

MEMO# 21944

November 9, 2007

SEC Proposes To Mandate EDGAR Filing Of Exemptive Applications; Conference Call On November 15

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TO: ETF ADVISORY COMMITTEE No. 33-07 RE: SEC PROPOSES TO MANDATE EDGAR FILING OF EXEMPTIVE APPLICATIONS; CONFERENCE CALL ON NOVEMBER 15

The Securities and Exchange Commission has proposed several rule amendments to its Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system, including a requirement that all applications for orders under the Investment Company Act of 1940 must be submitted electronically through EDGAR. [\[1\]](#) The proposal also requires electronic submission of Regulation E filings by small business development companies and business development companies. The Commission's proposal is briefly summarized below.

Comments on the proposal are due to the Commission on December 14. We will hold a conference call to discuss the proposal on Thursday, November 15 at 3:30 pm Eastern time. The dial-in number for the call is 888/769-9720 and the passcode is 65046.

If you plan to participate, please let Spring Long know via email (slong@ici.org) as soon as possible, but no later than 12 pm Eastern time on November 15. If you cannot participate, please provide any comments to Rachel Graham by phone (202/326-5819) or email (rgraham@ici.org).

Mandatory Electronic Submission of Exemptive Applications

Currently, all applications for exemptive orders under the Investment Company Act (other than investment company deregistration applications) must be filed with the Commission in paper form. Copies of filed applications are available through the Commission's public reference room or through a private vendor for a fee. Under the proposal, all exemptive applications would have to be submitted electronically through the EDGAR system. Any amendments to an application, related correspondence, and supplemental information also would have to be filed through EDGAR. [\[2\]](#)

Applicants would be subject to the provisions of Regulation S-T (General Rules and Regulations for Electronic Filings) and the EDGAR Filer Manual. According to the Proposing Release, the Commission "expects" that the Manual and the EDGARLink software would provide three submission types for applications: 40-APP, for applications typically processed by the Division of Investment Management's Office of Investment Company Regulation; 40-OIP, for applications typically processed by the Division's Office of Insurance Products; and 40-6B, for employees' securities company applications.

According to the Proposing Release, electronic filing of all exemptive applications would provide "considerable benefits" to the securities markets, investors and other members of the public by expanding the accessibility of information, and increasing the types of information, filed and made available for public review through the EDGAR system. [\[3\]](#) In addition, the Proposing Release states that the proposal would help applicants avoid the uncertainties and delays that can occur with the manual delivery of paper documents, and would improve the Commission's ability to track and process applications. In discussing the proposal's impact on efficiency, competition and capital formation, the Proposing Release states that mandatory electronic filing of applications may "make the investment products offered by applicants more competitive, since all applicants would have ready access to the applications of others" and would "improve investors' ability to make informed investment decisions." [\[4\]](#)

The Proposing Release requests comment on this proposal, including: (1) whether it would be burdensome to require the electronic submission of applications; (2) the types of applications to which the amendments should apply; (3) whether the proposed submission types are sufficient or if other or additional types would be helpful to applicants or the public; (4) any difficulties or considerations unique to the proposal; and (5) what the transition period to electronic filing should be.

Other Proposed Amendments Relating to the Filing of Exemptive Applications

Regulation S-T contains certain exemptions from EDGAR filing requirements, including:

(1) a temporary hardship exemption in Rule 201, which is available in cases of unanticipated technical difficulties that prevent the timely preparation and submission of an electronic copy; and (2) a continuing hardship exemption in Rule 202, which is available upon application to the Commission in cases where all or part of a filing cannot be made without undue burden or expense. Under the proposal, the temporary hardship exemption (which is self-executing) would not be available for EDGAR submissions of exemptive applications, because “there is generally no submission exigency or submission deadline associated with these submissions.” [5] The Proposing Release states that applicants would still have the ability to apply to the Commission for a continuing hardship exemption where necessary.

Under the proposal, two requirements in Rule 0-2 under the Investment Company Act, which governs the form of applications under that Act, would be eliminated: (1) the requirement that all verifications of applications and statements of fact be notarized, which the Proposing Release says is unnecessary in the context of an electronic filing; and (2) the requirement to include a draft notice as an exhibit to an application, because such drafts are of limited usefulness to the Commission staff. The Proposing Release requests comment on whether there is any reason to retain either requirement.

Regulation E Filings by Small Business Investment Companies and Business Development Companies

Currently, small business investment companies and business development companies make most of their filings through the EDGAR system, with the exception of certain filings in paper form pursuant to Regulation E of the Securities Act of 1933. Under the proposal, the Regulation E filings would be required to be made through EDGAR. The Proposing Release requests comment as to whether there is any reason these filings should not be made electronically through EDGAR.

Rachel H. Graham
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endnotes

[1] See Rulemaking for EDGAR System: Mandatory Electronic Submission of Applications for Orders Under the Investment Company Act and Filings Made Pursuant to Regulation E, SEC Rel. Nos. 33-8859, 34-56732, and IC-28042 (Nov. 1, 2007) (the “Proposing Release”). Page numbers in this memorandum refer to the Proposing Release as posted on the Commission’s website, which is available at <http://www.sec.gov/rules/proposed/2007/33-8859.pdf>.

[2] The Proposing Release states that related correspondence and supplemental information filed electronically are not automatically disseminated publicly through the

EDGAR system but are immediately available to the Commission staff. Proposing Release at n.17.

[\[3\]](#) Proposing Release at 7.

[\[4\]](#) Proposing Release at 25.

[\[5\]](#) Proposing Release at 14. The Proposing Release notes that the Commission previously has made the temporary hardship exemption unavailable for filers of beneficial ownership reports under Section 16(a) of the Securities Exchange Act of 1934. Proposing Release at n.43.

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