

SECURITIES AND EXCHANGE COMMISSION
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Amendments to Beneficial Ownership Reporting Requirements

AGENCY: Securities and Exchange Commission

ACTION: Final Rules.

SUMMARY: The Securities and Exchange Commission is today adopting amendments to its rules relating to the reporting of beneficial ownership in publicly-held companies. These amendments make the short-form Schedule 13G available, in lieu of Schedule 13D, to all investors beneficially owning less than 20 percent of the outstanding class that have not acquired and do not hold the securities for the purpose of or with the effect of changing or influencing the control of the issuer of the securities. The purposes of the amendments are to improve the effectiveness of the beneficial ownership reporting scheme and to reduce the reporting obligations of passive investors.

EFFECTIVE DATE: The amendments are effective February 17, 1998.

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SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting amendments to Regulation 13D-G<(1)> and Schedules 13D and 13G.<(2)> In addition, the Commission is adopting conforming amendments to Rule 16a-1<(3)> under the Securities Exchange Act of 1934 ("Exchange Act").

I. EXECUTIVE SUMMARY

Today, for the first time, the Commission is permitting certain large shareholders to use the short-form Schedule 13G, rather than the long-form Schedule 13D, to report accumulations and changes in stock holdings. This expanded eligibility to file on Schedule 13G applies only to persons not seeking to acquire or influence "control" of the issuer and who own less than 20 percent of the class of securities ("Passive Investor").<(4)> The existing reporting scheme imposed unnecessary disclosure obligations on persons whose acquisitions do not affect the control of issuers. The amendments adopted today will reduce the reporting obligations of these Passive Investors. The amendments also will improve the effectiveness of the beneficial ownership reporting scheme. The reduced number of Schedule 13D filings will allow the marketplace, as well as the staff of the Commission, to focus more quickly on acquisitions involving the potential to change or influence control.

Since a control purpose reflects the state of mind of a filing person and there are incentives to disclose less information, the Commission is imposing some safeguards on this new class of short-form filers:

- * Initial Schedule 13G must be filed within 10 days (instead of year end);
- * Prompt amendments are required every time the Passive Investor acquires more than an additional five percent;
- * Loss of Schedule 13G-eligibility occurs when Passive Investor acquires 20 percent or more of the class; and,
- * If the person no longer passively holds their shares or the person acquires 20 percent or more of the class, a Schedule 13D is due within ten days and the person is not permitted to

vote the shares or acquire more shares during the period of time beginning from the change in investment purpose or the acquisition of 20 percent or more until ten days after the Schedule 13D is filed.

The Commission also is adopting related and clarifying amendments including the simplification of the Schedule 13G dissemination requirements to reflect the ready availability of those reports on the Commission's EDGAR system. Schedules 13G will no longer be required to be sent to the exchanges, since all Schedules 13D and 13G must now be filed electronically with the Commission.<(5)>

II. AMENDMENTS TO REGULATION 13D-G

A. Expansion of the Class of Investors Eligible to Report on Schedule 13G

The Commission proposed the amendments adopted today on July 3, 1996.<(6)> The amendments are being adopted substantially as proposed with some important modifications. In addition to the two existing categories of Schedule 13G filers ("Qualified Institutional Investors"<(7)> and "Exempt Investors"<(8)>), today's amendments create a third category ("Passive Investors"),<(9)> significantly expanding the classes of persons eligible to file on the short form. Under the amendments, all Passive Investors are permitted to use the short-form Schedule 13G.<(10)> Passive Investors choosing to report on Schedule 13G will file that schedule within 10 calendar days after acquiring beneficial ownership of more than five percent of a class of subject securities. Persons unable or unwilling to certify that they do not have a disqualifying purpose or effect because, for example, the possibility exists that they may seek to exercise or influence control, would be ineligible to file a Schedule 13G and would be required to file a Schedule 13D.<(11)> Qualified Institutional Investors remain eligible to file the short-form report on Schedule 13G within 45 calendar days after the calendar year end. Exempt Investors also will continue to file their initial Schedule 13G within 45 calendar days after the calendar year in which they became subject to Section 13(g) and new Rule 13d-1(d). Even though a Passive Investor may report on Schedule 13G, it will be permitted to file a Schedule 13D instead. The fact that an investor can represent that it does not have a disqualifying purpose or effect but nevertheless chooses to file on a Schedule 13D may provide important information concerning the filing person's investment purpose.

B. Filing Periods for Passive Investors Filing on Schedule 13G

As adopted, Passive Investors choosing to file a Schedule 13G will file the initial schedule within 10 calendar days of crossing the five percent threshold. Requiring the filing within 10 days, rather than the 45 days following year end as is currently applicable to Qualified Institutional Investors and Exempt Investors, will provide more timely notice to the market and to investors of the existence of voting blocks that have the potential of affecting or influencing control of the issuer.

Although the Commission is adopting the initial reporting obligations for Passive Investors as proposed that are more stringent than those for Qualified Institutional Investors, the Commission is adopting a more liberal approach for amending Schedule 13G. The rule permits Passive Investors to amend in a manner similar, but more promptly than, Qualified Institutional Investors reporting on Schedule 13G.<(12)>

As proposed, Passive Investors would have been subject to the more stringent amendment requirements that currently apply to Schedule 13D filers. Seven commenters specifically addressed the proposed amendment requirements and five commenters believed that the proposals were too complex and overly cautious. Those commenters believed that the application of the more stringent amendment requirements to Passive Investors would significantly diminish the benefits of the proposals overall to Passive Investors and would be inconsistent with the Commission's intent to reduce the reporting obligations of Passive Investors. One commenter noted that if the Passive Investors have no intent to influence or change control of the issuer, then there is no substantially

greater need to track the percentage changes in holdings of Passive Investors, and therefore they should be treated no differently than Qualified Institutional Investors. In contrast, other commenters argued that the proposed accelerated filing of these Schedule 13G amendments for Passive Investors is necessary to provide notice to investors, issuers, and to the market of voting blocks of securities that have the potential of affecting or influencing control of the issuer.

While the Commission appreciates that the beneficial ownership rules are already complex, separate amendment requirements for Passive Investors appear to be necessary to address these competing concerns raised by the commenters. The views of the commenters on the amendment issue suggest that neither the current 13D nor 13G approach would be appropriate. By requiring prompt reporting of more than five percent changes in position, the Commission believes that sufficient information will be provided to investors, issuers, and to the market regarding the changes in percentage ownership of Passive Investors. To further prevent any possible abuse in the use of Schedule 13G by investors that have a disqualifying purpose or effect, the Commission is adopting, as proposed, the "cooling-off" period upon a change in investment purpose and the same "cooling-off" period will apply upon acquiring 20 percent or more of the class. Accordingly, as adopted, Passive Investors must amend the Schedule 13G within 45 calendar days after the end of the calendar year to report any change in the information previously reported. Passive Investors also will amend the Schedule 13G during the year if they acquire greater than 10 percent of the subject securities. This amendment will be required to be filed "promptly" upon acquiring greater than 10 percent.

Between 10 percent and less than 20 percent, Passive Investors will be required to file additional amendments "promptly" during the year if they increase or decrease their beneficial ownership by more than five percent of the class.

These new amendment requirements for Passive Investors that acquire greater than 10 percent of the class are different than the amendment requirements for Qualified Institutional Investors that acquire greater than 10 percent. Qualified Institutional Investors have until 10 days after the month in which they acquired greater than ten percent to amend their Schedule 13G. Qualified Institutional Investors holding more than 10 percent have until 10 days after the month in which they increased or decreased their beneficial ownership by more than five percent. In each case, the Qualified Institutional Investor's beneficial ownership is computed as of the last day of the month. The Qualified Institutional Investors are permitted greater flexibility in filing amendments in recognition of the fact that Qualified Institutional Investors routinely buy and sell securities in the ordinary course of business and are less likely to abuse the process.

