mail, recipients most likely will be made aware that they have received information that they may wish to review and, therefore, separate notice is not necessary. Information transmitted through electronic media, however, may not always provide a similar likelihood of notice that information has been sent that the recipient may wish to review.-[21]- Broker-dealers, transfer agents, and investment advisers, therefore, should consider whether it is necessary to supplement the electronic communication with another communication that would provide notice similar to that provided by delivery in paper through the postal mail.

2. Access

The Commission believes that customers, securities holders, and clients who are provided information through electronic delivery from broker-dealers, transfer agents, and investment advisers should have access to that information comparable to that which would be provided if the information were delivered in paper form. Thus, the use of a particular medium should not be so burdensome that intended recipients cannot effectively access the information provided. Also, persons to whom information is sent electronically should have an opportunity to retain the information through the selected medium or have ongoing access equivalent to personal retention.-[22]-

3. Evidence to Show Delivery

Providing information through postal mail provides reasonable assurance that the delivery requirements of the federal securities laws have been satisfied. The Commission believes that broker-dealers, transfer agents, and investment advisers similarly should have reason to believe that electronically delivered information will result in the satisfaction of the delivery requirements under the federal securities laws. Thus, whether using paper or electronic media, broker-dealers, transfer agents, and investment advisers should consider the need to establish procedures to ensure that applicable delivery obligations are met.

Broker-dealers, transfer agents, and investment advisers may be able to evidence satisfaction of delivery obligations, for example, by: (1) obtaining the intended recipient's informed consent-[23]- to delivery through a specified electronic medium, and ensuring that the recipient has appropriate notice and access, as discussed above; (2) obtaining evidence that the intended recipient actually received the information, such as by an electronic mail return-receipt or by confirmation that the information was accessed, downloaded, or printed;-[24]- or (3) disseminating information through certain facsimile methods. In order to ensure that information is delivered as intended, broker-dealers, transfer agents, and investment advisers delivering information using either electronic or paper-media should take reasonable precautions to ensure the integrity and security of that information.-[25]-

B. Personal Financial Information

Certain information that broker-dealers, transfer agents, and investment advisers deliver is specific to a particular person's personal financial matters ("Personal Financial Information"). For example, the information reported to customers under Exchange Act Rule 10b-10 relates to specific securities transactions and includes the identity and number of shares bought or sold and the net dollar price for the shares. Under Exchange Act Rule 10b-16, a broker-dealer that imposes finance charges on a customer's account during a quarterly period must deliver a quarterly statement disclosing, among other things, the account's beginning and closing balances, debits and credits entered during the period, the interest charged, and the rate or rates of interest. Similarly, under Advisers Act Rule 206(3)-2, investment advisers engaging in agency cross transactions involving clients are required to send the clients disclosure about those transactions.-[26]-

1. Confidentiality and Security

Broker-dealers, transfer agents, and investment advisers sending Personal Financial Information should take reasonable precautions to ensure the integrity, confidentiality, and security of that information, regardless of whether it is delivered through electronic means or in paper form. The Commission believes that broker-dealers, transfer agents, and investment advisers transmitting Personal Financial Information electronically must tailor those precautions to the medium used in order to ensure that the information is reasonably secure from tampering or alteration.

2. Consent

Because of the need to maintain the confidentiality and security of Personal Financial Information, it is important that the intended recipient is willing to accept the delivery of such information through electronic media and has actual notice that the Personal Financial Information will be delivered electronically. Therefore, in order to ensure that Personal Financial Information can be delivered in a

manner that maintains the information's confidentiality, unless a broker-dealer, transfer agent, or investment adviser is responding to a request for information that is made through electronic media or the person making the request specifies delivery through a particular electronic medium, the broker-dealer, transfer agent, or investment adviser should obtain the intended recipient's informed consent prior to delivering Personal Financial Information electronically.-[27]- This consent will ensure that the intended recipient is willing to accept the delivery of Personal Financial Information through electronic media and has actual notice that the Personal Financial Information will be delivered electronically. The Commission believes that such consent by the customer or client to the delivery of Personal Financial Information may be made either by a manual signature or by electronic means.

C. Communications From Broker-Dealers' Customers and Investment Advisers' Clients

In addition to requirements to deliver information, the Exchange Act and the Advisers Act provide for broker-dealers and investment advisers to "receive" or "obtain" responses from their customers or clients. For example, Exchange Act Rules 8c-1 and 15c2-1 require, under certain circumstances, broker-dealers to obtain a customer's written consent in order to hypothecate securities. Similarly, under the Advisers Act, certain provisions call for clients to consent to a transaction or acknowledge receipt of certain disclosures.-[28]- The Commission generally views an electronic communication from a customer to a broker-dealer or from a client to an investment adviser as satisfying the requirements for such written consent or acknowledgement.-[29]-

D. Electronic Transmission of Non-Required Disclosure

The guidance provided above is intended to permit broker- dealers, transfer agents, and investment advisers to comply with their delivery obligations under the federal securities laws when using electronic media. This interpretation does not apply to the electronic delivery of non-required information that in some cases is being provided voluntarily to customers, securities holders, and clients-[30]- in that it is not necessary (although it is, of course, permitted) to conform the electronic delivery of such information to the guidance in this release. Nevertheless, the Commission urges broker-dealers, transfer agents, and investment advisers to take into consideration the need to implement security measures when using electronic media to provide personal financial information.

