Reorganization and Liquidation (''Agreement'') between applicant and Prudential Government Income Fund, Inc. (''Government Income Fund''), a registered open-end management investment company organized as a corporation under the laws of Maryland. On January 12, 1996, applicant's shareholders approved the Agreement.

3. Applicant and Government Income Fund could be deemed to be affiliated persons under the Act solely by reason of having a common investment adviser, common trustees/directors, and/or common officers. Applicant therefore relied on the exemption provided by rule 17a–8 under the Act to effect the merger.[2] In accordance with the rule, the trustees of applicant found that the sale of applicant's assets to the Government Income Fund was in the best interests of applicant and that the interest of applicant's shareholders would not be diluted as a result of the reorganization contemplated by the Agreement. The board of directors of Government Income Fund also found that the sale of applicant's assets to the Government Income Fund was in the best interests of Government Income Fund, and the interests of Government Income Fund's shareholders would not be diluted as a result of the reorganization contemplated by the Agreement.

4. On January 19, 1996, applicant had total net assets of $125,590,639, comprising 4,731,652 Class A shares at a net asset value of $10.49 per share, 7,215,308 Class B shares at a net asset value of $10.49 per share, and 21,833 Class C shares at a net asset value of $10.49 per share.

5. Pursuant to the Agreement, on January 19, 1996, applicant transferred all of its assets to Government Income Fund, and Government Income Fund assumed all of applicant's liabilities. The transfer was based on the relative net asset value per Class A, Class B and Class C shares of applicant and Class A, Class B and Class C shares, respectively, of the Government Income Fund on such date. Such shares of Government Income Fund were then distributed *pro rata* to the shareholders of Class A, Class B and Class C shares of applicant, respectively.

6. Expenses incurred in connection with the merger included approximately $83,000 in printing expenses, $20,000 in solicitation expenses, $30,000 in legal fees and expenses, and $9,000 in mailing expenses. Applicant and Government Income Fund agreed to pay the expenses in proportion to their respective asset levels. Since all of applicant's assets have been transferred to Government Income Fund and Government Income Fund has assumed all of applicant's liabilities, these expenses will be satisfied from the assets of Government Income Fund.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities, and was not a party to any litigation or administrative proceeding. Applicant is not presently engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant intends to file a Certificate of Termination with the Office of the Secretary of the Commonwealth of Massachusetts to effect the termination of the applicant as a Massachusetts business trust as soon as practicable.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19468 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release Nos. 33–7314; 34–37480; International Series Release No. 1010; File No. S7–19–96]

RIN 3235–AG83

Securities Act Concepts and Their Effects on Capital Formation

AGENCY: Securities and Exchange Commission.

ACTION: Concept Release.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') has received the Report of the Advisory Committee on the Capital Formation and Regulatory Processes (the ''Advisory Committee'') chartered by the Commission. In addition to its consideration of the Report of the Advisory Committee (the ''Advisory Committee Report''), the Commission is reexamining the application of the Securities Act of 1933 and the rules thereunder to securities offerings. Information and comment are being sought with regard to what reforms could or should be undertaken, consistent with the Commission's investor protection mandate, to reform the current regulation of the capital formation process. Varying approaches, including a ''company registration'' concept recommended by the Advisory Committee, are being considered.

DATES: Comments should be received by September 30, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C., 20549. Comments also may be submitted electronically to the following electronic mail address: rule-comment@sec.gov. All comment letters should refer to File No. S7–19–96; this file number should be included in the subject line if electronic mail is used. 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: Anita Klein, Office of Chief Counsel, Division of Corporation Finance, (202) 942–2900. For copies of the Advisory Committee Report, please fax a request to the Office of Commissioner Wallman at (202) 942–9563 or call (202) 942–0800.[1]

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities Act of 1933 (the ''Securities Act'')[2] and the rules and regulations thereunder have long provided the foundation for a capital formation system whose integrity, fairness and liquidity are unparalleled. Because U.S. capital formation methods and markets are characterized by innovation, the Commission vigilantly seeks to identify ways to improve its regulatory framework governing that system.[3] Two studies presented to the

[1] The Advisory Committee Report is also available through the Commission's Public Reference Room and the Commission's Internet Web site (http://www.sec.gov). For further information with respect to the Advisory Committee Report, contact the Advisory Committee staff: David A. Sirignano, Staff Director, at (202) 942–2870; Dr. Robert Comment (202) 942–8036; Catherine T. Dixon, (202) 942–2920; Meridith Mitchell (202) 942–0890; or Luise M. Welby (202) 942–2990.

[2] 15 U.S.C. §§ 77a *et seq.*

[3] The current reexamination of the Securities Act registration system is the most recent step in the modern reevaluation of the regulatory framework that many date back to the publication of the 1966 article by Milton Cohen which first suggested the integration of the Securities Act and the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. §§ 78a *et seq.*) disclosure systems. *See* M. Cohen, ''Truth in Securities'' Revisited, 79 *Harv. L. Rev.* 1340 (1966). Since the publication of that article, the Commission has conducted or arranged several studies related to the disclosure system, including those completed by the Commission's Disclosure Policy Study Group in 1969 and the Commission's Advisory Committee on Corporate Disclosure in 1977. *See* Disclosure to Investors—A

Commission this year are assisting the Commission with its most recent efforts to reexamine that regulatory framework.

The first report delivered to the Commission was the Report of the Task Force on Disclosure Simplification (the ''Task Force'') of March 1996 (the ''Task Force Report'').[4] Among many other recommendations, the Task Force identified a number of areas in which modernization and simplification of the registration and disclosure processes could be accomplished.[5]

Today, the second report is being presented to the Commission by the Advisory Committee, chaired by Commissioner Steven M.H. Wallman.[6] The Advisory Committee has been studying the securities offering process and the Commission's rules regulating it since February 1995.[7] The objective of the Advisory Committee has been to assist the Commission in evaluating the efficacy of the regulatory process relating to the public offering of securities, securities market trading, and corporate reporting. The Advisory Committee Report is being published contemporaneously with this release and reflects 18 months of extensive study and analysis of the regulatory framework.[8] The Advisory Committee's work has assisted the Commission in focusing on diverse developments in the markets (some of which are more recent in origin and some of which reflect longer-term trends) and their current effects on the regulatory framework. Those developments and effects are the impetus for the Commission's current reexamination of some of the fundamental concepts of the regulatory framework. The Advisory Committee Report and its recommendations will be the subject of an ongoing review by the Commission and its staff.[9]

The Advisory Committee Report's primary recommendation is that the Commission further its integrated disclosure system by implementing a system based on a ''company registration'' concept first envisioned by the American Law Institute's Federal Securities Code.[10] As formulated by the Advisory Committee, a company registration system generally would be accomplished through the following steps:

On a one-time basis, the issuer [11] files a registration statement (deemed effective immediately) that includes information similar to that currently provided in an initial short-form shelf registration statement. This registration statement could then be used for all types of securities and all offerings (including those offered in furtherance of business acquisitions) and all offerings could be subject to Section 11 strict liability;

Current and future Exchange Act reports are incorporated by reference into that registration statement;

Around the time of the offering, transactional and updating disclosures are filed with the Commission, usually in a Form 8–K that is incorporated by reference into the registration statement and subject to Section 11 strict liability, but in certain cases, at the option of the issuer, through a prospectus supplement like those traditionally filed in shelf takedowns;

Other than a nominal fee paid at the initial filing, registration fees would be paid at the time of sale rather than prior to making any offers (the ''pay as you go'' feature);

Issuers would be required to adopt some disclosure enhancements (and encouraged to adopt others) that seek to improve the quality and timeliness of disclosure provided to investors and the markets; and

Formal prospectuses would be required to be physically delivered only in non-routine transactions and, when so required to be delivered, they would have to be delivered in time to be considered in connection with the investment decision. In almost all instances, an issuer could incorporate by reference filed information into selling materials or the confirmation of sale to satisfy the legal obligation to deliver a prospectus (which, under the statute, must precede or accompany a confirmation of sale).

The Commission seeks comment with respect to the Advisory Committee's company registration system, as a whole, as well as each of the separate recommendations contained in the Advisory Committee Report.[12] The Commission is not today proposing and is not in a position to endorse or reject the views or recommendations expressed in the Advisory Committee Report, the Task Force Report or any other ideas contained herein.

Reappraisal of Administrative Policies under the '33 and '34 Acts (Mar. 1969) (commonly referred to as the ''Wheat Report''); Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission (Nov. 1977). Those efforts paved the way for significant integration of the Securities Act and Exchange Act disclosure systems by the Commission in 1982. *See* Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380].

Further refinement of the Securities Act registration system included, for example, the development of the short-form shelf registration system, which has enabled ''seasoned issuers'' to conduct a primary offering on a delayed or continuous basis if certain requirements are met. Shelf registration has afforded an eligible registrant a certain degree of flexibility by enabling it to time its offering when market conditions are most advantageous. The Commission's subsequent adoption of a ''universal'' shelf registration system in 1992 increased this flexibility even further by permitting an eligible company to register debt, equity, and other securities on a single shelf registration statement, without having to specify the amount of each class of securities to be offered. *See* Securities Act Release Nos. 6499 (Nov. 17, 1983) [48 FR 52889] and 6964 (Oct. 22, 1992) [57 FR 48970].

4 Report of the Task Force on Disclosure Simplification (March 1996).

5 Comment is being solicited *infra* Section II.B.2, II.B.5 and II.B.6 with respect to a limited number of specific aspects of the Task Force Report.

6 Report of the Advisory Committee on the Capital Formation and Regulatory Processes (July 24, 1996).

7 The Advisory Committee consisted of: The Honorable Steven M.H. Wallman, Chairman; Professor John C. Coffee, Jr.; The Honorable Barber B. Conable, Jr.; Robert K. Elliott; Edward F. Greene; Dr. George N. Hatsopoulos; A. Bart Holaday; Paul Kolton; Roland M. Machold; Dr. Burton G. Malkiel; Claudine B. Malone; Charles Miller; Karen M. O'Brien; and Larry W. Sonsini. The Commission gratefully acknowledges the time and efforts of the members and staff of the Advisory Committee in producing a thoughtful and comprehensive report.

The Advisory Committee held eight public meetings and Committee members and staff met with a number of groups and individuals concerned with or affected by the Commission's regulation of the capital formation process.

8 Given the concurrent publication of the Advisory Committee Report and the recent publication of the Task Force Report, both of which are available on the Commission's Internet Web site and through the Commission's Public Reference Room, this release does not attempt to explain in full the varying proposals to reform the capital formation regulatory process that give rise to many of the questions asked in this release. Familiarity with the detailed discussions contained in those documents is assumed, as is familiarity with many basic Securities Act concepts. The Commission strongly urges interested parties to read the Advisory Committee Report in its entirety, as well as Section III of the Task Force Report.

9 *See* the comprehensive discussions contained in the Advisory Committee Report concerning market developments and the effects they have had on the operation of the Securities Act framework. Advisory Committee Report at pp. 4–9 and Appendix A (''App. A''). Similarly, *see* the Task Force Report at pp. 23–28.

10 The American Law Institute's Federal Securities Code was developed, after many years of effort, under the direction of Professor Louis Loss. *See* American Law Institute, Federal Securities Code (1980). *See also* L. Loss, ''The American Law Institute's Federal Securities Code Project,'' 25 *Bus. Law.* 27 (1969).

11 The Advisory Committee recommends that eligibility for an initial pilot be limited to issuers that: have registered at least one public offering under the Securities Act; have been reporting under the Exchange Act for two years; have a public float of at least $75 million; and have securities listed on the New York Stock Exchange, the American Stock Exchange or NASDAQ NMS. Foreign issuers would be eligible if they file annual, quarterly and other periodic reports with the Commission on forms designed for domestic issuers, although the Advisory Committee specifically requests the Commission to consider whether current foreign issuer eligibility requirements for Form F–3 primary offerings should be sufficient for eligibility in the pilot. Most foreign countries (other than Canada) do not require their issuers to prepare quarterly reports.

12 Comment also is solicited *infra* Section II.B.1 with respect to a limited number of specific aspects of the Advisory Committee Report.

Consideration of public comment on the recommendations in the Advisory Committee Report, the Task Force Report, and other ideas herein will be undertaken prior to any future Commission action. In the event the Commission determines to take such action, a specific proposal will be published for comment.

II. Securities Act Concepts

The Securities Act and the issuer disclosure provisions of the Exchange Act are premised on the view that investors are best protected in making investment decisions if they are presented with full and fair disclosure of all material information about the investments. The continuing challenge for the Commission lies in adapting the statutory disclosure framework to developments in the capital markets while ensuring that investors receive full and fair disclosure in a manner [13] and at a time that allows such informed decision-making.

Faced with the following developments, among others: increasing institutionalization of the markets; advances in technology and communication media; continuing globalization of securities markets; and the erosion of distinctions between private and public transactions, the Commission is examining whether the existing investor protection mechanisms, such as registration of both offers and sales and physical delivery of final prospectuses to investors around the time of sale, remain the best methods for accomplishing this full disclosure objective. The Commission is considering as well whether specific aspects of the integration of the registration requirements under the Securities Act and the periodic reporting requirements under the Exchange Act, if adjusted, could better serve investors' needs for full disclosure. Finally, the Commission is considering whether certain distinctions between public and private offerings of public companies remain necessary and how the increasingly institutional nature of investors should be reflected in the regulatory framework.