C. 13D Filing Requirement and Cooling-Off Period for Changes in Investment Purpose or Effect

When Qualified Institutional Investors and Passive Investors determine they hold the subject securities with a disqualifying purpose or effect, they must file a Schedule 13D no later than 10 calendar days after the change in investment purpose. The Commission is adopting, as proposed, a "cooling-off" period that will begin with the change in investment purpose and last until the expiration of the tenth calendar day from the date of the filing of a Schedule 13D. During the cooling-off period, the reporting person is prohibited from voting or directing the voting of the subject securities or acquiring additional beneficial ownership of any equity securities of the issuer or any person controlling the issuer.

Seven commenters specifically addressed the proposals regarding the Schedule 13D filing requirement upon a change in investment purpose or effect and the related cooling-off period. Three of those commenters supported the Schedule 13D filing requirement and cooling-off period as proposed. The other four commenters supported the concept of a cooling-off period but thought the period should be shortened. However, in light of the changes being adopted today to liberalize the amendment requirements for Passive Investors reporting on Schedule 13G, the Commission believes the 10 day cooling-off period, as adopted, is necessary and appropriate. The earlier

commencement of the cooling-off period will encourage the prompt filing of a Schedule 13D.<(16)> The cooling-off period will prevent further acquisitions or the voting of the subject securities until the market and investors have been given time to react to the information in the Schedule 13D filing.

D. Twenty-Percent Limit on Ownership Interest Reportable on Schedule 13G and Related Cooling-Off Period

Under today's amendments, Passive Investor status is limited to holders of less than 20 percent of the class of subject securities. Upon acquiring 20 percent or more, the investor must report the acquisition on Schedule 13D within 10 calendar days.<(17)> Additionally, the investor will be subject to a "cooling-off" period commencing from the time the investor reaches the 20 percent threshold until ten calendar days after the filing of the Schedule 13D.<(18)> During this period, the investor will be prohibited from voting or directing the voting of the subject securities and from acquiring additional beneficial ownership in any equity securities of the issuer. This cooling-off period is the same period that applies to Passive Investors and Qualified Institutional Investors when they change their investment purpose. The Commission proposed a standstill<(19)> period upon the acquisition of 20 percent or more of the class. The Commission is adopting the cooling-off period in lieu of the standstill period at the 20 percent threshold in order to further prevent abuse of the liberal amendment requirements adopted today for Passive Investors and to simplify Regulation 13D-G.

Six commenters specifically addressed the proposal regarding the 20 percent limitation and related standstill period. A majority of those commenters supported the 20 percent limitation. One commenter believed the ownership limit should be lowered to 10%. Three commenters supported the standstill period as proposed. Two commenters believed that it would be unfair to Passive Investors to impose a limit on beneficial ownership reportable on Schedule 13G and to apply any standstill period. Those commenters believed that if an investor can make the passive certification, then it should be treated the same as Qualified Institutional Investors. The Commission believes that the 20 percent limitation and the cooling-off period adopted today are necessary and appropriate for prompt disclosure of sizeable blocks of securities because of the inherent control implications corresponding to such ownership positions held by persons that do not purchase securities in the ordinary course of business.<(20)> The 20 percent limit applies only with respect to Passive Investors reporting on Schedule 13G pursuant to new Rule 13d-1(c). Qualified Institutional Investors and Exempt Investors are not subject to the 20 percent limitation because the Commission recognizes that institutions that purchase securities in the ordinary course of business may be burdened by a limitation on the amount of securities that can be reported on the short-form Schedule 13G. Further, the Commission believes that Schedule 13G strikes an appropriate balance between furnishing disclosure to the market and the burdens placed on such institutions.

E. Re-establishing Schedule 13G Eligibility

The amended rules allow persons who have lost their eligibility to file on Schedule 13G to re-establish their Schedule 13G-eligibility and again report on Schedule 13G.<(21)> Specifically, a Qualified Institutional Investor that has lost its Schedule 13G eligibility, because it is no longer a qualified entity under Rule 13d-1(b)(1)(ii) or cannot make the required certification, is allowed to switch back to Schedule 13G pursuant to the Qualified Institutional Investor provision<(22)> once it re-establishes its status under Rule 13d-1(b)(1)(ii) or can again make the necessary certification. Similarly, a Passive Investor that has lost its Schedule 13G-eligibility under Rule 13d-1(c), because it can no longer certify that it does not have a disqualifying purpose or effect or because it reached the 20 percent threshold, is able to switch back to Schedule 13G when it can once again make the certification or when its beneficial ownership falls below 20 percent. The Commission believes that investors and the market will be better informed if reporting persons are able to switch back to Schedule 13G after re-establishing their eligibility, since the filing of a Schedule 13D will be a

clearer indicator of investors that currently have a disqualifying purpose or effect or investors that hold 20 percent or more of the class.

Once a Schedule 13D reporting person decides to switch to a Schedule 13G, the Schedule 13G would be filed to reflect that decision.<(23)> The filing of the Schedule 13G will be deemed to amend the Schedule 13D. Therefore, no formal amendment to the Schedule 13D will be required.

F. Expansion of the Class of Qualified Institutional Investors

1. Foreign Institutional Investors

Under the amended rules, the use of the short-form Schedule 13G pursuant to the Qualified Institutional Investor provisions of Rule 13d- 1(b) will continue to be limited essentially to institutions such as brokers, dealers, investment companies, and investment advisers registered with the Commission, or regulated banks or insurance companies. The use of Schedule 13G by similar non-domestic institutions has been limited in the past to those institutions that have obtained an exemptive order from the Commission<(24)> or, under the current practice, a no-action position from the Division of Corporation Finance. The no-action relief was based on the requester's undertaking to grant the Commission access to information that would otherwise be disclosed in a Schedule 13D and the comparability of the foreign regulatory scheme applicable to the particular category of institutional investor.

The Commission is not expanding the list of qualified institutional investors to include foreign institutions. The Passive Investor provisions adopted today make Schedule 13G available to all investors that do not have a disqualifying purpose or effect, including foreign investors. These new provisions have more lenient filing requirements for amendments to Schedule 13G than as originally proposed.<(25)> Therefore, foreign institutional investors wanting to report on Schedule 13G should be able to rely on the passive investor provisions without significant difficulty. Any foreign institutional investor that would rather report on Schedule 13G as a Qualified Institutional Investor and does not want to rely on the Passive Investor provisions may continue to seek no-action relief from the staff under current practices.

2. State and Local Governmental Employee Benefit Plans

The Commission is expanding the list of Qualified Institutional Investors under Rule 13d-1(b)(1)(ii) to allow employee benefit plans maintained primarily for the benefit of state or local government employees to report on Schedule 13G. The Commission believes that these plans are now generally subject to fiduciary obligations and standards for investment that are substantially similar to those imposed by Employee Retirement Income Security Act of 1974 ("ERISA"). The Commission has revised the language in Rule 13d-1(b)(1)(ii)(F) to eliminate the phrase "pension fund" because such entities are included in the definition of employee benefit plan in Section 3(3) of ERISA.

The Commission is making a conforming change to the beneficial owner definition under Section 16 by amending Rule 16a-1(a)(1)(vi) to include state and local government employee benefit plans in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

3. Savings Associations

Based upon the suggestions of commenters, the Commission is expanding the list of Qualified Institutional Investors under Rule 13d-1(b)(1)(ii) by adding new paragraph (H) to allow savings associations to report on Schedule 13G. Adding savings associations to the list of Qualified Institutional Investors codifies the staff no-action relief granted to Columbia Savings and Loan (June 15, 1987).