The staff also has received inquiries about the permissibility of using various electronic media to disseminate advertisements for an investment adviser's services or other information that is not subject to a delivery requirement. Such communications are permissible, subject to the same requirements and restrictions that apply to such communications in paper. For example, electronically disseminated advertisements are subject to the same prohibitions against misleading disclosure as advertisements in paper.-[31]- Materials concerning an adviser that are potentially available to ten or more persons through an electronic system would be considered subject to the recordkeeping requirements applicable to such communications.-[32]- Similarly, if an adviser uses a publicly available electronic medium such as a World Wide Web site to provide information about its services, the adviser would not qualify for the exemption from registration in section 203(b)(3) of the Advisers Act. That exemption is available only if, among other things, an adviser does not hold itself out generally to the public as an investment adviser.

III. Covered Delivery Requirements

For clarity, below is a list of current rules under the Exchange Act and requirements under the Advisers Act to which broker-dealers, transfer agents, and investment advisers may apply the guidance provided in this interpretation. The Commission believes that the list sets forth all of the rules that require or permit communications between broker-dealers, transfer agents, investment advisers and customers, securities holders, and clients under the Exchange and Advisers Acts.-[33]- The interpretation in this release is intended to cover all optional and required communications under the Exchange and Advisers Acts between broker-dealers, transfer agents, and investment advisers, and customers, securities holders, and clients.-[34]-

A. Exchange Act

Subject to the guidelines in this release, broker-dealers and transfer agents may fulfill their requirements to deliver information to customers and securities holders under the following Exchange Act rules:-[35]-

* Rule 8c-1, which requires broker-dealers to obtain customers' written consent in order to hypothecate securities under circumstances that would permit the commingling of customers' securities and to give written notice to a pledgee that, among other things, a security pledged is carried for the account of a customer.-[36]-

* Rule 9b-1, which, among other things, requires a broker-dealer to furnish to each customer, and keep current, an options disclosure document, prior to accepting an order to purchase or sell an option on behalf of that customer.-[37]-

* Rule 10b-10, which requires a broker-dealer to give or send confirmation information to customers.-[38]- In addition, broker-dealers must furnish to customers upon written request information such as the factors that affect the yield calculation related to asset- based securities.-[39]-

* Rule 10b-16, which requires both initial and periodic written disclosure of the credit terms of margin loans.-[40]-

* Rule 11Ac1-3, which requires a broker-dealer to deliver to each customer, upon opening a new account and on an annual basis thereafter, an account statement disclosing the broker-dealer's policies relating to payment for order flow and its order routing policies.-[41]-

* Rule 15c1-5, which requires, under specified circumstances, written disclosure of control if a broker-dealer or municipal securities dealer is controlled by, controlling, or under common control with the issuer of a security.-[42]-

* Rule 15c1-6, which requires a broker-dealer or municipal securities dealer receiving advisory fees to disclose any participation or financial interest in the distribution of a security at or before the completion of a transaction in such security for the account of a customer.-[43]-

* Rule 15c2-1, which requires broker-dealers to obtain customers' written consent in order to hypothecate securities under circumstances that would permit the commingling of customers' securities.-[44]-

* Rule 15c2-5, which requires a written statement making disclosures prior to effecting transactions in special insurance premium funding accounts that would involve an extension or arrangement of credit, as well as retaining for its files, a written statement setting forth the basis for making a determination that the arrangement is suitable for the customer.-[45]-

* Rule 15c2-11, with regard to the requirement that broker-dealers make certain information enumerated in the rule reasonably available upon request.-[46]-

* Rule 15c2-12, with regard to the requirements that municipal securities underwriters provide, upon request, a preliminary official statement (if one exists) and a final official statement.-[47]- * Rule 15c3-2, which requires a broker-dealer to give or send to its customers a written notification of a free credit balance, that the broker-dealer may use that free credit balance in its business operations, and that the funds are payable upon demand of the customer.-[48]-

* Rule 15c3-3, which requires that broker-dealers obtain repurchase agreements in writing and confirm in writing the specific securities that are the subject of hold in custody repurchase agreements.-[49]-

* Rules 15g-3 through 15g-8, which require a broker- dealer, among other things, to disclose to its customers, both prior to effecting a transaction in a penny stock and on the written confirmation, bid and ask quotations and broker-dealer and associated person compensation.-[50]-

* Rule 17a-5, which requires a broker-dealer to send to its customers audited and unaudited financial statements.-[51]-

* Rule 17Ad-5, which requires a transfer agent to respond within certain time frames to written requests for the status of items presented for transfer, for acknowledgement of transfer instructions, for confirmation of a transfer agent's possession of a certificate, for a transcript of a person's account, or for dividend and interest payments.-[52]-

B. Advisers Act

* Section 205(a)(2) of the Advisers Act, which requires an investment adviser to obtain its client's consent to the assignment of an advisory contract.-[53]-

* Section 205(a)(3) of the Advisers Act, which requires an investment adviser to notify its clients, if the adviser is organized as a partnership and there is a change in members of partnership.-[54]-

* Section 206(3) of the Advisers Act, which prohibits certain principal and agency transactions with a client without prior written disclosure about the transaction and consent of the client.-[55]-