A. Request for Comments on Securities Act Concepts

In this release, the Commission seeks comment on the best methods for eliminating unnecessary obstacles to capital formation while improving the quality and timing of disclosure and, therefore, investor protection. To assist the Commission in its deliberations, certain concepts that are central to the current capital-raising process and transcend any one approach to reform are highlighted below. Comment is solicited regarding the best approach to resolving concerns raised by those concepts, whether that approach is one or more of the approaches mentioned herein, a combination thereof, or any approach not described in this release. In commenting on the issues and approaches discussed in this release, commenters are requested to focus on how those matters impact on full and fair disclosure to investors in a manner and at a time that allows for informed investment decisions.

1. Quality of ongoing disclosure. Investors in primary offerings for repeat issuers and investors in the secondary markets generally rely on periodic disclosure prepared pursuant to the Exchange Act.[14] The existing Securities Act registration system for larger, seasoned issuers is heavily dependent upon incorporation of disclosure from such reports into the registration statement.[15] Some observers have suggested that, while issuers undertaking registration of public offerings often devote significant resources to developing disclosure of the quality required under the Securities Act, equivalent resources are not necessarily devoted to preparing disclosure in Exchange Act periodic reports.

Given the importance of investor protection, both with respect to investors in primary offerings and investors in the secondary trading markets,[16] the Commission solicits comment regarding whether, in fact, a significant difference exists in the quality of disclosure between Securities Act and Exchange Act documents. If such a difference exists, what Commission action should be taken to address this concern? Should enhancement of current safeguards (such as the application of liability provisions) or the adoption of newly devised safeguards,[17] or both, be used to ensure that disclosure in Exchange Act documents is equal in quality to that in Securities Act documents?

Are there particular aspects of Exchange Act disclosure that are in need of improvement, and thus require specific Commission focus? Is there information in Securities Act disclosure that should be mandated in Exchange Act reports?[18] To enhance disclosure quality, should further participation of persons independent of the issuer, such as independent accountants, be required in the preparation of Exchange Act reports?

If various reforms would result in disclosure less often being prepared specifically in connection with the offering process, or would allow issuers quicker, more frequent (potentially continuous) access to the capital markets, would any concern about existing Exchange Act disclosure quality be exacerbated? Are improvements needed to ensure that Exchange Act reports provide a more current stream of information to investors? For example, should consideration be given to adopting a requirement, similar to certain self-regulatory organizations' requirements, that information that could materially affect the market for an issuer's securities be disclosed promptly in a public filing with the Commission?[19] Should the filing dates for Exchange Act reports (*e.g.* Form 8–K) be accelerated or should the events that trigger such reports be broadened?[20] Should the disclosure of particular events be accelerated?[21]

2. Informing Investors. a. Constructive versus Physical Delivery The Securities Act prohibits persons from sending securities through interstate commerce ''for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements'' of Securities Act Section 10(a).[22] In addition, the Section 10(a) prospectus must be sent or given prior to or at the same time with any communication, such as selling

[13] In accordance with a Task Force Report recommendation, the Commission is currently contemplating the ''plain English'' approach to prospectus writing in another context. *See* Task Force Report at pp. 17–18. This release focuses on the content of the information delivered rather than the language in which information is presented.

[14] For domestic companies, Exchange Act periodic disclosure is generally provided in annual reports on Form 10–K (17 CFR 249.310) due 90 days after the end of the fiscal year, quarterly reports on Form 10–Q (17 CFR 249.308a) due 45 days after the end of the fiscal quarter and ''material events'' reports on Form 8–K (17 CFR 249.308) due within a specified number of days (either 5 business days or 15 calendar days) after the event occurs.

[15] *See* Form S–3, 17 CFR 239.13.

[16] It is estimated that the secondary trading market for equity securities was roughly 35 times as large (in aggregate dollar terms) as the amount registered for primary offerings in 1995. *See* Advisory Committee Report at p. 2.

[17] *See, e.g.,* Advisory Committee Report regarding certain disclosure enhancements at pp. 26–28 and *infra* Section II.B.1.b.

[18] *See, e.g.,* Advisory Committee Report regarding Risk Factors at p. 27 and Appendix B (''App. B''), pp. 56–57.

[19] *See, e.g.,* New York Stock Exchange Listed Company Manual § 202.05; American Stock Exchange Company Guide § 1102; and National Association of Securities Dealers By-laws, Schedule D.

[20] *See, e.g.,* Advisory Committee Report at p. 27 and App. B, pp. 55–56.

[21] *See, e.g.,* Advisory Committee Report at p. 27.

[22] 15 U.S.C. § 77j(a). Section 5(b)(2) of the Securities Act, 15 U.S.C. § 77e(b)(2).

materials or confirmations, that would otherwise fall within the broad definition of ''prospectus.''[23] These prospectus delivery provisions, which were established to ensure that investors would be fully informed, today are fulfilled in some cases by physical delivery of written prospectuses and in some cases by a mixture of physical delivery of transaction-specific information and constructive delivery (through the issuer incorporating the information by reference from filed documents) of company information. Through the 1995 adoption of Rule 434, the Commission has allowed constructive delivery of some transaction-specific information in limited circumstances by larger issuers.[24]

The Commission is considering whether there are circumstances under which constructive delivery to investors of all offering information (including both company and transaction-specific disclosure) would provide sufficient investor protection. Have advances in technology and communications now established a system whereby ''accessibility'' provides roughly the same amount of investor protection as physical delivery? Should reliance solely on constructive delivery be permitted only if access is assured not only through the Commission but also through other media? Is the broad dissemination of publicly available information regarding a company, which the ''efficient market hypothesis'' assumes,[25] in fact a reality for most investors, and not just sophisticated ones, at any given time? Does it matter, under the ''efficient market hypothesis'' or otherwise, if just sophisticated investors have this information? Is it useful to require this information to be physically delivered if, as under the current system, it is not required to be delivered until days after the investment decision is made? On what basis are investors in the secondary markets making investment decisions?

Where constructive delivery is being used, is there nevertheless a minimum amount of basic offering information not typically contained in a confirmation that the Commission should mandate be physically delivered, such as in a newly developed short-form profile prospectus, regardless of the nature of the offering or investor? If so, why?

Comment also is solicited regarding whether the same method of delivery should be required for all purchasers in a single offering. Should issuers be permitted to choose different methods of delivery for different investors, without regard to the investor's level of sophistication?[26] If different delivery methods are appropriate, should the choice be dependent upon the nature of the purchaser, the size of the offering, the type of security offered, or a combination of such factors? If the nature of the purchaser is a determining factor, would the ''accredited investor'' test,[27] the ''qualified institutional buyer'' test[28] or another test serve as the best criterion for determining whether constructive or physical delivery is used? If the Commission were to require information to be delivered to unsophisticated investors in a more costly manner, would issuers and underwriters be less likely to permit such investors to participate in an offering? Would it depend on the type of offering? Would additional flexibility provided to issuers and underwriters to tailor disclosure documents to unsophisticated investors encourage inclusion of such investors by issuers and underwriters?