The Commission is making a conforming change to the Section 16 rules by adding new Rule 16a-1(a)(1)(viii) to include savings associations in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

4. Church Plans

Also upon the suggestion of commenters, the Commission is expanding the list of Qualified Institutional Investors under Rule 13d-1(b)(1)(ii) by adding new paragraph (I) to allow church employee benefit plans to report on Schedule 13G. Adding church plans to the list of Qualified Institutional Investors is consistent with the treatment of church plans under the National Securities Markets Improvement Act of 1996<(26)> which exempts such plans from most federal securities regulation. The Commission is making a conforming change to the Section 16 rules by adding new Rule 16a-1(a)(1)(ix) to include church plans in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

5. Control Persons of Qualified Institutional Investors

The Commission is expanding the list of Qualified Institutional Investors under Rule 13d-1(b)(1)(ii) to allow control persons of Qualified Institutional Investors to report indirect beneficial ownership through the controlled entity on Schedule 13G. In order to use Schedule 13G, the control person must not own directly, or indirectly through an ineligible entity or affiliate, more than one percent of the subject company's stock and is not seeking to change or influence control of the subject company.<(27)>

The Commission is making a conforming change to the Section 16 rules by amending Rule 16a-1(a)(1)(vii) to include control persons of qualified institutions in the list of persons that are not deemed to be beneficial owners of securities held for the benefit of third parties.<(28)> Four commenters have requested some form of relief or guidance on when beneficial ownership under Rule 13d-3 should be attributed among entities under common control. This issue arises in the case of a consolidated group of corporations under common control or in the case of a single entity that has separately managed businesses within the same legal entity.

The Commission recognizes that certain organizational groups are comprised of many different business units that operate independently of each other. They may nevertheless have to aggregate beneficial ownership for Regulation 13D-G reporting purposes.<(29)> The need to aggregate may have the effect of requiring diverse business units to share sensitive information, when it is otherwise not necessary for business purposes. Because the Rule 13d-3(a) definition of beneficial ownership includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership by the business units, divisions or subsidiaries that hold the securities normally should be attributed to the parent entities that are in a control relationship to the shareholder entity. In those instances where the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining whether a filing threshold has been exceeded and the aggregate amount owned by the controlling persons.<(30)>

The determination as to whether the voting and investment powers are exercised independently from the parent and other related entities is based on the facts and circumstances. One circumstance in which beneficial ownership may not be required to be attributed to the parent entities is when these entities have in place certain informational barriers that ensure that the voting and investment powers are exercised independently from parent and affiliated entities.<(31)> This approach assumes that there will not be arbitrary or artificial separation of business units. One factor militating against separation would be participation in a common compensation pool that may align voting and investment decisions.

When informational barriers are relied upon to avoid attributing beneficial ownership to the parent entities, the various companies or groups should maintain and enforce written policies and procedures reasonably designed to prevent the flow of information to and from the other business units, divisions and entities that relate to the voting and investment powers over the securities. Those companies or groups also should obtain an annual, independent assessment of the operation of the policies and procedures established to prevent the flow of information among the related entities. The frequency in which an informational barrier is crossed with respect to a particular security (and therefore beneficial ownership would be attributed for that security) would raise questions regarding the efficacy of the informational barrier overall. However, an isolated instance in which this occurs would not necessarily impact the ownership treatment of securities of other issuers held by the reporting person.<(32)> Finally, the parent entities should have no officers or directors (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) who are involved in the exercise of the voting and investment powers in common with the shareholder.<(33)> For example, the existence of an independent investment committee would be evidence of an effective separation between the parent and the affiliated entities.

6. Investment Advisers Prohibited from Registering under the Investment Advisers Act of 1940 Pursuant to Section 203A of that Act

Since the issuance of the Reproposing Release, Congress passed the National Securities Markets Improvement Act of 1996<(34)>. Among other things, the Act amended the Investment Advisers Act of 1940 (the "Advisers Act") by adding Section 203A, which prohibits certain investment advisers from registering with the Commission. For the most part, only advisers that have "assets under management" of \$25 million or more, that advise registered investment companies, or that meet one of several exemptions from the prohibition on registration will be registered with the Commission. Other advisers will be regulated by state securities authorities. Currently, Rule 13d-1(b)(1)(ii)(E) restricts the use of Schedule 13G to investment advisers registered under Section 203 of the Advisers Act. Today the Commission is amending this rule to allow those investment advisers that are prohibited from registering under the Advisers Act pursuant to Section 203A of that Act to report on Schedule 13G as a Qualified Institutional Investor. Although these persons will not be subject to the federal regulatory regime for investment advisers, they will continue to buy and sell securities in the ordinary course of business and their businesses will be regulated by state law.

The Commission is making a conforming change to the Section 16 rules by amending Rule 16a-1(a)(1)(v) to include these investment advisers in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.

G. Shareholder Communications and Beneficial Ownership Reporting

The Commission requested comment as to whether the Section 13(d) reporting obligations restrict a shareholder's ability to engage in proxy related activities including the ability to use the proxy rule exemptions that were adopted in 1992 to facilitate communications among shareholders. The Commission asked whether relief, in addition to that adopted today, from Schedule 13D filing obligations with respect to soliciting activities is necessary and appropriate.

Only seven commenters responded to this request for comment. Two commenters believed that the Section 13(d) reporting obligations do not restrict the use of the proxy rule exemptions. The other five commenters believed that the reporting obligations do restrict the use of the proxy rule exemptions and all those commenters requested the Commission to provide various forms of relief or guidance on the matter. The two primary concerns raised by the five commenters are that activities exempt from the rules:

- (i) may constitute the formation of a "group" under Rule 13d-5(b); or

(ii) may be construed as having the purpose or effect of changing or influencing the control of the issuer, and therefore would disqualify a person from eligibility to use Schedule 13G.

Although the Commission agrees that it can provide some further guidance in this area as discussed below, the Commission does not believe that the current beneficial ownership and group concepts unduly interfere with the type of shareholder communications contemplated by the proxy rule exemptions. The Commission believes that no further relief from the Section 13(d) filing obligations is required.

Specifically, the Commission believes that a shareholder who is a passive recipient of soliciting activities, without more, would not be deemed a member of a group under Rule 13d-5(b)(1) with persons conducting the solicitation. This would be true even where the soliciting activities result in the shareholder granting a revocable proxy. Similarly, when a shareholder solicits and receives revocable proxy authority (subject to the discretionary limits of Rule 14a-4), without more, that shareholder does not obtain beneficial ownership under Section 13(d) in the shares underlying the proxy.

The eligibility to use Schedule 13G by a shareholder who submits, supports, or engages in exempt soliciting activity in favor of a shareholder proposal submitted pursuant to Rule 14a-8, will depend on whether that activity was engaged in with the purpose or effect of changing or influencing control of the company. That determination normally would be based upon the specific facts and circumstances accompanying the solicitation and the vote. For that reason, the Commission is not able to provide extensive guidance on this issue.

In some cases the subject matter of the proposal or solicitation may be dispositive. For example, most solicitations regarding social or public interest issues (e.g., environmental policies, apartheid, etc.) would not have the purpose or effect of changing or influencing control of the company. Corporate governance proposals, however, may or may not be control related. Proposals and soliciting activity relating to matters such as executive compensation, director pensions, and confidential voting normally would not prevent the use of a Schedule 13G. Even corporate governance issues that are presumably control related (e.g., removal of a poison pill, opting out of state takeover statutes, or removal of staggered boards) might not have a disqualifying purpose or effect, depending on the circumstances. In contrast, most solicitations in support of a proposal specifically calling for a change of control of the company (e.g., a proposal to seek a buyer for the company or a contested election of directors or a sale of a significant amount of assets or a restructuring of a corporation) would clearly have that purpose and effect. Some relevant factors to consider in assessing the purpose and effect of the type of proposal and related soliciting activity include:

- (1) Does the filing person purchase securities in the ordinary course of business and by its nature does not seek to acquire control of companies?
- (2) Was the proposal submitted or solicitation undertaken based upon the filing person's investment policies regarding good corporate governance for all the filer's portfolio companies, rather than to foster a control transaction for the particular company?
- (3) Was the proposal submitted, or solicitation commenced, under circumstances where, given the subject matter of the particular proposal, it is likely to have the effect of facilitating a change of control of that particular company by another person or group (for example, the submission of a proposal to eliminate a staggered board that may facilitate a non-management solicitation, even by an unrelated third party)?
- (4) Did the filing person commence an independent solicitation, exempt or otherwise, in favor of a proposal (the mere submission of a proposal under Rule 14a-8, without any independent soliciting activity, would be less likely to have a disqualifying purpose or effect)?