* Rule 204-3, which requires investment advisers to deliver a written disclosure statement, or "brochure," to clients at least 48 hours before entering into an advisory contract, unless the client has the right to terminate the contract without penalty within five business days.-[56]- In addition, investment advisers are required, except in certain cases, to make available "without charge" updates to its brochure.-[57]-

* Rule 205-3(d), which requires disclosure regarding advisory arrangements involving performance fees.-[58]-

* Rule 206(3)-2, which permits agency cross transactions, provided that the investment adviser provides general written disclosure about its role in the transactions, receives from clients consent to agency cross transactions, and sends both written confirmation of each transaction and an annual written disclosure statement.-[59]-

* Rule 206(4)-2, which requires certain disclosure relating to adviser custody of client assets.-[60]-

* Rule 206(4)-3, which requires certain disclosures to be made by solicitors who receive cash solicitation fees from advisers and a signed and dated acknowledgement from clients of the receipt of the investment advisers and solicitors written disclosure statements.-[61]-

IV. Additional Securities Act, Exchange Act, and Investment Company Act Examples

The October Interpretive Release included a series of examples illustrating the general concepts set forth earlier in that release in order to provide guidance in applying those concepts to specific facts and circumstances. The Commission is publishing here the following, additional examples to provide further guidance and illustration. These examples are based on questions that have been raised with the staff by industry representatives since the publication of the October Interpretive Release. Any party (whether or not a registered investment company) may look to these examples for guidance.

(1) Company XYZ places a prospectus for any securities offering on its electronic mail system. Company XYZ also uses its electronic mail system to disseminate documents required under the Exchange Act. Employees use the company's electronic mail in the ordinary course of performing their duties as employees and ordinarily are expected to log-on to electronic mail routinely to receive mail and communications. Those employees who do not log-on have alternative means of receiving electronic mail messages, such as having them sent to secretaries or co-workers who then deliver them to the employee. The electronic mail either includes the actual document or announces the availability of the document and provides information as to how to access the document through the local area network. The electronic mail also prominently states that a paper version of the document is available upon request. This would satisfy delivery obligations with respect to employees who use the company's electronic mail system in the course of performing their duties or who are expected to have alternative means made available to receive electronic mail messages.

(2) Company XYZ places a notice announcing its unregistered Dividend Reinvestment Plan-[62]- on its Internet Web site under a menu heading "Dividend Reinvestment Plan." The announcement also contains the phone number of the Company's agent (which is independent from the Company) from whom additional information regarding the operation of the Dividend Reinvestment Plan can be obtained. Additionally, the Company's Internet Web site contains a hypertext link to the independent agent's Internet Web site where a brochure describing the operation of the Dividend Reinvestment Plan and an enrollment card can be obtained.

This would be permissible, so long as the information on the Company's Internet Web site is limited to the announcement of the unregistered Dividend Reinvestment Plan and the name and address of the independent agent from whom additional information can be obtained. (This would be analogous to the communications that an issuer of an unregistered plan could make in paper format.) As with communications in paper format, the Company may not use its Internet Web site to advertise the Dividend Reinvestment Plan or its benefits. Further, the use of a hypertext link to the home page of the independent agent would be permitted; however, the Company could not provide a hypertext link directly to the Dividend Reinvestment Plan materials.

(3) Brokerage firm ABC, a recordholder of Company XYZ's common stock, received consents from beneficial holders of Company XYZ's common stock for electronic delivery of Company XYZ's annual report and proxy materials and for electronic processing of voting instructions. These customers are provided with the Internet Web site address where Company XYZ's annual report and proxy materials are located and the Internet Web site address where they can provide their voting instructions electronically to the brokerage firm.

The electronic processing of voting instructions from beneficial holders and the electronic voting of proxies would be consistent with the proxy rules. Issuers and others are reminded to consider any applicable state laws or self-regulatory organization rules.

(4) A fund makes supplemental sales literature and its prospectus available through a commercial on-line service. Under section 5(b) of the Securities Act, sales literature, whether in paper or electronic form is required to be preceded or accompanied by a final prospectus meeting the requirements of section 10(a) of the Securities Act. By contrast, an advertisement satisfying the requirements of Securities Act Rule 134 or 482 need not be preceded or accompanied by a prospectus. Users could click on a box in the supplemental sales literature to have the prospectus downloaded or to request that a prospectus be mailed. While the system permits the sales literature to be viewed on-line, it does not allow users to view the prospectus. Unlike the system in example 36 in the October Interpretive Release, this system would not require that a user have downloaded or printed the prospectus before viewing the supplemental sales literature. Users accessing the supplemental sales literature would give specific consent to electronic delivery of the prospectus.