Would constructive delivery be appropriate in every offering of a particular type of securities (e.g. debt), or would the appropriateness of constructive delivery be dependent as well on the size of the offering or the identity of the purchasers?[29] Would investors know in what manner information would be delivered if the issuer could employ multiple delivery options? In the view of commenters, would this information matter to investors?

b. Timing of delivery. One key element of the full disclosure objective is ensuring that investors are given sufficient time to consider material information in making investment decisions. Under current rules, prospectus delivery is required prior to or at the same time with the confirmation in primary offerings. In practice, therefore, Section 10(a) prospectuses may be unlikely to be sent to investors in advance of the decisions to purchase. In some cases, preliminary prospectuses are delivered, but they generally are not required to be delivered if the issuer is reporting under the Exchange Act.[30] For reporting issuers, material company information for the most part will have been widely available at the time of any offering, but information regarding the offering transaction and any information that reflects material developments since the last Exchange Act report was filed would not have been.[31] Comment is requested with regard to whether investors in primary offerings by reporting companies receive transactional and material developments information in the traditional physical form in sufficient time to make informed investment decisions. If not, what Commission action would be appropriate to ensure that result?

To the extent that transaction-specific information is constructively delivered through public filings rather than physically delivered to individual offerees, does such an approach delay or aid absorption of that information by investors in the primary offering or by the market? If such information is filed just prior to sale, would investors have more, less, or the same opportunity to make informed decisions under constructive delivery as they have today under the shelf registration system, where the transaction-specific information is physically delivered with the confirmation sometime after the investment decision is made?

c. Limitations on written communications other than the statutory prospectuses. The drafters of the Securities Act intended that the

[23] See Section 2(10)(a) of the Securities Act, 15 U.S.C. § 77b(10)(a).

[24] *See* Securities Act Release No. 7168 (May 11, 1995) [60 FR 26604]. For larger, seasoned issuers, Securities Act Rule 434 (17 CFR 230.434) currently allows constructive delivery of transaction-specific information (other than that relating to the description of the securities offered) and company information (other than material issuer developments) in firm commitment underwritten offerings for cash.

[25] The ''efficient market hypothesis'' generally provides that the price of a company's publicly traded securities fully reflects all available information about the company at any given time. *See, e.g.,* L. Loss and J. Seligman, 1 *Securities Regulation* 1, 184–86, n. 41 (1994). While there are different versions of the ''efficient market hypothesis,'' perhaps the most widely accepted version is the ''semi-strong'' variant, which posits that all *publicly* available information is quickly disseminated into the marketplace and reflected in the price of a company's stock. *See* Loss and Seligman, *supra* at 185, note 41. The Commission has previously relied on such a version of the ''efficient market hypothesis,'' for example, when adopting Securities Act Rule 415 concerning shelf registration. *See* Securities Act Release No. 6499.

[26] See Advisory Committee Report at pp. 18–22.

[27] ''Accredited investor'' is defined in Securities Act Rule 501(a), 17 CFR 230.501(a). See Advisory Committee Report at p. 21.

[28] ''Qualified institutional buyer'' is defined in Securities Act Rule 144A(a)(1), 17 CFR 230.144A(a)(1).

[29] See Advisory Committee Report at pp. 19–22 and App. B, p. 16.

[30] Exchange Act Rule 15c2–8, 17 CFR 240.15c2–8.

[31] For non-shelf offerings today, such information may be on file with the Commission for some time prior to the offering, although the amount of time is dependent upon many factors, including whether the staff reviews that registration statement. To the extent pre-transaction staff review for repeat issuers' registration statements would be limited or eliminated in the future, that time is likely to become shorter, and could become materially shorter.

statutory prospectus be the written selling document for securities. ''Free writing'' outside the statutory prospectus is not generally permitted except in the post-effective period when the Section 10(a) prospectus has been delivered to investors. Comment is solicited with respect to whether more flexibility to inform investors by use of written vehicles other than the traditional prospectus should be permitted. For example, should simplified profile prospectuses be permitted or required? With respect to offerings by seasoned issuers, if significant ongoing information is and has been available to investors with respect to such issuers, is the potential for harm from allowing or encouraging non-prospectus information delivery minimized? Would investor protection be likely to improve to the extent that issuers are encouraged to provide written, rather than oral, information about the basic terms of the transaction? Alternatively, would more flexibility be likely to result in use of selling materials driven by marketing needs that (in the distributed form) significantly differ from the prospectus envisioned by the Securities Act? If so, would investors' focus shift to the marketing language instead of the mandated prospectus disclosure, particularly if the latter is constructively rather than physically delivered? What standard of liability should attach to such other selling materials?

Would a system allowing incorporation by reference of the required prospectus disclosure from a registration statement previously filed with the Commission facilitate the use of simplified term sheets or other types of ''free writing?'' Would that system facilitate free writing if such selling materials had to be filed and subject to liability under Section 12(a)(2)? Would sufficient investor protection exist where Section 12(a)(2) liability is applied?

To what extent would issuers be more inclined to provide selling materials under that sort of system than under the current system? Would the requirement to have a Section 10(a) prospectus (and the selling materials) on file by the time of use of the selling materials present any difficulty as a practical matter, even though statutory disclosure may be wholly incorporated by reference rather than delivered physically? [32]

3. Timeliness of disclosure—informing the market. Under the current shelf system, information concerning shelf takedowns (contained in a prospectus supplement) is not required to be filed until the second business day following the earlier of: the date of determination of the offering price, or the date of first use in connection with the offering. Some have expressed concern that the current structure of the shelf registration system does not require timely disclosure to the secondary markets of all material information that is being disclosed to investors in the primary offering. [33]

Does the post-takedown filing of prospectus supplements strike an appropriate balance between quick access to capital and timely disclosure to investors in the secondary markets for such securities? Is this balance appropriate if the prospectus supplement is available earlier? Are the secondary markets having difficulty assimilating such information during the period before it is filed with the Commission because of limited access to such information? What role do wire services and others play in disseminating such information? If all this information is already fully disseminated to the secondary markets at the time investors make the decision to purchase in the primary offering, is it necessary to require any filing or mandate any specific form of information delivery for transactions? As procedures are developed permitting issuers to access the capital markets more quickly, what changes, if any, are likely to occur to the underwriting process and investor participation?

If information that is not filed with the Commission is not being fully assimilated prior to the making of investment decisions, comment is requested with respect to whether, regardless of any other reforms, the shelf registration system should be amended to require the filing of complete offering disclosure (including the price and other terms of the securities) at some point prior to the takedown in order to allow time for the market to assimilate such information. [34] If so, how long does it take for such information to be assimilated by the market? Would the answers to these questions be dependent upon the nature of the securities involved in the offering, the nature of the offering, or the size of the issuer?