(5) Was the activity undertaken in opposition to a proposal put forth by management for shareholder approval, rather than in support of a proposal submitted by the filing person or some other shareholder?

Some proxy-related activities, by their nature, will have only limited effect on control of the company, and therefore should normally not cause a shareholder to lose its 13G eligibility. For example, voting in favor of an insurgent or making a voting announcement under Rule 14a-1(l)(2)(iv) in favor of a corporate governance proposal, without more, would not cause the loss of Schedule 13G eligibility, regardless of the subject matter. This is true even if the voting announcement supports a non-management shareholder proposal. Although in many instances these determinations will be difficult and fact intensive, the Commission believes that the amendment adopted today that allows a person to re-establish its Schedule 13G eligibility <(35)> should serve to lessen the concern that a Schedule 13G filing person may lose its eligibility to report on Schedule 13G by engaging in or being a part of soliciting activities. Under new Rule 13d-1(h), if a reporting person loses its Schedule 13G eligibility due to its soliciting activities and is required to then report on Schedule 13D, the reporting person can switch back to Schedule 13G when the reporting person is no longer involved in the soliciting activities and can make the necessary certifications.<(36)>

H. Related and Clarifying Amendments

The Commission also has eliminated the redundancies that existed in Regulation 13D-G regarding the filing and dissemination requirements by setting forth such requirements in one rule, Rule 13d-7(b). The Commission believes that Schedule 13G will become the primary reporting document for beneficial ownership, since a majority of investors will now file Schedule 13G in lieu of Schedule 13D. For this reason, the Commission proposed that the original and amendments to Schedules 13G be provided to each exchange where the security is traded as is currently required for Schedules 13D.

However, since these filings will be made by persons without a disqualifying purpose or effect and are now required to be filed electronically on the Commission's Electronic Data Gathering and Retrieval System and therefore available in the electronic media, including on the Commission's World Wide Web site (<http://www.sec.gov>), the Commission is not adopting this proposal. Likewise, due to the electronic availability of Schedules 13D, the Commission is not adopting the proposal that a copy of the Schedule 13D and amendments thereto be provided to the National Association of Securities Dealers for securities quoted on the National Association of Securities Dealers Automated Quotation System ("NASDAQ").<(37)>

Additionally, because of the electronic availability of filings and the fact that Schedules 13G do not represent control transactions, the Commission is further simplifying the dissemination requirements for all Schedule 13G filers by eliminating the requirement that Schedules 13G be sent to the exchanges. Accordingly, copies of all initial Schedules 13G and amendments filed with the Commission by Passive Investors, Qualified Institutional Investors, and Exempt Investors will only be required to be sent to the issuer and will not be required to be sent to any exchange or automated quotation system on which the securities are traded.

The amendments clarify the number of copies required to be filed to the extent paper filings may be made. The Commission notes that paper filings would be relatively rare, since all Schedules 13D and 13G must be filed in electronic format, unless they relate to the securities of a foreign private issuer or the filer has received a hardship exemption.

Additionally, the rules have been revised to eliminate language regarding filing fees for Schedules 13D and 13G since such fees have been previously eliminated.<(38)> Finally, technical amendments to Schedules 13D and 13G have been made to conform the schedules to the proposed rules and to amend the filing deadlines and the number of copies in the instruction.

ISSUE	OLD SCHEDULE 13D	NEW SCHEDULE 13D	OLD SCHEDULE 13G	NEW SCHEDULE 13G
Person required to file	Any person acquiring more than 5% of an equity security. Rule 13d-1(a).	No change.	<p><u>Qualified Institutional Investors</u>: Eligible institutions acquiring more than 5% of an equity security. Rule 13d-1(b).</p> <p><u>Exempt Investors</u>: Persons holding more than 5% of an equity security who are not subject to, or whose acquisitions are exempt from Section 13(d). Rule 13d-1(c).</p>	<p><u>Qualified Institutional Investors</u>: Expanded to include (i) investment advisers registered under state law; (ii) control persons of qualified institutions; (iii) federal, state and local employee benefit plans; (iv) savings associations; and (v) church plans. Rule 13d-1(b)(1)(ii)(E)-(I).</p> <p><u>Exempt Investors</u>: No change.</p> <p><u>Passive Investors</u>: Any person acquiring more than 5% but less than 20% of an equity security and did not acquire such securities with a purpose or effect of changing or influencing control of the issuer or in a transaction having that effect. Rule 13d-1(c).</p>
Initial Filing	Within 10 days after the acquisition. Rule 13d-1(a).	No change.	<p><u>Qualified Institutional Investors</u>: Within 45 days after calendar year in which the person holds more than 5% as of the year end, or within 10 days after the end of the first month in which the person's beneficial ownership exceeds 10% of the class of equity securities computed as of the end of the month. Rule 13d-1(b)(2).</p> <p><u>Exempt Investors</u>: Within 45 days after calendar year in which the person becomes obligated to file. Rule 13d-1(d).</p>	<p><u>Qualified Institutional Investors</u>: No change.</p> <p><u>Exempt Investors</u>: No change.</p> <p><u>Passive Investors</u>: Within 10 days after the acquisition. Rule 13d-1(c).</p>
ISSUE	OLD SCHEDULE 13D	NEW SCHEDULE 13D	OLD SCHEDULE 13G	NEW SCHEDULE 13G
Amendment	File promptly to reflect any material change including a change in investment purpose. An acquisition or disposition of beneficial ownership of securities equal to 1% or more of the class is deemed to be a material change. Rule 13d-2(a).	No change.	<p><u>All Filers</u>: Within 45 days after the end of the calendar year to report any change in the information. Rules 13d-2(b), (c) and (d).</p> <p><u>Qualified Institutional Investors</u>: In addition to the requirement stated above, within 10 days after the end of the first month in which the person's beneficial ownership exceeds 10% of the class computed as of the end of</p>	<p><u>Qualified Institutional Investors</u>: No change.</p> <p><u>Exempt Investors</u>: No change.</p> <p><u>Passive Investors</u>: Within 45 days after the end of the calendar year to report any change in the information. In addition, an amendment must be filed promptly upon the person's beneficial ownership exceeding 10% of the class and thereafter</p>

			the month, and thereafter within 10 days of the end of any month in which the person's beneficial ownership increases or decreases more than 5% computed as of the end of the month. Rule 13d-1(b)(2) and 13d-2(c).	promptly upon the person's beneficial ownership increasing or decreasing more than 5%. Rule 13d-2(a).
Purpose of Acquisition	Disclose purpose of the transaction. Schedule 13D, Item 4.	No change.	<p><u>Qualified Institutional Investors</u>: Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and does not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10 and Rule 13d-1(b).</p> <p><u>Exempt Investors</u>: No certification required.</p>	<p><u>Qualified Institutional Investors</u>: Requires certification that the securities were acquired in the ordinary course of business, were not acquired for the purpose of and does not have the effect of changing or influencing control of the issuer, and were not acquired in a transaction having such an effect. Schedule 13G, Item 10 and Rule 13d-1(b).</p> <p><u>Exempt Investors</u>: No certification required.</p> <p><u>Passive Investors</u>: Same certification as for Qualified Institutional Investors except that acquisitions need not occur in the ordinary course of business. Schedule 13G, Item 10(b) and Rule 13d-1(c).</p>
ISSUE	OLD SCHEDULE 13D	NEW SCHEDULE 13D	OLD SCHEDULE 13G	NEW SCHEDULE 13G
Filing an initial Schedule 13D following previous filing on Schedule 13G.	<p><u>Qualified Institutional Investors</u>: Promptly, but not more than 10 days after the person determines that it no longer holds the securities (i) in the ordinary course of business or (ii) without the purpose or effect of changing or influencing the control of the issuer, or within 10 days the person ceases to be an eligible institution. Rules 13d-1(b)(3) and (4).</p> <p><u>Exempt Investors</u>: Within 10 days upon making an acquisition subject to or not exempt from Section 13(d).</p>	<p><u>Qualified Institutional Investors</u>: Within 10 days after the person determines that it no longer holds the securities (i) in the ordinary course of business or (ii) without the purpose or effect of changing or influencing control of the issuer or ceases to be an eligible institution. Rules 13d-1(e) and (g).</p> <p><u>Exempt Investors</u>: No change.</p> <p><u>Passive Investors</u>: Within 10 days of: (i) acquiring or holding the securities with the purpose or effect of changing or influencing control of the issuer or in a transaction having that effect (Rule 13d-1(e)), or (ii) the person's beneficial ownership equals or exceeds 20%</p>	Not applicable.	Note: The filing person may refile on Schedule 13G once the disqualification has ended.