This would not satisfy the prospectus delivery requirement because there would not be sufficient access to the prospectus. Because the system does not give users the opportunity to view the prospectus, it would lack the sort of reasonably comparable access to the prospectus and the sales literature present in examples 14, 15, and 35 in the October Interpretive Release. The opportunity to request that a

prospectus be mailed or downloaded would not, under current technology, be considered to give investors sufficient access to the prospectus. Instead, it would be analogous to giving investors sales literature in paper with a toll-free telephone number for requesting the prospectus: under those circumstances the prospectus would be received later and would not be considered to have preceded or accompanied the sales literature.-[63]-

(5) A fund places its prospectus on its site on the World Wide Web or some other electronic system. Shareholders provide a written, revocable consent to receive prospectuses electronically through the system. The consent informs shareholders that the current version of each prospectus will be available continuously on the system and that the fund will use the quarterly account statement or quarterly newsletter as the means of notification of prospectus amendments. It also states that another means of notification may be used, but only after shareholders have been notified of the change by the then current means of notification.-[64]- The fund replaces its prospectus with an annual amendment updating the fund's financial information and making other changes.-[65]- The fund has provided notification that the prospectus will be updated by including notification in the preceding account statement or shareholder newsletter; the notification provides the approximate date on which the amendment will be available. A subsequent amendment to the fund's prospectus reflects the addition of a redemption fee.

Notification of the prospectus amendment has been included in the preceding statement or newsletter.-[66]-

Just as the use of a newsletter or statement in example 46 in the October Interpretive Release constituted sufficient notice for effective delivery of the semi-annual reports required under the Investment Company Act of 1940, the use of a newsletter or statement here would constitute sufficient notice for effective delivery with respect to the scheduled prospectus update.

(6) A fund's on-line prospectus has the same text as the paper version, but the text appears in a different format. For example, text that appears as a block in the margin of a page in the paper prospectus appears in a box in the flow of the text in the electronic version. The fund does not make a separate filing under Securities Act Rule 497 with respect to the electronic version.

The mere difference in format without any difference in text would not qualify the electronic version as a different "form of prospectus" for which filing is required.

(7) An investment company produces both an electronic version (such as a CD-ROM) and a paper version of its prospectus. Each version contains all information required by, and otherwise complies with, the applicable form and all other applicable provisions of the federal securities laws. The electronic version contains a movie that does not appear in the paper version. Each version of the prospectus indicates that there may be other versions of the prospectus and, if the issuer determines to make such other versions available, provides information on how to obtain such other versions.-[67]- The paper version does not include a summary or transcript of the movie in the electronic version. Both versions of the prospectus are filed with the Commission as part of the company's registration statement, or separately pursuant to Rule 497.-[68]-

The use of either version of the prospectus to satisfy delivery requirements would be permissible.-[69]- The issuer (or other party to whom the law assigns the responsibility) remains responsible for ensuring that each version satisfies applicable statutory requirements.-[70]-

V. Solicitation of Comments

Any interested person wishing to submit written comments relating to the views expressed in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6-9, Washington, D.C. 20549. Comments also may be submitted electronically at the following electronic mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7-13-96. This file number should be included on the subject line if comments are submitted using electronic mail. Comment is requested not only on the

specific issues discussed in detail in the release, but on any other issues that should be considered in connection with facilitating the use of electronic media by broker-dealers, transfer agents, and investment advisers. Comment is sought from both the point of view of the sender and the intended recipient. The Commission further requests comment on any competitive burdens that may result from this interpretation. Comments must be received on or before [insert date 45 days after date of publication in the Federal Register]. Comments received will be available for public inspection and copying in the Commission's public reading room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

List of Subjects

17 CFR Parts 231 and 241 Securities.

17 CFR Parts 271 and 276

Investment companies, Securities.

Amendment to the Code of Federal Regulations

The Commission is amending Title 17, Chapter II of the Code of Federal Regulations in the manner set forth below:

PART 231 - INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 231 is amended by adding Release No. 33-7288 and the release date of May 9, 1996 to the list of interpretive releases.

PART 241 - INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 241 is amended by adding Release No. 34-37182 and the release date of May 9, 1996 to the list of interpretive releases.

PART 271 - INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 271 is amended by adding Release No. IC-21945 and the release date of May 9, 1996 to the list of interpretive releases.

PART 276 - INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 276 is amended by adding Release No. IA-1562 and the release date of May 9, 1996 to the list of interpretive releases.

By the Commission.

Jonathan G. Katz Secretary

Dated: May 9, 1996

FOOTNOTES

-[1]- Securities Act Release No. 7233 (Oct. 6, 1995), 60 FR 53458 (Oct. 13, 1995) (hereinafter "October Interpretive Release"). In a companion release, the Commission proposed technical amendments to certain of its rules that currently are premised on the distribution of paper documents. Securities Act Release No. 7234 (Oct. 6, 1995), 60 FR 53467 (Oct. 13, 1995). Today the Commission is adopting these technical amendments substantially as proposed. Securities Act Release No. 7289 (May 9, 1996).

-[2]- October Interpretive Release, supra note 1, at 53459, n.12.

-[3]- The term investment adviser is used in the rest of this release to refer to both investment advisers and persons acting on their behalf (including any solicitor receiving cash compensation from an adviser in accordance with Advisers Act Rule 206(4)-3, 17 CFR 275.206(4)-3).

-[4]- The substantive requirements and liability provisions of the federal securities laws apply equally to electronic and paper-based media. For example, the antifraud provisions of the Exchange Act and Rule 10b-5 thereunder, as well as section 206 of the Advisers Act and the rules thereunder, apply to information delivered and communications transmitted electronically, to the same extent as they apply to information delivered in paper form. See October Interpretive Release, supra note 1, at 53459, n.11. In addition, broker-dealers, transfer agents, and investment advisers continue to be subject to their respective recordkeeping requirements under Exchange Act Rules 17a-3 and 17a-4, 17 CFR 240.17a-3 and 240.17a-4, Exchange Act Rules 17Ad-6 and 16Ad-7, 17 CFR 240.17Ad-6 and 240.17Ad-7, and Advisers Act Rule 204-2, 17 CFR 275.204-2.