Does it matter if transaction-specific disclosure that does not amount to a material development is not assimilated until some time after the offering? Should a special requirement apply in cases where the offering involves a type of security never before sold by the issuer? Should there be certain events (*e.g.* a percentage of equity being offered) that will always be deemed material developments?

In addition, comment is requested with regard to whether takedown information should be filed in an Exchange Act report that is incorporated by reference into the registration statement. Should all Securities Act Rule 424(b) prospectus supplements be deemed to be a part of the effective registration statement, as is the case with prospectus supplements filed in connection with Rule 430A?

4. The role of ''gatekeepers'' in maintaining quality of disclosure. The civil liability provisions of the Securities Act registration system provide strong incentives for certain parties independent of the issuer (such as underwriters, accounting professionals, and others) to take steps to ensure the quality of disclosure. [35] Given the interest of issuers in quick access to the capital markets, some commenters and reports have argued that these ''gatekeepers'' may not currently be given the amount of time they wish or need in which to perform their traditional ''due diligence'' role, particularly in connection with delayed shelf offerings. [36] Comment and specific data are solicited with respect to the nature and prevalence of such difficulties. Comment is requested on whether there is tension between the traditional role of ''gatekeepers'' and the issuer's desire to have quick access to the capital markets.

Can the independent ''gatekeepers'' role be reconfigured in order to facilitate the issuer's ability to access the capital markets quickly while maintaining or enhancing investor protection? If not, should reliance on such ''gatekeepers'' continue if a collateral effect may be to slow down access to the capital markets? Is the increasing ability of issuers to access the securities markets directly by themselves affecting the role of underwriters as ''gatekeepers,'' particularly in light of advances in technology and communications? Has there been a change in the role other parties play, such as analysts and rating agencies, that should be considered in evaluating the role of traditional ''gatekeepers?'' In what ways has the

[32] The Section 10(a) prospectus would be required to be on file subject to, if applicable, Rule 430A (17 CFR 230.430A) and Rule 424 (17 CFR 230.424).

[33] *See, e.g.,* Advisory Committee Report at pp. 5–6. *See also* Securities Act Rule 424(b), 17 CFR 230.424(b).

[34] *See, e.g.,* Advisory Committee Report at p. 17.

[35] *See* Securities Act Section 11, 15 U.S.C. 77k. *See also* Securities Act Section 12, 15 U.S.C. § 77l.

[36] *See, e.g.,* Committee on Federal Regulation of Securities, ''Report of Task Force on Sellers' Due Diligence and Similar Defenses Under the Federal Securities Laws,'' 48 *Bus. Law.* 1185 (1993).

''due diligence'' process changed to reflect these changes?

Are there mechanisms that could be adopted to allow such ''gatekeepers'' to operate effectively? Have advances in technology and communications and the existence, in some cases, of auditors engaging in interim reviews, and analysts and rating agencies made performance of the ''gatekeeper'' function possible on a continuous basis, or with little notice, due to the dissemination of information about issuers on a continuing basis?

Would requiring a separate filing that is subject to Section 11 liability (such as an Exchange Act filing incorporated by reference into the registration statement) focus the issuer and other parties on the quality of disclosure and the need to undertake due diligence? If so, should the timing thereof be dependent upon the type of security involved and the size of the offering? Should there be a different or supplemental mechanism (for example, a requirement that independent ''gatekeepers'' be notified of (or engaged for, as applicable) an offering at least several days in advance, or a requirement that a certificate be filed by independent ''gatekeepers'' prior to the offering that they have performed due diligence)? Would these mechanisms be consistent with today's demands for quick access to capital?

Would a ''disclosure committee'' of an issuer's board of directors operate as an effective ''gatekeeper?'' [37] Would such a ''disclosure committee'' likely improve the monitoring of disclosure by directors or improve the accuracy of disclosure? Would it result in a diminished oversight role for the rest of the board? What effect would it have on the liability of the directors serving on the committee? What effect would it have on the liability of the other directors on the board? Would board members be willing to serve on such a committee if there were no Commission guidance on liability? [38] How would it operate differently from the audit committee?

5. Staff review. The Advisory Committee Report states that the uncertainty surrounding whether there will be staff review of registration statement disclosure, in cases other than initial public offerings and major restructurings, results in delays and uncertainties that may not be justified in terms of public interest and investor protection benefits.[39] The Advisory Committee Report suggests that, for those issuers in a company registration system, under certain circumstances, staff review be eliminated with respect to pre-transaction filings in favor of enhanced reviews of Exchange Act filings that could provide a similar deterrent effect.

Only a small percentage of the Commission's current reviews of Securities Act registration statements focus on issuers that are neither making their initial public offering nor offering securities in connection with major restructurings.[40] Many of those reviews involve issuers that are either financially troubled or are offering a new type of security to the public. Comment is requested with respect to whether the Commission staff should shift its review of repeat issuers from Securities Act registration statements to the review of Exchange Act reports. If so, under what circumstances? Should the Commission instead consider: making public its criteria used to determine whether to review repeat issuers' registration statements; limiting its review of repeat issuers' registration statements to those issuers that are financially troubled or are engaging in an extraordinary transaction; or allowing repeat issuers to request review of their Exchange Act reports well in advance of a public offering? [41]

B. Request for Comment on Aspects of Specific Approaches

1. The Advisory Committee Report. a. Scope of the system. If the Commission were to ultimately adopt a version of company registration, should it be preceded by a temporary pilot program to test the system? If ultimately adopted, should it apply to issuers on a voluntary or mandatory basis? Should it be mandated for some issuers, and if so, which ones? Would it be appropriate for smaller issuers without significant additional investor protection mechanisms? Are the benefits of the company registration system that do not exist in the current shelf registration system likely to attract the participation of issuers given the different requirements of company registration, including the investor protection enhancements? If available only to larger issuers on a voluntary basis, are such issuers likely to opt in? The company registration system, in its recommended pilot stage, would not be available to all issuers currently eligible to rely on shelf registration for delayed offerings because, for example, it requires two years of reporting history as opposed to one year. The Advisory Committee believed that the extra ''seasoning'' from an additional year could help ensure the quality of the Exchange Act reporting structure. Is such an additional requirement appropriate?

If a voluntary company registration system were implemented, eligible issuers could be operating under one of two separate registration systems: the Form S–3 (allocated or universal shelf or non-shelf) registration, or company registration (modified or full). If such a system were to be implemented, should issuers electing to be part of the system be required to rely on company registration for all subsequent offerings of securities if they are to receive certain other benefits,[42] or should issuers be permitted to use a company registration system except when they issue unregistered securities in reliance upon statutory exemptions or Commission exemptive rules or regulations? Should any period of ineligibility to choose a company registration system be applied if an issuer changes its mind about participation in the system? Are there offerings of certain exempt securities and exempt transactions that an issuer should be permitted to make on an unregistered basis while participating in company registration? Should debt securities and equity securities be treated differently with regard to mandatory inclusion?