		of the class of equity securities. Rule 13d-1(f).		
ISSUE	OLD SCHEDULE 13D	NEW SCHEDULE 13D	OLD SCHEDULE 13G	NEW SCHEDULE 13G
Cooling-Off Period upon a change in investment purpose.	<u>Qualified Institutional Investors</u> : 10 day period after the filing of a Schedule 13D because the person no longer holds the securities in the ordinary course of business or not with the purpose or effect of changing or influencing control of the issuer. Rule 13d-1(e).	<u>Qualified Institutional Investors</u> : From the time the person no longer holds the securities without the purpose or effect of changing or influencing control of the issuer until the expiration of the tenth day after the date the Schedule 13D is filed. Rule 13d-1(e). <u>Passive Investors</u> : Same as Qualified Institutional Investors. Rule 13d-1(e).	Not applicable.	Not applicable.
Cooling-Off Period upon acquiring 20% or more of the class.	Not applicable.	<u>Passive Investors</u> : From the time the person's beneficial ownership equals or exceeds 20% of the class until the expiration of the tenth day after the date the Schedule 13D is filed. Rule 13d-1(f).	Not applicable.	Not applicable.

III. FINAL REGULATORY FLEXIBILITY ANALYSIS

A Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with 5 U.S.C. 604 concerning the amendments to the beneficial ownership rules of Regulation 13D-G and related Schedules 13D and 13G and the amendments to Rule 16a-1(a)(1). The analysis notes that the principal effect of the revisions to Regulation 13D-G will be to reduce the disclosure obligations and associated costs to a majority of persons, including small entities, required to report beneficial ownership under Sections 13(d) and 13(g) of the Exchange Act and would eliminate the reporting obligations under Section 16 of the Exchange Act of certain governmental employee benefit plans, church plans, savings associations, investment advisers registered with the state and certain control persons of Qualified Institutional Investors. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules and forms to be amended.

As stated in the analysis, alternatives to the proposed amendments were considered, including, among other things, changing or simplifying the compliance or reporting requirements for small entities or exempting small entities from all requirements to file the schedules under Regulation 13D- G. As discussed in the analysis, there is no less restrictive alternative to the amendments that would serve the purposes of the beneficial ownership provisions of the Exchange Act. As originally proposed, Passive Investors would have been subject to more stringent amendment requirements that would have required amendments to be filed upon every one percent change in their beneficial ownership. However, in order to further reduce the reporting burdens of Passive Investors, the Commission is not adopting the proposed amendment requirements. Under the adopted rules, Passive Investors will only file amendments to their Schedules 13G upon greater than five percent changes in their beneficial ownership, as well as the annual amendment. Further, the Commission originally proposed that a copy of the Schedule 13G be sent to each exchange on which the security is traded and to NASDAQ if the security trades there. However, in order to simplify the dissemination requirements, copies of the Schedule 13G will not be required to be sent to any exchange or NASDAQ and will only continue to be sent to the issuer, as well as being filed with the Commission.

The Commission received no comments on the Initial Regulatory Flexibility Analysis ("IRFA") prepared in connection with the proposing release. Five commenters indicated that the amendments would improve the effectiveness of the beneficial ownership reporting system and would reduce the reporting burdens of Passive Investors. A copy of the IRFA may be obtained by contacting Dennis O. Garris in the Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

V. PAPERWORK REDUCTION ACT

The beneficial ownership reporting requirements are intended to provide investors and the subject issuer with information about accumulations of securities that may have the ability to change or influence control of the issuer. Before the amendments adopted today, Regulation 13D-G required that most persons file a detailed disclosure statement on the long-form Schedule 13D upon acquiring more than five percent of the subject securities. Certain qualified institutions (Qualified Institutional Investors) and persons who have not made an acquisition subject to Section 13(d) (Exempt Investors) may file the short-form disclosure statement Schedule 13G which requires less detailed disclosure than Schedule 13D.

The amendments make Schedule 13G available, in lieu of Schedule 13D, to all Passive Investors beneficially owning less than 20 percent. The Commission anticipates that the amendments will reduce the existing information collection requirements associated with Regulation 13D-G and Schedules 13D and 13G. The amendments will allow more individuals and non-institutional investors to file the short-form Schedule 13G. An important change from the proposed rules is that Passive Investors filing on Schedule 13G will be subject to the more liberal filing requirements with respect to amending the Schedule 13G. This change further reduces the reporting obligations of Passive Investors. Under the amended rules, Passive Investors must amend the Schedule 13G within 45 calendar days after the end of the calendar year to report any change in the information previously reported. Passive Investors also will promptly amend the Schedule 13G during the year if they acquire greater than 10 percent of the subject securities and thereafter upon an increase or decrease of greater than five percent. Further, in order to reduce the dissemination requirements for all persons filing Schedules 13G, the Commission is not adopting the proposed requirement that Schedules 13G be sent to each exchange on which the security is traded and to NASDAQ if the security trades on its system. As adopted, Schedules 13G will only be required to be sent to the issuer as well as being filed with the Commission.

In a recent study performed by the Office of Economic Analysis,⁽³⁹⁾ 63 percent of the Schedules 13D surveyed disclosed a passive investment purpose. Of the total surveyed, 53 percent disclosed a passive investment purpose and held less than 20 percent of the class of equity securities and therefore would be eligible to file on Schedule 13G under the new rules as Passive Investors.⁽⁴⁰⁾ It is estimated that 1646 Schedules 13D will be filed each year under the new rules.⁽⁴¹⁾ Each Schedule 13D would impose an estimated burden of 14.75 hours for a total annual burden of 24,278.50 hours.⁽⁴²⁾ It is estimated that 9,044 Schedules 13G will be filed each year under the new rules.⁽⁴³⁾ Each Schedule 13G would impose an estimated burden of 10 hours for a total annual burden of 90,440 hours. The Commission did not receive any Paper Work Reduction Act comments. Providing the information required by Schedules 13D and 13G is mandatory under Sections 13(d) and 13(g) and Regulation 13D-G of the Exchange Act. The information will not be kept confidential. Unless a currently valid OMB control number is displayed on the Schedules 13D and 13G, the Commission may not sponsor or conduct or require response to an information collection. The OMB control number is 3235-0145. The collection is in accordance with the clearance requirements of 44 U.S.C. 3507.

VI. COST-BENEFIT ANALYSIS

No specific data was provided in response to the Commission's request regarding the costs and benefits associated with amending the filing requirements under Regulation 13D-G.⁽⁴⁴⁾ Making

Schedule 13G available to all Passive Investors holding less than 20 percent of subject securities should significantly reduce the reporting costs incurred by those investors. Regulation 13D-G applies to any person that acquires more than five percent of a class of equity securities. The amendments will decrease the disclosure obligations of a significant number of persons currently required to file the long-form Schedule 13D. Based upon data provided by the Commission's Office of Economic Analysis, 53 percent of Schedules 13D studied by that office disclosed a passive investment purpose and held less than 20 percent of the class of securities and, therefore, would be eligible to file on Schedule 13G as Passive Investors under the amendments adopted today.<(45)>

An important change from the proposed rules is that Passive Investors filing on Schedule 13G will be subject to the more liberal filing requirements with respect to amending the Schedule 13G. This change further reduces the reporting obligations of Passive Investors. Commenters believed that the amendment requirements, as proposed, were too burdensome and that the potential benefit of the proposals to Passive Investors would have been substantially outweighed by the costs of monitoring their holdings and reporting the changes. Under the amended rules, Passive Investors must amend the Schedule 13G within 45 calendar days after the end of the calendar year to report any change in the information previously reported. Passive Investors also will promptly amend the Schedule 13G during the year if they acquire greater than 10 percent of the subject securities and thereafter upon an increase or decrease of greater than five percent. Further, in order to reduce the dissemination requirements for all persons filing Schedules 13G, the Commission is not adopting the proposed requirement that Schedules 13G be sent to each exchange on which the security is traded and to NASDAQ if the security trades on its system. As adopted, Schedules 13G will only be required to be sent to the issuer as well as being filed with the Commission.