The Commission proposed for comment amendments to the broker-dealer record preservation rule, which would permit broker-dealers to employ, under certain conditions, optical storage technology to maintain required records. See Exchange Act Release No. 32609 (July 9, 1993), 58 FR 38092 (July 15, 1993) ("Proposing Release"). At the time these amendments were proposed, concerns were expressed that optical disk images would make it difficult, from an examination and discovery perspective, to detect alterations made to handwritten records and to records containing handwritten text. To address these concerns, the Proposing Release solicited comments on the adequacy of optical disk technology to preserve handwritten records or records that contain handwritten text.

Simultaneous with the issuance of the Proposing Release, the Division of Market Regulation, with the Commission's concurrence, issued a no-action letter permitting broker-dealers to use optical disk technology immediately. See Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC to Mr. Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, Securities Industry Association, Inc., (June 18, 1993). The no-action letter permits the optical storage of all paper records, including handwritten records, except those records required to be made under paragraphs (a)(6) and (a)(7) of Rule 17a-3 (proprietary and customer order tickets).

The Commission's request for comment in the Proposing Release regarding handwritten records was in no way intended to limit reliance on the no-action letter. In addition, the Commission notes that paperless order tickets (i.e., those generated by computers) may, under the no-action letter, be stored on optical disks. The Commission understands that most of the large firms generate paperless order tickets rather than handwritten order tickets.

Finally, the Commission is aware that questions have been raised regarding the application of the optical storage no-action letter. The staff of the Division of Market Regulation is prepared to discuss with interested persons any issues in connection with this letter, as well as with the Proposing Release.

-[5]- See, e.g., National Association of Securities Dealers, Inc. ("NASD") Notice to Members 95-80 (Sept. 26, 1995), NASD Rules of Fair Practice 35, and New York Stock Exchange, Inc. ("NYSE") Rule 472, which govern member firm responsibilities relating to communications with the public, including electronic communications.

In order to determine whether new guidelines are needed for the use of electronic communications, on January 12, 1996, the NYSE sent a survey to its members and member organizations regarding the use of electronic systems to communicate with customers. The NYSE asked its members to return the survey by

February 15, 1996. NYSE Information Memorandum (Jan. 12, 1996). The Commission understands that the NASD intends to send a similar survey to its members.

The Commission strongly encourages the SROs to continue to work with broker-dealers to adapt SRO supervisory review requirements governing communications with customers to accommodate the use of electronic communications by broker- dealers. Because electronic delivery systems allow broker- dealers and their associated persons to freely contact the general public, as well as their clients, firms should maintain effective supervision and records of associated persons' communications to avoid potential sales practice problems. The Commission believes, however, that the SROs' rules concerning the supervisory requirements for electronic communications should be based on the content and audience of the message, and not merely the electronic form of the communication. For example, the SROs should consider whether electronic mail communications, that, as a practical matter, replace or substitute for telephone conversations, in many cases would not require advance authorization or prior supervisory review.

The Commission also recognizes that broker-dealers are concerned about the costs of maintaining electronic communications as records on a long term basis, and it intends to discuss these concerns further with the securities industry.

-[6]- Article 8 of the UCC was revised substantially in 1994, and the revisions were endorsed by both the American Law Institute and the National Conference of Commissioners on Uniform State Laws. This revised version has been adopted by 13 states. Under Revised Article 8 Section 8-102(6), parties to a transaction may "transmit information by any mechanism agreed upon by the persons transmitting and receiving the information." Revised Article 8 eliminates the current Section 8-319 requirement for a signed writing evidencing the terms of a securities transaction.

In states that have not yet codified the 1994 amendments, a confirmation bearing the broker-dealer's letterhead or some other identifying marking, generally, fulfills that requirement. See e.g., Kohlmeyer and Co. v. Bowen, 192 S.E.2d 400, 126 Ga. App. 700 (Ga. Ct. App. 1972); See also Bains v. Piper, Jaffray & Hopwood, 497 N.W.2d 263 (Minn. Ct. App. 1993) (computer generated confirmation held to satisfy the UCC requirement for a writing).

-[7]- See, e.g., Treas. Reg. 404.4(e) and 403.5(d) (rules regarding hold in custody repurchase agreements applicable to government securities brokers and dealers that are financial institutions).

-[8]- For example, this interpretation does not apply to any requirements to file information with the Commission in connection with registering under sections 15, 15A, 15B, or 15C of the Exchange Act as a broker-dealer, national securities association, municipal securities dealer, or government securities broker-dealer. Broker- dealers currently register with the Commission, the SROs, and the states through the Central Registration Depository ("CRD") system operated by the NASD. A redesign of the CRD system will allow broker-dealers to file uniform registration forms electronically. In connection with the CRD redesign the Commission intends to adopt amendments to Form BD, the uniform application for broker-dealer registration under the Exchange Act. See Exchange Act Release No. 35224 (Jan. 12, 1995), 60 FR 4040 (Jan. 19, 1995) (proposing amendments to Form BD).