The current Securities Act regulatory framework applies different liability standards to registered offerings than

[37] *See* the full description of this concept at pp. 31–34 of the Advisory Committee Report. This concept is recommended by the Advisory Committee, although it is not identified as an essential element of company registration.

[38] Although the Advisory Committee Report stops short of recommending a particular change in the application of liability to ''gatekeepers,'' three members of the Advisory Committee, in a separate statement, expressed doubt that practitioners would recommend, or that corporations would adopt, some of the reforms proposed by the Advisory Committee, and particularly the disclosure committee concept, unless the Commission accompanied it with a transition in liability rules. *See* ''Separate Statement of John C. Coffee, Jr., Edward F. Greene, and Lawrence W. Sonsini'' in the Advisory Committee Report at Section IV., p. 38.

[39] *See* Advisory Committee Report at App. A, pp. 6–14.

[40] The Commission staff does not currently review takedown disclosure in a shelf registration statement prior to use, although the staff selectively reviews shelf registration statements prior to their effective date and selectively reviews other registration statements of repeat issuers, as well as Exchange Act reports of repeat issuers.

[41] *See* the discussion of staff review in the Advisory Committee Report at App. B, pp. 21–22.

[42] *See* Advisory Committee Report at App. B, pp. 34–39. Under the Advisory Committee recommendations, issuers that choose full company registration would be entitled to rely upon a narrower application of the resale limitations for ''affiliates'' and a narrower definition of who is an ''underwriter'' with respect to their securities. *See* Advisory Committee Report at App. B, p. 34.

unregistered offerings.[43] For example, strict liability under Section 11 applies to registered offerings but does not apply to unregistered offerings. Is this liability distinction likely to lead an issuer to prefer to retain the option of making unregistered exempt or offshore offerings? What would be the benefits to investors of a system in which all offerings are registered (full company registration) as opposed to the current system in which some offerings are registered and some are unregistered? What would be the negative consequences? Are the reasons that issuers choose unregistered private offerings (such as the need to keep certain information confidential, the activities of arbitrageurs or the identity of the purchasers) they addressed by the company registration model?[44]

b. Disclosure enhancements. The Advisory Committee Report suggests that a number of ''disclosure enhancements'' be a part of the company registration system, largely as methods to ensure the quality and currency of Exchange Act disclosure.[45] Comment is requested with respect to the effect of each of those enhancements and whether any resulting benefit would justify any additional cost of complying. For example, would a benefit be provided by the management certification (which is not filed but subject to penalty) that is not currently provided by the signature requirements? Would management be more likely to read the disclosure document or would it provide the certification, much in the same way some management reportedly execute signature pages, without reading the disclosure document?

The recommended mandatory enhancements focus on internal issuer action to improve disclosure, rather than seeking enhancement of Exchange Act reports through persons independent of the issuer. Comment is requested with respect to the relative costs and benefits of focusing on internal issuer action as compared to greater participation of independent ''gatekeepers.'' Should any voluntary enhancement involving independent parties (*e.g.* the review of interim financial results under SAS 71)[46] be mandated? Should any of the mandatory enhancements be voluntary? Are there additional or alternative enhancements that would provide investor protection at reasonable cost? For example, should other communications from the auditors to the issuer be reported in the Form 8–K filings (*e.g.* internal control weaknesses)? Should sales be prohibited during the days following the occurrence of any event (or certain specified events) triggering a Form 8–K before the report has been filed? As recommended by the Advisory Committee, should sales be prohibited until the market assimilates the information after such filing?

Could aspects of any of the proposed enhancements be modified to provide greater investor protection without disproportionately increasing the costs? For example, are there events currently reported on Form 10–Q that should be subject to an accelerated reporting schedule on Form 8–K?[47] Would any of the enhancements operate instead to reduce investor protection? Would any of these enhancements suggest that fewer persons take responsibility for the disclosure? If enhancements are beneficial, should they be mandated for some or all issuers reporting under the Exchange Act, regardless of participation in company registration?

2. Task Force Report Recommendations. The Task Force Report sets forth a list of recommended reforms for the regulatory system. The main focus of those recommendations was on revising the existing shelf registration system to provide more flexibility and accessibility. Those recommendations included:

- Allowing smaller issuers that have been reporting for a year to make delayed offerings (without altering the disclosure requirements or permitting forward incorporation by reference);
- Eliminating ''at the market'' offering restrictions;
- Allowing universal shelf registration for secondary offerings;
- Allowing issuers and majority-owned subsidiaries to be named as possible issuers on a shelf registration (without designating the issuer until takedown);
- Allowing reallocation of securities on a shelf registration statement by post-effective amendment;
- Allowing registration by seasoned issuers without any specification of the classes registered; and
- Allowing seasoned issuers to pay registration fees at the time of takedown.[48]

The Commission seeks comment with respect to each of the Task Force's recommendations relating to reforming shelf registration. In addition, the Commission requests comment specifically on the following aspects of the Task Force's suggested reforms.

1. Many Task Force shelf registration revisions are similar to the streamlining aspects of the company registration system. If a company registration approach is implemented, would any of the Task Force recommendations to revise the shelf system provide an added benefit to ineligible (or eligible) issuers without loss of investor protection?

2. Would the Task Force reforms eliminate any remaining concern of issuers regarding market overhang effects when equity securities may be issued from a universal shelf?

3. Would reform of the shelf registration process as suggested in the Task Force Report be appropriate only if investor protection enhancements also were added? If so, what enhancements would be needed? Would the shelf registration reforms minimize or exacerbate concerns about ensuring current information for the secondary markets?

3. Liberalizing the resale of unregistered securities. One approach to reforming the registration system involves the expansion of Rule 144A under the Securities Act.[49] Rule 144A has facilitated the creation of a private, relatively liquid, limited institutional market made up of qualified

[43] *See* Securities Act Sections 11, 12 and 17, 15 U.S.C. §§ 77k, 77*l*, and 77q. *See also Gustafson v. Alloyd Co. Inc.*, 115 S. Ct. 1061 (1995).

[44] *See* Advisory Committee Report at App. A, pp. 18–19, 36–38 and at App. B, p. 45.