The Commission does not believe that the amendments adopted today will have any burden on competition or capital formation since the purpose of the Regulation 13D-G filing requirements is only to report beneficial ownership in public companies. The amendments adopted today will increase market efficiency because with the reduced number of Schedule 13D filings the market will be able to focus more quickly on acquisitions involving the potential to change or influence control.

VII. STATUTORY BASIS AND TEXT OF AMENDMENTS

The amendments to Rules 13d-1, 13d-2, 13d-3 and 13d-7 and Schedules 13D and 13G and Rule 16a-1 are being adopted pursuant to the authority set forth in Sections 3(b), 13, 16 and 23 of the Securities Exchange Act of 1934.

Lists of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

TEXT OF AMENDMENTS

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for Part 240 continues to read, in part, as follows: Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. By amending 240.13d-1 to revise paragraph (a), the introductory text of paragraph (b)(1), paragraphs (b)(1)(ii) and (b)(2), to remove paragraphs (b)(3) and (b)(4) and to redesignate paragraphs (c), (d), (e) and (f) as paragraphs (d), (i), (j) and (k), revise newly designated paragraph (d) and to add paragraphs (c), (e), (f), (g) and (h) to read as follows:

240.13d-1 Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than five percent of the class shall, within 10 days after the acquisition, file with the Commission, a statement containing the information required by Schedule 13D (240.13d-101).

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (240.13d-101) may, in lieu thereof, file with the Commission, a short-form statement on Schedule 13G (240.13d-102), Provided, That:

* * * * *

(ii) Such person is:

(A) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(B) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(C) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(D) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8);

(E) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) or under the laws of any state;

(F) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 et seq. ("ERISA") that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(G) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in 240.13d-1(b)(1)(ii)(A) through (I), does not exceed one percent of the securities of the subject class;

(H) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(I) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3); and

(J) A group, provided that all the members are persons specified in 240.13d-1(b)(1)(ii)(A) through (I); and

* * * * *

(2) The Schedule 13G filed pursuant to paragraph (b)(1) of this section shall be filed within 45 days after the end of the calendar year in which the person became obligated under paragraph (b)(1) of this section to report the person's beneficial ownership as of the last day of the calendar year, Provided, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (i) of this section beneficially owned as of the end of the calendar year is more than five percent; However, if the person's direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities prior to the end of the calendar year, the initial Schedule 13G shall be filed within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities, computed as of the last day of the month.

(c) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (240.13d-101) may, in lieu thereof, file with the Commission, within 10 days after an acquisition described in paragraph (a) of this section, a short-form statement on Schedule 13G (240.13d-102). Provided, That the person:

(1) Has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any transaction subject to 240.13d-3(b);

(2) Is not a person reporting pursuant to paragraph (b)(1) of this section; and

(3) Is not directly or indirectly the beneficial owner of 20 percent or more of the class.

(d) Any person who is or becomes directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (i) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act (15 U.S.C. 78m(d)(6)(A) or 78m(d)(6)(B)), or because the beneficial ownership was acquired prior to December 22, 1970, or because the person otherwise (except for the exemption provided by Section 13(d)(6)(C) of the Act (15 U.S.C. 78m(d)(6)(C))) is not required to file a statement, shall file with the Commission, within 45 days after the end of the calendar year in which the person became obligated to report under this paragraph (d), a statement containing the information required by Schedule 13G (240.13d-102).

(e)(1) Notwithstanding paragraphs (b) and (c) of this section and 240.13d-2(b), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G (240.13d-102) pursuant to paragraph (b) or (c) of this section, or is required to report the acquisition but has not yet filed the schedule, shall immediately become subject to 240.13d-1(a) and 240.13d- 2(a) and shall file a statement on Schedule 13D (240.13d-101) within 10 days if, and shall remain subject to those requirements for so long as, the person:

(i) Has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any transaction subject to 240.13d-3(b); and

(ii) Is at that time the beneficial owner of more than five percent of a class of equity securities described in 240.13d-1(i).

(2) From the time the person has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect until the expiration of the tenth day from the date of the filing of the Schedule 13D (240.13d-101) pursuant to this section, that person shall not:

(i) Vote or direct the voting of the securities described therein; or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(f)(1) Notwithstanding paragraph (c) of this section and 240.13d- 2(b), persons reporting on Schedule 13G (240.13d-102) pursuant to paragraph (c) of this section shall immediately become subject to 240.13d-1(a) and 240.13d-2(a) and shall remain subject to those requirements for so long as, and shall file a statement on Schedule 13D (240.13d-101) within 10 days of the date on which, the person's beneficial ownership equals or exceeds 20 percent of the class of equity securities. (2) From the time of the acquisition of 20 percent or more of the class of equity securities until the expiration of the tenth day from the date of the filing of the Schedule 13D (240.13d-101) pursuant to this section, the person shall not:

(i) Vote or direct the voting of the securities described therein, or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(g) Any person who has reported an acquisition of securities in a statement on Schedule 13G (240.13d-102) pursuant to paragraph (b) of this section, or has become obligated to report on the Schedule 13G (240.13d- 102) but has not yet filed the Schedule, and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section or determines that it no longer has acquired or holds the securities in the ordinary course of business shall immediately become subject to 240.13d-1(a) or 240.13d-1(c) (if the person satisfies the requirements specified in 240.13d-1(c)), and 240.13d-2(a), (b) or (d), and shall file, within 10 days thereafter, a statement on Schedule 13D (240.13d-101) or amendment to Schedule 13G, as applicable, if the person is a beneficial owner at that time of more than five percent of the class of equity securities.

(h) Any person who has filed a Schedule 13D (240.13d-101) pursuant to paragraph (e), (f) or (g) of this section may again report its beneficial ownership on Schedule 13G (240.13d-102) pursuant to paragraphs (b) or (c) of this section provided the person qualifies thereunder, as applicable, by filing a Schedule 13G (240.13d-102) once the person determines that the provisions of paragraph (e), (f) or (g) of this section no longer apply.

* * * * *

3. By amending 240.13d-2 by revising paragraphs (a), (b), and the note to 240.13d-2; redesignating paragraph (c) as paragraph (e), and adding paragraphs (c) and (d) to read as follows:

240.13d-2 Filing of amendments to Schedules 13D or 13G.

(a) If any material change occurs in the facts set forth in the Schedule 13D (240.13d-101) required by 240.13d-1(a), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file the statement shall promptly file or cause to be filed with the Commission an amendment disclosing that change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed "material" for purposes of this section; acquisitions or dispositions of less than those amounts may be material, depending upon the facts and circumstances.

(b) Notwithstanding paragraph (a) of this section, and provided that the person filing a Schedule 13G (240.13d-102) pursuant to 240.13d-1(b) or 240.13d-1(c) continues to meet the requirements set forth therein, any person who has filed a Schedule 13G (240.13d-102) pursuant to 240.13d-1(b), 240.13d-1(c) or 240.13d-1(d) shall amend the statement within forty-five days after the end of each calendar year if, as of the end of the calendar year, there are any changes in the information reported in the previous filing on that Schedule; Provided, however, That an

amendment need not be filed with respect to a change in the percent of class outstanding previously reported if the change results solely from a change in the aggregate number of securities outstanding. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to 240.13d-1.