Because, at the present time, the Commission does not have the technological capacity to receive electronic transmissions of information from broker-dealers, transfer agents, or investment advisers, this interpretation also does not apply to other requirements to file information with the Commission under the Exchange and Advisers Acts. See, e.g., Exchange Act Rule 9b-1, 17 CFR 240.9b-1 (options markets' obligation to file with the Commission any revisions to an options disclosure document); Advisers Act Form ADV, 17 CFR 279.1 (application for registration of investment advisers). The Commission, nevertheless, recognizes the desirability of electronic filing and is examining the feasibility of establishing systems capable of receiving information electronically.

-[9]- For example, the notice requirements to the National Association of Securities Dealers, Inc. under Exchange Act Rule 10b-17, also are not within the scope of this interpretation. 17 CFR 240.10b-17.

-[10]- For example, Rule 15a-6 requires U.S. registered broker-dealers, under certain circumstances, to obtain certain foreign persons' consent to service of process. 17 CFR 240.15a-6(a)(3)(iii)(D). The Commission has never taken a position as to the specific means by which the U.S. broker-dealer may meet this obligation, but believes that a consent to service of process may be obtained through the use of a facsimile.

-[11]- The exact nature of the broker-dealer's, transfer agent's, and investment adviser's delivery obligations is defined broadly and includes such terms as "give," "furnish," "send," and "deliver." The Commission believes that, in general, these terms are sufficiently broad to accommodate the contemplated electronic transmission of documents by or on behalf of the broker-dealer, transfer agent, or investment adviser and, when called for, from a customer to a broker-dealer, transfer agent, or investment adviser. But see infra notes 12 and 50.

-[12]- In connection with transactions in penny stocks, however, the Commission believes that in order to fulfill the purposes of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, broker-dealers should continue to have customers manually sign and return in paper form any documents that require a customer's signature or written agreement. See infra note 50.

-[13]- October Interpretive Release, supra note 1, at 53460. See also supra example 7.

-[14]- For a discussion of how requirements to present information in a certain order may be applied to documents containing hyperlinks, see example 51 in the October Interpretive Release. Id. at 53466.

-[15]- See Exchange Act 15(b)(4)(E); Advisers Act 203(e)(5). See also NASD Rules of Fair Practice 27; NYSE Rule 342.

-[16]- See, e.g., In re: Bryant, Securities Exchange Act Release No. 32357 (May 24, 1993), (Commission upheld a finding of the National Association of Securities Dealers, Inc. that, among other things, the failure to develop procedures to supervise a registered representative, who sent a false confirmation statement on behalf of the broker- dealer, and to enforce existing procedures constituted a failure to supervise on the part of the president of the firm).

-[17]- For example if a person revokes consent to receiving information electronically, even following delivery of the information, a paper copy should be delivered upon request. Revocation, however, is not a prerequisite to requesting a paper copy.

The Commission understands that it can be very costly for broker-dealers to maintain records for long periods of time. This is particularly true with respect to information that is specific to a customer's account or to a transaction, such as the type of information defined below as Personal Financial Information. See infra section II.B. For this reason, the Commission has limited the time period that broker-dealers must preserve records required to be made under Exchange Act Rules 17a-3. 17 CFR 240.17a-3. Specifically, Exchange Act Rule 17a-4 requires broker- dealers to preserve records for a period of six years (3 years in the case of certain types of information), the first two years in an easily accessible place. 17 CFR 240.17a-4. For these same reasons, the Commission believes it is reasonable to expect that broker-dealers would provide customers with information in paper form upon request for a period of two years. Transfer agents and investment advisers are subject to similar recordkeeping requirements. 17 CFR 250.17Ad-6 and 240.17Ad-7; 17 CFR 275.204-2.

-[18]- October Interpretive Release, supra note 1, at 53460-61.

-[19]- Id. at 53461.

-[20]- See id. at 53460. See also infra section II.B.2. regarding additional requirements when broker- dealers, transfer agents, and investment advisers send certain types of information (defined as Personal Financial Information) to customers.

-[21]- For example, if information is provided by physically delivered material (such as a computer diskette or CD-ROM) or by electronic mail, that communication itself generally should be sufficient notice. If information is made available electronically through a passive delivery system, such as an Internet Web Site, however, separate notice would be necessary to satisfy the delivery requirements unless the broker-dealer, transfer agent, or investment adviser can otherwise evidence that delivery to the customer or client has been satisfied.

-[22]- For example, the intended recipient's ability to download or print information delivered electronically would enable a recipient to retain a permanent record. See October Interpretive Release, supra note 1, at 53460.

-[23]- See id. at 53460. If a consent is used, the consent should be an informed consent. An informed consent should specify the electronic medium or source through which the information will be delivered and the period during which the consent will be effective, and should describe the information that will be delivered using such means. The broker-dealer, transfer agent, or investment adviser also should inform the customer that there may be potential costs associated with electronic delivery, such as on-line charges. Except where a manual signature is required under the penny stock rules, see infra note 50, broker- dealers may obtain consents either manually or electronically. In most cases in which a request for information is made through an electronic medium, consent to receive the requested information by means of electronic delivery may be presumed.