[45] *See* Advisory Committee Report at pp. 26–28. Those enhancements include: a certification that is sent with the filing of each mandatory periodic report that two of four senior officers have reviewed the issuer's Exchange Act reports and that, to the best of their knowledge, they do not contain any material false or misleading information; a one-time management report to the audit committee or to the board of directors, if there is no audit committee, describing the procedures followed to ensure integrity of reports and to avoid insider trading (updated only if materially changed); an alteration of the due dates for Forms 8–K to 5 business days after the occurrence of the event where such reports currently allow 15 calendar days; an expansion of the events that require *per se* a filing of a Form 8–K; a new requirement that risk factors disclosure be included in the Form 10–K (amplified by a discussion of the benefits of ownership at the issuer's option); a review of interim financial information under SAS 71 by independent accountants at the time of filing (a voluntary enhancement); and a ''disclosure committee'' of the board of directors (a voluntary enhancement).

[46] *See* AICPA Statement on Auditing Standards No. 71 (May 1992).

[47] *See, e.g.*, the recommendations regarding acceleration of reporting of certain events in the Advisory Committee Report at p. 27.

[48] *See* the Task Force Report at pp. 36–40. The Task Force also recommended allowing smaller issuers that are not eligible for Form S–3 but have been reporting for a year to deliver their Exchange Act reports with their prospectuses (rather than reiterating that information in the prospectuses). All but the first and fourth of these recommendations noted above are recommendations of the Advisory Committee. *See* Task Force Report at pp. 36–40 and the Advisory Committee Report at p. 35, n. 40 and accompanying text.

[49] 17 CFR 230.144A.

institutional buyers (''QIBs''). Suggestions have been made that easing the restrictions on the types of securities and buyers that may participate in the Rule 144A market would reduce the cost of capital formation without a corresponding loss of investor protection.[50] Should the Commission consider expanding the use of Rule 144A as an alternative to, or in combination with, aspects of company registration? For example, should the fungibility restriction of Rule 144A [51] be revised and, if so, should it be eliminated or simply eased for a particular class of issuers or securities? Comment also is requested regarding whether the group of institutions eligible to be QIBs should be expanded and, if so, in what manner.[52] Would the expansion of this separate institutional market lessen investor protection in any way or harm the public interest?

If the Commission were to expand the use of Rule 144A, revise Rule 152,[53] and address further the problematic practices under Regulation S,[54] would enough of the complexity of the ''restricted versus unrestricted securities'' and ''private versus public offering'' dichotomies be eliminated, or would such actions move the line of demarcation but otherwise retain all the distinctions?[55] Would the complexity be eliminated if, in addition, the Commission shortened the holding period in Rule 144 or would this change move the line of demarcation?[56] Rule 144 is commonly viewed as setting the restrictions on resale of most unregistered securities (including sale of Rule 144A securities outside the QIB market). As such, would reducing the Rule 144 holding period have the effect of making the alternative of not registering securities more attractive to issuers and purchasers and, therefore, tend to minimize the need for further reform of the registration process? Would rule changes that encourage more offerings to be unregistered impact investor protection?

4. The four-part approach. Another recently articulated approach to modernizing the regulatory framework governing the offering process consisted of: (i) focusing on the nature of purchasers as one of the factors considered in defining the regulation of registered offerings; (ii) exempting offers from registration; (iii) allowing communications other than the statutory prospectus during the offering period, subject to Section 12(a)(2) (but not Section 11) liability; and (iv) allowing prospectus delivery by incorporation by reference of the full prospectus, where appropriate, and pre-confirmation physical delivery of prospectuses in all other cases.[57] Some of these ideas, such as use of constructive delivery and allowing non-statutory prospectus communications, are discussed above.

Comment is solicited with respect to whether the implementation of these reforms would suffice to achieve full disclosure in the modern offering process. If not, what other actions would be needed? Would the deregulation of offers resolve some of the complexities resulting from the statutory distinction between private and public offerings?

Would there be any loss of investor protection as a result of the deregulation of offers due to the fact that no document need be filed until the time of sales, especially with respect to issuers that do not file under the Exchange Act? Conversely, would there be an increase in information without the diminution of investor protection if the deregulation resulted in the freedom to provide written, profile disclosure not conforming to the traditional prospectus? Are there classes of registered offerings regarding which the capital markets have no need for advance notice of the issuers' intentions to offer securities? Should this approach be considered only for certain classes of issuers and, if so, which ones?

5. ''Pink herring'' concept. Another recent suggestion is that offers be permitted to be made by any issuer after filing a ''pink herring'' registration statement consisting of limited information regarding the price, the type of security, the method of distribution and financial results.[58] An initial nominal fee would be paid with the pink herring filing. Thereafter, public offers and general solicitations could be made. Although all offers would be registered under this approach, whether public or private, unregistered sales to qualified non-retail investors could be made thereafter in compliance with, for example, Regulation D.[59]

Comment is solicited with respect to whether this proposal would resolve much of the strain resulting from the erosion of distinctions between private and public offerings. Would there be a loss of investor protection due to the fact that only limited disclosure need be filed until the time of sales? Would there be increased investor protection from this proposal in comparison to a system where offers are not regulated at all and no filing is made with the Commission until the time of sale? Would a benefit result from the potential involvement of some ''gatekeepers?'' Would there be a benefit from requiring a filing with the Commission that could be reviewed by offerees or used by the Commission in the event of fraudulent offers? Should this approach be considered only for certain classes of issuers, such as non-reporting issuers, and, if so, for which ones? Should a pink herring filing include limited company information as well as limited transaction-specific information?

6. Private and public offerings—revisiting rule 152. Issuers that undertake a private offering may later decide to make a public offering instead. The safe harbor provided by Securities Act Rule 152 [60] deems the Section 4(2) exemption to continue to apply to the private transaction in those circumstances if the private offering has been terminated prior to the

[50] *See, e.g.,* J. Coffee, Jr., ''Re-Engineering Corporate Disclosure: The Coming Debate Over Company Registration,'' 52 Wash. & Lee L. Rev. 1143, 1177–79 (1995).

[51] Under current Rule 144A, securities that are fungible when issued with those traded on a national securities exchange or quoted in a U.S. automated inter-dealer quotation system may not be sold in the 144A market. *See* Rule 144A(d)(3), 17 CFR 230.144A(d)(3).

[52] Under Rule 144A, securities may only be offered or sold to QIBs. To be eligible to be a QIB, an institution must own and invest on a discretionary basis at least $100 million in securities of unaffiliated entities, or, if a registered dealer (acting for its own accounts or on behalf of other QIBs), at least $10 million in securities of unaffiliated entities. Banks, savings associations and equivalent foreign institutions must also have a net worth of at least $25 million to be eligible.

[53] See *infra* Section II.B.6.

[54] Securities Act Release No. 7190 (June 27, 1995) [60 FR 35663].

[55] Perceived difficulties arising from these distinctions include: prohibitions on combining a private offer and a public sale; Section 5 ''gun-jumping'' issues arising from converting a private offering to a public offering; and general solicitation and integration concerns arising when converting an offering begun after filing a registration statement to a private offering. *See* S. Keller, ''Basic Securities Act Concepts Revisited,'' INSIGHTS, vol. 9 at pp.5–12 (May 1995) and Advisory Committee Report, App. A at pp. 22–32.