(c) Any person relying on 240.13d-1(b) that has filed its initial Schedule 13G (240.13d-102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to 240.13d-2(b), file an amendment on Schedule 13G (240.13d-102) within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership, computed as of the last day of the month, exceeds 10 percent of the class of equity securities. Thereafter, that person shall, in addition to filing any amendments pursuant to 240.13d-2(b), file an amendment on Schedule 13G (240.13d-102) within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership, computed as of the last day of the month, increases or decreases by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (c).

(d) Any person relying on 240.13d-1(c) and has filed its initial Schedule 13G (240.13d-102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to 240.13d-2(b), file an amendment on Schedule 13G (240.13d-102) promptly upon acquiring, directly or indirectly, greater than 10 percent of a class of equity securities specified in 240.13d-1(d), and thereafter promptly upon increasing or decreasing its beneficial ownership by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (d).

* * * * *

Note to 240.13d-2: For persons filing a short-form statement pursuant to Rule 13d-1(b) or (c), see also Rules 13d-1(e), (f), and (g).

4. By amending 240.13d-3 by revising paragraph (d)(1)(ii) to read as follows:

240.13d-3 Determination of beneficial ownership.

* * * * *

(d) * * *

(1) * * *

(ii) Paragraph (d)(1)(i) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in 240.13d-1(i), and may therefore give rise to a separate obligation to file.

* * * * *

5. By adding 240.13d-7 to read as follows:

240.13d-7 Dissemination.

One copy of the Schedule filed pursuant to 240.13d-1 and 240.13d-2 shall be sent to the issuer of the security at its principal executive office, by registered or certified mail. A copy of Schedules

filed pursuant to 240.13d-1(a) and 240.13d-2(a) shall also be sent to each national securities exchange where the security is traded.

6. By amending 240.13d-101 by revising the language preceding the first box on the cover page, revising the note on the cover page, revising Instruction (2) for the Cover Page, and in Item 7 revise the cite "Rule 13d-1(f) (240.13d-1(f))" to read 240.13d-1(k)" to read as follows: 240.13d-101 Schedule 13D - Information to be included in statements filed pursuant to 240.13d-1(a) and amendments thereto filed pursuant to 240.13d-2(a).

* * * * *

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of 240.13d-1(e), 240.13d-1(f) or 240.13d- 1(g), check the following box.

* * * * *

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See 240.13d-7(b) for other parties to whom copies are to be sent.

* * * * *

Instructions for Cover Page

* * * * *

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and the membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) [unless it is a joint filing pursuant to Rule 13d-1(k)(1) in which case it may not be necessary to check row 2(b)].

* * * * *

7. By amending 240.13d-102 by revising the section heading, before the first paragraph on the cover page add a line for the date of the reportable event and boxes to check for the appropriate filing provision, revising Instruction (2) for the Cover Page, revising Instruction A following the Notes, revising Items 3, 4, 8, and 10, and revising the Note at the end of the schedule, to read as follows:

240.13d-102 Schedule 13G - Information to be included in statements filed pursuant to 240.13d-1(b), (c) and (d) and amendments thereto filed pursuant to 240.13d-2.

* * * * * _____

(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

[] Rule 13d-1(b)

[] Rule 13d-(c)

[] Rule 13d-1(d)

* * * * *

Instructions for Cover Page

* * * * *

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and that membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) [unless it is a joint filing pursuant to Rule 13d-1(k)(1) in which case it may not be necessary to check row 2(b)].

* * * * *

Notes

* * * * *

Instructions. A. Statements filed pursuant to Rule 13d-1(b) containing the information required by this schedule shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in Rules 13d-1(b)(2) and 13d-2(c). Statements filed pursuant to Rule 13d-1(c) shall be filed within the time specified in Rules 13d-1(c), 13d-2(b) and 13d-2(d). Statements filed pursuant to Rule 13d-1(c) shall be filed not later than February 14 following the calendar year covered by the statement pursuant to Rules 13d-1(d) and 13d-2(b).

* * * * *

Item 3. If this statement is filed pursuant to 240.13d-1(b) or 240.13d-2(b) or (c), check whether the person filing is a:

- (a) Broker or dealer registered under section 15 of the Act (15 U.S.C. 78o).
- (b) Bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c).
- (c) Insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c).
- (d) Investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C 80a-8).
- (e) An investment adviser in accordance with 240.13d- 1(b)(1)(ii)(E);
- (f) An employee benefit plan or endowment fund in accordance with 240.13d-1(b)(1)(ii)(F);
- (g) A parent holding company or control person in accordance with 240.13d-1(b)(1)(ii)(G);
- (h) A savings associations as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);
- (i) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3);
- (j) Group, in accordance with 240.13d-1(b)(1)(ii)(J). If this statement is filed pursuant to 240.13d-1(c), check this box.

Item 4. Ownership.

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

(a) Amount beneficially owned: _____.

(b) Percent of class: _____.

(c) Number of shares as to which the person has:

(i) Sole power to vote or to direct the vote _____.

(ii) Shared power to vote or to direct the vote _____.

(iii) Sole power to dispose or to direct the disposition of _____.

(iv) Shared power to dispose or to direct the disposition of _____.

Instruction. For computations regarding securities which represent a right to acquire an underlying security see 240.13d-3(d)(1).

* * * * *

Item 8. Identification and Classification of Members of the Group. If a group has filed this schedule pursuant to 240.13d-1(b)(1)(ii)(J), so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to 240.13d-1(d), attach an exhibit stating the identity of each member of the group.

* * * * *

Item 10. Certifications.

(a) The following certification shall be included if the statement is filed pursuant to 240.13d-1(b): By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

(b) The following certification shall be included if the statement is filed pursuant to 240.13d-1(c): By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

* * * * *

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See 240.13d-7(b) for other parties for whom copies are to be sent.

* * * * *

8. By amending 240.16a-1 to revise paragraphs (a)(1)(i), (ii), (iii), (iv), (v), (vi) and (vii), redesignate paragraph (a)(1)(viii) as paragraph (a)(1)(xi) and to add paragraphs (a)(1)(viii), (ix) and (x) to read as follows:

240.16a-1 Definition of Terms

* * * * *

(a) * * *

(1) * * *

(i) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(ii) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(iii) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(iv) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8);

(v) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) or under the laws of any state;

(vi) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 et seq. ("ERISA") that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(vii) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in paragraphs (a)(1)(i) through (ix), does not exceed one percent of the securities of the subject class;

(viii) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ix) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3); and

(x) A group, provided that all the members are persons specified in 240.16a-1(a)(1)(i) through (ix).

* * * * *

By the Commission.

Jonathan G. Katz
Secretary

January 12, 1998

Footnotes

<(1)> Rules 13d-1, 13d-2, 13d-3, and 13d-7 [17 CFR 240.13d-1, 240.13d-2, 240.13d-3, and 240.13d-7].

<(2)> 17 CFR 240.13d-101 and 240.240.13d-102.

<(3)> 17 CFR 240.16a-1.

<(4)> See fn. 9, *infra*.

<(5)> Schedules 13D and 13G are not required to be filed electronically with respect to securities of foreign private issuers. See Note to paragraph (c)(4) to 17 CFR 232.901.

<(6)> Exchange Act Release No. 37403 (July 7, 1996) ("Reproposing Release"). The comment letters, as well as a summary of the comments, are available from the Commission's Public Reference Room (File No. S7-16-96).

<(7)> The institutional investors include a broker or dealer registered under Section 15(b) of the Exchange Act [15 U.S.C. 78o(b)], a bank as defined in Section 3(a)(6) of the Exchange Act [15 U.S.C. 78c(a)(6)], an insurance company as defined in Section 3(a)(19) of the Exchange Act [15 U.S.C. 78c(a)(19)], an investment company registered under Section 8 of the Investment Company Act of 1940 [15 U.S.C. 80a-8], an investment adviser registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], an employee benefit plan or pension fund that is subject to the provisions of the Employee Retirement Income Security Act of 1974 [codified principally in 29 U.S.C. 1001- 1461], and related holding companies and groups (collectively, "institutional investors"). Rule 13d- 1(b)(1)(ii) [17 CFR 240.13d-1(b)(1)(ii)].