In addition, if the broker-dealer, transfer agent, or investment adviser is relying on the consent to ensure effective delivery and the intended recipient revokes the consent, future documents should be delivered in paper.

-[24]- For example, depending on the circumstances and the procedures used, customers' and clients' written consent or acknowledgement, as required under certain Exchange and Advisers Acts rules and discussed infra notes 28-29 and accompanying text, may serve as sufficient evidence to show delivery.

-[25]- October Interpretive Release, supra note 1, at 53460, n.22.

-[26]- 17 CFR 275.206(3)-2(a)(2) (written confirmation of each transaction "at or before the completion of each such transaction"); 17 CFR 275.206(3)-2(a)(3) (annual written disclosure statement identifying transactions). In addition, investment advisers having custody of client assets are required to send an itemized statement to each client at least quarterly showing assets in custody of the adviser. 17 CFR 275.206(4)-2(a)(4).

-[27]- See discussion supra note 23 regarding informed consent.

-[28]- See, e.g. Advisers Act 205(a)(2) and 206(3); 17 CFR 275.206(3)-2(a)(1); 17 CFR 275.206(4)-3(a)(2)(iii).

-[29]- Of course, broker-dealers and investment advisers should be cognizant of their responsibilities to prevent, and the potential liability associated with, unauthorized transactions. See, e.g., supra note 16. In this regard, the Commission believes that broker-dealers and investment advisers should have reasonable assurance that the response received from a customer or client is authentic.

In addition, for policy reason discussed infra note 50, the Commission will continue to require broker-dealers to obtain the manual signature of customers on certain disclosure documents required under Exchange Act Rules 15g-2 and 15g-9.

-[30]- See, e.g., Kimberly Weisul, Calvert Becomes First Fund to Offer Info On-Line; Mutual Fund Company Dodges the Security Issue, Investment Dealers' Digest, Jan. 22, 1996, at 9; Jon Birger, Prudential Web Site to Let Clients Track Their Accounts Daily, Bond Buyer, Oct. 18, 1995, at 10.

-[31]- See 17 CFR 275.206(4)-1. Broker-dealers' advertisements and sales literature are subject to NASD rules, which have been recently been amended specifically to include electronic communications. NASD, Notice to Members 95-74 (Sept. 1995); NASD, Notice to Members 95-80 (Sept. 26, 1995).

-[32]- 17 CFR 275.204-2(a)(11). Broker-dealers also are subject to recordkeeping requirements that would be applicable to all electronic communications received and sent by the firm relating to its business. 17 CFR 17a-4(a)(4).

-[33]- The summary provided of the delivery obligations under the Covered Delivery Requirements is intended for ease of reference only. It is not intended to be a statement of all the requirements under the rules and provisions listed, and has no legal force or effect. Reference should be made to the full text of the rules, which is published in the Code of Federal Regulations, as well as to relevant releases, interpretations, and no-action letters, and to the full text of the Exchange and Advisers Acts, 15 U.S.C. 77 and 78, et seq.

-[34]- But see supra notes 4-10 and accompanying text. See also infra notes 35 and 50.

-[35]- This release does not address the prospectus delivery requirements under Exchange Act Rule 15c2-8. 17 CFR 240.15c2-8. Broker-dealer requirements to deliver a preliminary prospectus in connection with the issuance of securities by an issuer that has not previously been required to file reports pursuant to Exchange Act Section 13(a), 15 U.S.C. 78m(a), or 15(d), 15 U.S.C. 78o(d), were addressed in the October Interpretive Release. See October Interpretive Release, supra note 1, at 53462, n. 31.

-[36]- 17 CFR 240.8c-1(a)(1) and (f).

-[37]- 17 CFR 240.9b-1(d).

-[38]- 17 CFR 240.10b-10. This release, therefore, resolves the issues in the October Interpretive Release with respect to Exchange Act Rule 10b-10, which requires broker-dealers to send confirmations at or before completion of the transaction by permitting electronic delivery of the confirmation. 17 CFR 240.10b-10. See October Interpretive Release, supra note 1, at 53459, n.12.

In a release adopting certain amendments to Rule 10b-10, the Commission recognized the use of a facsimile machine to send customer confirmation statements. At that time, however, the Commission believed that the use of other electronic means to send confirmations should be viewed on a case-by- case basis. See Exchange Act Release No. 34962 (Nov. 10, 1994); 59 FR 59612 (Nov. 17, 1994). This interpretation supersedes the view expressed in the 1994 release.

Broker-dealers are reminded that, when a prospectus is required to be delivered, it should be delivered prior to, or concurrent with, delivery of the confirmation. Thus, if a confirmation is sent by facsimile, the prospectus also should be sent by facsimile or equally prompt means.

-[39]- 17 CFR 240.10b-10(a)(7).

-[40]- 17 CFR 240.10b-16.

-[41]- 17 CFR 240.11Ac1-3.

-[42]- 17 CFR 240.15c1-5.

-[43]- 17 CFR 240.15c1-6.

-[44]- 17 CFR 240.15c2-1(a)(1).

-[45]- 17 CFR 240.15c2-5.

-[46]- 17 CFR 240.15c2-11(a)(4) and (a)(5).

-[47]- 17 CFR 240.15c2-12.

-[48]- 17 CFR 240.15c3-2.

-[49]- 17 CFR 240.15c3-3(b)(4).