[56] *See* Securities Act Release No. 7187 (June 27, 1995) [60 FR 35645]. Rule 144 provides a safe harbor for sales under Securities Act Section 4(1), 15 U.S.C. 77d(1), for persons selling unregistered restricted securities and for affiliates of the issuer selling any issuer securities. The participation of brokers and dealers acting as intermediaries in such resales is exempt under Securities Act Section 4(3) or 4(4), 15 U.S.C. 77d(3) or 77d(4).

[57] These suggestions were made in a 1995 speech to the Committee on Federal Regulation of Securities of the American Bar Association by Linda C. Quinn, then Director of the Division of Corporation Finance. *See* L. Quinn, ''Reforming the Securities Act of 1933—A Conceptual Framework,'' INSIGHTS, vol. 10, pp. 25–29 (1995).

[58] This approach is described in more detail in the Task Force Report at p. 31.

[59] 17 CFR 230.501 through 230.508 and Preliminary Notes thereto.

[60] 17 CFR 230.152.

commencement of the public offering. In the absence of the safe harbor, the exemption for the private offering may be in doubt, as it could be integrated with the public offering. The Task Force Report recommended that Rule 152 be revisited with a view towards permitting a company to switch from a private offering to a public offering without an intervening termination of the private offering.[61] Comment is solicited with respect to whether this proposal would resolve much of the strain resulting from the erosion of distinctions between private and public offerings. Would this enhance an issuer's ability to access the capital markets more efficiently? Would there be a loss of investor protection from such a change? If Rule 152 is expanded, should its availability be limited to offerings other than those that may give rise to disclosure abuses (*e.g.* blind pools, blank check companies or penny stocks)?

Similarly, should the Commission modify its view that the act of filing a registration statement in connection with a non-shelf offering is deemed to commence a public offering in all cases? Should the Commission create a safe harbor for private offerings that are undertaken while the issuer has ''quietly'' filed a registration statement?[62]

7. General solicitation. Effective June 10, 1996, the Commission adopted Rule 1001,[63] which exempts from registration under the Securities Act certain small offerings that are exempt from state law registration under the California Corporations Code.[64] The California law provides an exemption for offerings by California-related issuers to ''qualified purchasers'' (which are similar to accredited investors as defined in Securities Act Regulation D). Under the California law, a general announcement with limited contents may be widely published and circulated, much like that under the Commission's Regulation A ''test the waters'' process. Comment is solicited with respect to whether the Commission should extend the approach in Rule 1001 to offerings on a nationwide basis so that a general solicitation could precede an exempt sale to qualified purchasers.

Comment also is requested with respect to a broader relaxation of general solicitation prohibitions on offerings made under Regulation D Rules 505 and 506.[65] Is the inability to reach out broadly to find qualified investors for such Regulation D offerings unnecessarily hampering the utility of the regulation and raising costs to issuers? Would relaxation of such prohibition be appropriate?[66]

8. Other Questions. Would modification of the existing shelf registration system provide the equivalent benefits to issuers and other participants in the markets, and investors, in both the primary and secondary markets, as the new company registration system may provide?

Would modifications to the existing regulatory system (including shelf registration) provide equivalent benefits to eliminating the need for regulatory distinctions (such as ''private versus public,'' ''domestic versus offshore,'' and other similar issues) as would the new company registration system if companies opted into full company registration?

Would it be better to have a pilot program for company registration, while maintaining the current system, or should instead the current system be modified?

III. Conclusion

The Commission is soliciting public comment on a variety of issues relating to the Securities Act offering process, including the effect of any changes in the regulatory scheme on the operation of both the primary and secondary markets. In addition to responding to the questions presented in this release, the Commission encourages commenters to provide any information to supplement the information and assumptions contained herein regarding the functioning of the capital-raising process, the roles of market participants, the advantages and disadvantages of suggested reforms, the expectations of investors, and the other matters discussed. The Commission also invites commenters to provide views and data as to the costs and benefits associated with possible changes discussed above in comparison to the costs and benefits of the existing regulatory framework. The Commission also seeks comment concerning whether, given the passage of time and the evolution of the capital markets since adoption of the registration system, legislative reform is needed. In order for the Commission to assess the impact of changes to the Securities Act regulatory scheme on capital formation and the protection of investors, comment is solicited from the point of view of investors, issuers, underwriters, broker-dealers, analysts, and other interested parties, including accountants and attorneys involved in the registration process.

By the Commission.

Dated: July 25, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–19461 Filed 7–30–96; 8:45 am]

BILLING CODE 8010–01–P

---

[61] *See* Task Force Report at pp. 29–30.

[62] An issuer ''quietly'' files a registration statement when the filing of such document with the Commission is not accompanied by a marketing effort for the securities, including the circulation of a preliminary prospectus.

[63] 17 CFR 230.1001 (Regulation CE).

[64] Securities Act Release No. 7285 (May 1, 1996) [61 FR 21356].

[65] 17 CFR 230.505 and 230.506.

[66] See the discussion and solicitation of comment contained in Securities Act Release No. 7185 (June 27, 1995) [60 FR 35638]. Comment letters have been received in response to that solicitation of comments and are available in the Commission's Public Reference Room File No. S7–15–95. Such letters will be considered in connection with this release and need not be resubmitted.

[Release No. SIPA–159/July 25, 1996]

Securities Investor Protection Act of 1970; Securities Investor Protection Corporation; Notice of Determination That WestLB Securities Americas Inc. Is a Member of SIPC

Notice is hereby given that on June 11, 1996, the Securities Investor Protection Corporation (''SIPC'') informed the Securities and Exchange Commission (''Commission'') that WestLB Securities Americas Inc. (''WestLB'') is no longer eligible for the exclusion from SIPC membership under section 3(a)(2)(A)(i)[1] of the Securities Investor Protection Act of 1970 (''SIPA''). The Commission is publishing this notice to inform the public that, pursuant to SIPC's determination, WestLB is now a member of SIPC.

I. Introduction

Section 3(a)(2)[2] of SIPA provides that, with certain exceptions, all broker-dealers registered pursuant to Section 15(b)[3] of the Securities Exchange Act of 1934 are members of SIPC. Section 3(a)(2)(A)(i) provides an exception to SIPC membership for broker-dealers whose principal business, in the determination of SIPC, taking into account the business of affiliated entities, is conducted outside the United States and its territories and possessions.

II. Background and Discussion

WestLB, formerly known as RWS Securities, Inc., is a corporation organized under the laws of the United States and is a wholly owned subsidiary of Westdeusche Landesbank

---

[1] 15 U.S.C. § 78ccc(a)(2)(A)(i) (1995).

[2] 15 U.S.C. § 78ccc(a)(2)(A) (1995).

[3] 15 U.S.C. § 78o(b) (1995).