<(8)> The term "Exempt Investors" refers to persons holding more than five percent of a class of subject securities at the end of the calendar year, but who have not made an acquisition subject to Section 13(d). For example, persons who acquire all their securities prior to the issuer registering the subject securities under the Exchange Act are not subject to Section 13(d) and persons who acquire not more than two percent of a class of subject securities within a 12-month period are exempted from Section 13(d) by Section 13(d)(6)(B), but in both cases are subject to Section 13(g). Section 13(d)(6)(A) exempts acquisitions of subject securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933.

<(9)> The term "Passive Investors" is used in this release to refer to shareholders beneficially owning more than five percent of the class of subject securities and who can certify that the subject securities were not acquired or held for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect. See Rule 13d-1(c) and revised Item 10 of Schedule 13G. Shareholders that are unable to certify to this effect are considered to have, for purposes of this release, a "disqualifying purpose or effect". <(10)> Rule 13d-1(c).

<(11)> The Commission has revised, as proposed, the certification on the Schedule 13G for Qualified Institutional Investors to provide that such investors certify that the securities were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired and are not held in connection with or as a participant in any transaction having such purpose or effect (emphasis added). This amendment to the certification is to conform the language of the certification to amended Rule 13d-1(e).

<(12)> Amended Rule 13d-2(b) requires Qualified Institutional Investors to amend Schedule 13G 45 days after the end of each calendar year if, as of the end of such calendar year, if there are any changes in the information reported in the previous filing on that Schedule. Further, under amended Rule 13d-2(c) if their beneficial ownership exceeds 10 percent of the class at the end of any month, an amendment would be required to be filed within 10 days after the end of that month, as well as within 10 days after the end of any month in which their ownership increases or decreases by more than five percent of such class.

<(13)> See Sections II.C. and II.D. infra.

<(14)> The determination of what constitutes "promptly" under Regulation 13D-G is based upon the facts and circumstances surrounding the materiality of the change in information triggering the filing obligation and the filing person's previous disclosures. Any delay beyond the date the filing reasonably can be filed may not be prompt. See In the Matter of Cooper Laboratories, Inc., Release No. 34-22171 (June 26, 1985).

<(15)> Rule 13d-1(e).

<(16)> The sooner the Schedule 13D filing is made, the sooner the cooling-off period will end, since the cooling-off period ends 10 calendar days from the date the Schedule 13D is filed. <(17)> Upon reaching the 20 percent limit, the investor is not required to amend its Schedule 13G in addition to filing the Schedule 13D.

<(18)> Rule 13d-1(f).

<(19)> The "standstill" period would have commenced upon acquiring 20 percent or more of the class and terminated upon the filing of the Schedule 13D. During the standstill period, the investor would have been prohibited from voting its securities or acquiring additional equity securities in the issuer.

<(20)> As stated in the Reproposing Release, the Commission does not intend these new rules to create a presumption that beneficial ownership of 20 percent or more indicates control or a control purpose. Further, no presumption is intended that beneficial ownership below 20 percent cannot indicate control or a control purpose. Indeed, the Commission believes that it would be unusual for an investor to be able to make the necessary certification of a passive investment purpose when beneficial ownership approaches 20 percent.

<(21)> Rule 13d-1(h).

<(22)> Rule 13d-1(b).

<(23)> The Schedule 13G would be filed as an initial Schedule 13G as opposed to an amendment even if the reporting person had reported on Schedule 13G before losing its Schedule 13G-eligibility.

<(24)> See Exchange Act Release No. 14692 (April 21, 1978) [43 FR 18484].

<(25)> See Section II.B. above.

<(26)> Title V, Section 508.

<(27)> Rule 13d-1(b)(1)(ii)(G). This amendment codifies the no-action position set forth in Warren E. Buffet & Berkshire Hathaway, Inc., (available December 5, 1986). Two commenters addressed this proposal and both commenters supported the proposal.

<(28)> This amendment under Section 16 codifies the interpretive position set forth in Edward C. Johnson 3d., (available August 20, 1991).

<(29)> Since state takeover statutes and shareholder rights provisions are triggered by certain "beneficial ownership" or "voting power" thresholds -- and may even use the beneficial ownership definition under Rule 13d-3 -- there is a concern that reporting ownership on an aggregate basis may trigger some of those provisions.

<(30)> Likewise, under these circumstances, attribution may not be required under Rule 16a-1(a)(1).

<(31)> The Commission adopted a similar approach in modifying the definition of "affiliated purchaser" under Regulation M. See Exchange Act Release No. 38067 (December 20, 1996) [62 FR 520]. Although informational barriers may serve to prevent the attribution of beneficial ownership to the parent entities, a group under Rule 13d-5(b) can still be formed among commonly controlled entities or with the parent entity that otherwise own securities in the issuer if these persons agree to act together for the purpose of acquiring, holding, voting or disposing of the subject securities. See e.g., In the Matter of the Gabelli Group, Inc., et al, Exchange Act Rel. No. 26005 (August 17, 1988).

<(32)> To the extent the informational barrier is crossed, beneficial ownership of that class of security should be reported on an aggregate basis by the entities sharing the information.

<(33)> The entities may have common officers, directors, and employees but those persons must not be involved in the exercise of the voting and investment powers or otherwise made aware of specific securities positions which are not publicly available. This factor would ensure that persons involved in the exercise of the voting and investment powers are not the same persons that would exercise such powers for the parent entity and therefore no information concerning the exercise of such powers would pass through the informational barrier. <(34)> Pub. L. No. 104-290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

<(35)> Rule 13d-1(h).

<(36)> On September 18, 1997, the Commission proposed amending Rule 14a-8 to provide an override mechanism from the exclusion of the shareholder proposal under Rule 14a-8(c)(5) and (c)(7). See Release No. 34-39093. The 13G-eligibility of a shareholder who would use the proposed override mechanism to submit a shareholder proposal would be determined in the same manner as discussed in this section.

<(37)> Schedules 13D will, however, continue to be sent to each exchange on which the security is traded, which is a statutory requirement.

<(38)> See Exchange Act Release No. 7331 (September 24, 1996).

<(39)> The sample included 100 Schedules 13D filed from May 21, 1997 to June 2, 1997. <(40)> In an earlier survey discussed in the Reproposing Release, 110 Schedules 13D filed in November and December 1994 were surveyed and 76 percent disclosed a passive investment purpose. Of the total surveyed, 63 percent disclosed a passive investment purpose and held less than 20 percent of the class of securities and would therefore be eligible to use Schedule 13G as Passive Investors.

<(41)> This estimated number of respondents is based upon the number of Schedules 13D filed in fiscal year 1996 and assumes no increase each year. This represents an estimated 53 percent reduction from the 3,503 Schedules 13D filed in fiscal year 1996. The estimated 53 percent reduction in Schedule 13D filings is based upon the sample data provided by the Office of Economic Analysis.

<(42)> Total annual burden hours are determined by multiplying the estimated average burden hours for completing the particular schedule by the estimated number of respondents that file that schedule.

<(43)> This number of respondents is based upon the number of Schedules 13G filed in fiscal year 1996 (7,187) plus the additional 1,857 respondents that are expected to file on Schedule 13G under the proposed rules and assumes no increase each year.

<(44)> However, eight commenters expressed general views as to the costs and benefits associated with the amendments, without attempting to quantify either the costs or benefits. Five commenters stated that the proposed amendments would reduce passive filers' reporting burdens and associated costs. Seven commenters expressed concern that the proposed 20 percent limitation upon the availability of Schedule 13G to institutional investors that are passive would impose increased compliance burdens and costs without providing any useful information to the public. Finally, three commenters believed that requiring Schedule 13G filers to provide each exchange upon which the security is traded a copy of the Schedule would be overly burdensome because such information is not readily available. The proposal to provide copies of Schedule 13G to each exchange is not being adopted.

<(45)> The sample included 100 Schedules 13D filed from May 21, 1997 to June 2, 1997.