-[50]- 17 CFR 240.15g-3 through 15g-8.

The Commission believes that the requirements under Exchange Act Rules 15g-2 and 15g-9, which require broker-dealers to obtain from a customer prior to effecting transactions in penny stocks (1) a manually signed acknowledgement of the receipt of a risk disclosure document, (2) a written agreement to transactions involving penny stocks, and (3) a manually signed and dated copy of a written suitability statement, should not be met by means of electronic media. In adopting these provisions pursuant to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, the Commission intended to provide customers with an

opportunity to make an informed, deliberate decision without the high pressure sales practices that sometimes are characteristic of transactions in these securities. For similar reasons, a facsimile copy of a customer's signature has not been sufficient to satisfy the requirements under Rules 15g-2 and 15g-9 that certain documents be manually signed and dated. See Exchange Act Release No. 32576 (July 2, 1993); NASD Notice to Members 90-65 (Oct. 1990); NASD Notice to Members 90-18 (Mar. 1990).

While broker-dealers may not meet the signature requirement under Rule 15g-9 by electronic means, the Commission believes that, consistent with the guidance set forth in this interpretation, they may meet their delivery obligations to their customers under this rule by electronic means. The "risk disclosure document" that broker-dealers are required to furnish to their customers under Rule 15g-2 is subject to strict formatting and typefacing restrictions. In order to comply with the requirements set forth in the instructions to Schedule 15G, a risk disclosure document delivered electronically, when printed, would have to result in a document that meets the requirements and contains the exact text of Schedule 15G.

When the Commission next reviews the penny stock rules, it may be willing to consider a "cooling-off" period as an alternative to the requirement of a manual signature under Rules 15g-2 and 15g-9. The Commission requests comment on this approach.

-[51]- 17 CFR 240.17a-5(c).

-[52]- 17 CFR 17Ad-5. Under certain circumstances, transfer agents currently are permitted to respond to requests by telephone.

-[53]- 15 U.S.C. 80b-5(a)(2).

-[54]- 15 U.S.C. 80b-5(a)(3).

-[55]- 15 U.S.C. 80b-6(3).

-[56]- 17 CFR 275.204-3(b). To the extent an adviser relies on 48-hour advance delivery rather than the five-day cancellation period, the 48-hour period would be measured from the time at which notice is given to the client that the statement is available through a specified electronic medium or source. Investment advisers should have reason to believe that the nature of the system or any limitations on the client's access to that system will not result in any material delay in the client's access to the information following receipt of the notice.

-[57]- 17 CFR 275.204-3(c). If a client has elected to receive the disclosure statement electronically, and neither the adviser nor any system used by the adviser to disseminate updates electronically imposes a charge upon the client specifically for the receipt of this information, the Commission would consider this requirement satisfied, even though a system selected by a client to gain access to the adviser's system may impose charges for access, printing or downloading. Alternatively, the Commission would consider the requirement satisfied so long as a paper version of the update is available without charge notwithstanding any charges that may be imposed upon a client for access, printing or downloading by the system used by an adviser to disseminate updates electronically.

-[58]- 17 CFR 275.205-3(d).

-[59]- 17 CFR 275.206(3)-2.

-[60]- 17 CFR 275.206(4)-2.

-[61]- 17 CFR 275.206(4)-3. Cf. Investment Company Act Release No. 21260 at n. 38 (July 27, 1995), 60 FR 39574 (contemplating that notification required under proposed Investment Company Act Rule 3a-4 could be provided electronically by investment advisers and other sponsors of investment advisory programs).

-[62]- A company need not register its dividend reinvestment plan under the Securities Act where its involvement in the plan is limited to administrative or ministerial functions. For additional information, including a listing of permitted functions, see Securities Act Release No. 4790 (July 13, 1965), 30 FR 9059

(July 20, 1965); Securities Act Release No. 5515 (July 22, 1974), 39 FR 28520 (August 8, 1974); Securities Act Release No. 6188 (February 1, 1980), 45 FR 8960 (February 11, 1980).

-[63]- As technology develops, some users may have the capacity to download and view a prospectus in no more time than it takes to jump via hyperlink from the sales literature to the prospectus. Under those circumstances, the capacity to download would be considered to give those users reasonably comparable access to the prospectus that would provide sufficient access.

-[64]- A change in means of notification under such circumstances would also be effective in the case of notification of the availability of shareholder reports discussed in example 46 in the October Interpretive Release. October Interpretive Release, supra note 1.

-[65]- Under section 10(a)(3) of the Securities Act, a fund that continuously offers its shares would have to amend its prospectus no less frequently than every 16 months in order to include updated financial statements.

-[66]- With unscheduled material prospectus amendments for which such advance notice would not be feasible, the fund would need to use other forms of notification such as a postcard or e-mail message. See October Interpretive Release, supra note 1, example 43.

-[67]- The facts of this example should not be read as imposing any obligation on the issuer to make such other versions of its prospectus available to any person.

-[68]- Alternatively, the company may file with the Commission as an appendix to the prospectus the script of the movie and a fair and accurate narrative description of the graphic or image material. See October Interpretive Release, supra note 1, example 13.

-[69]- Of course, the general principles concerning electronic delivery, as described in the October Interpretive Release, supra note 1, would apply.

-[70]- See id. at 53460.