

MEMO# 10812

March 18, 1999

SEC PROPOSES RULE CHANGES TO ACCOMMODATE EDGAR MODERNIZATION

1 SEC Release No. IC-23735 (March 16, 1999). [10812] March 18, 1999 TO: OPERATIONS COMMITTEE No. 10-99 SEC RULES COMMITTEE No. 20-99 TECHNOLOGY TASK FORCE RE: SEC PROPOSES RULE CHANGES TO ACCOMMODATE EDGAR MODERNIZATION

The Securities and Exchange Commission is modernizing the Electronic Data gathering, Analysis, and Retrieval ("EDGAR") system. When the programming for the new system is completed, EDGAR will be able to accept filings submitted in HyperText Markup Language ("HTML"), as well as the current ASCII format. Also, filers will have the option of accompanying their required filings with unofficial copies in Portable Document Format ("PDF"). The attached release describes the modernization and proposes changes to certain rules and filing requirements to accommodate the system changes.¹ Comments on the proposed rule changes must be filed by April 15th. If there are issues you would like the Institute to consider addressing in its comment letter, please call the undersigned (202/326-5851) or e-mail your comments (smith@ici.org) by April 7th.

I. EDGAR Modernization Under the current EDGAR system, filers must submit electronic filings in a text-based ASCII format which precludes the use of graphics, varied fonts and other visual displays. The SEC plans to change EDGAR to a HTML/PDF environment so that it will be able to accept and display filings that use graphic and other visual presentations. Filers will be able to submit documents to the EDGAR system that can appear in substantially the same graphic format as those prepared by the issuer for delivery to investors. The release notes that the HTML/PDF environment will greatly expand the amount and kinds of information that the SEC can make available to investors through the EDGAR system. At the same time, modernization should ease burdens on filers, by enabling the submission of documents to the EDGAR system in a format similar to that in which issuers present documents to the public and investors. Filers will be required to submit most filings in HTML or ASCII. The SEC expects that eventually, HTML will replace ASCII for most filings. Filers may also submit unofficial copies of filings in PDF. However, PDF filings may not be used to satisfy filing requirements. The modernization schedule provides that the EDGAR system will accept HTML/PDF documents beginning on May 24, 1999. However, there will be an initial implementation period for HTML filings, extending to year 2000, during which the SEC will impose certain limitations on HTML filings. During the implementation period, only certain tags (commands and identifying information) will be accepted by the EDGAR system.

A. Use of HTML and PDF The SEC expects to require HTML for most filings as soon as practicable. The release requests comment on whether the SEC should continue to support ASCII, or whether, in the future, the Commission should require all documents to be filed in HTML. The release also requests comment on the use of eXtensible Markup Language ("XML") for EDGAR submission header tags. Appendix A to the release includes a list of HTML tags that

could be used during the implementation period. The permissible tags provide formatting capability while eliminating active content and certain classes of hypertext links. Filings which contain tags not included in Appendix A would be suspended by the EDGAR system. The release requests comment on the proposed tag set, including whether the SEC should permit, require, or prohibit any particular tag. In addition to HTML, the SEC intends to permit filers to submit a single unofficial PDF copy of each document included in the filing. Filers may wish to submit the unofficial copy since PDF documents retain all fonts, formatting, colors, images and graphics contained in an original document. If a filer chooses to submit an unofficial PDF copy, it must be "substantially equivalent" to the document contained in the official filing of which it is a copy. To be considered substantially equivalent, the documents must be the same in all respects except for the formatting and inclusion of graphics. Filers cannot make submissions consisting solely of PDF documents. The release requests comment on the proposal to allow filers to submit unofficial PDF copies of official filings. Should the unofficial PDF copy contain a legend or disclaimer that it is not the official filing? How else could users of the dissemination system be alerted to the unofficial status of the PDF copy?

B. Graphic and Image Material During the HTML implementation period, the SEC will not accept graphic or image material in HTML documents. However, the optional, unofficial PDF copy of an EDGAR document may contain graphic and/or image material. Further, during the HTML implementation period, neither HTML documents nor unofficial PDF copies may contain animated graphics (e.g., files with moving corporate logos or other animation). The SEC intends to permit graphic and image material in HTML documents after the HTML implementation period. Due to concerns about data storage limitations and ease of viewing, the SEC may propose restrictions on the type and size of graphic and image material that may be included. The release requests comment on the circumstances and manner in which the SEC might limit file size and the type of graphic and image material. The SEC is considering whether, once the implementation period is over, requiring graphic and image material to be included in HTML documents under certain circumstances. For example, where SEC rules require information to be in graphic form (e.g., the bar chart and performance graph required by Items 2 and 5 of Form N-1A), should filers be required to present the graphic, rather than merely giving the data? Alternatively, should the presentation of graphic and image material continue to be optional to alleviate the burden on filers who do not currently have the resources to prepare graphic and image material?

C. File Transmission and Security After the HTML implementation period, filers will be able to make EDGAR filings through Internet-based technology via an internet service provider of their choice. The SEC plans to revise its EDGARLink filing transmission software to support Internet-based filing. The Commission intends to provide for security through "Secure Socket Layer" (i.e., encrypted transmissions) and server side certificates. The release indicates that the SEC is considering whether filers should be allowed or required to acquire and present client side certificates from one or more Commission designated vendors. The release requests comment on these security precautions.

D. Document Appearance and Layout Different Internet browsers used by filers or investors may display the information presented in an HTML document in a different fashion. The release indicates that this problem would be especially evident when a filing printed in hard copy from one browser appears significantly different from the same filing printed out from another browser. To maximize the likelihood of consistent document appearance across different browsers, the SEC intends to specify HTML 3.2 as the required standard for HTML documents. The Commission is also considering specifying a standard screen size (e.g., 800 by 600 pixels) for HTML document preparers to use to assure documents will fit viewers' browser screens. The release requests comment on these proposed standards. The release also requests comment on what steps the SEC can take to ease filer burden while maintaining the usability of filings. Rule Amendments to

Accommodate EDGAR Modernization The release proposes to amend various Commission rules, regulations and forms to accommodate EDGAR modernization. The significant proposed amendments of interest to investment companies are described below.

Amendments to Regulation S-T

1. Proposed Rule 104 Proposed Rule 104 would provide that an electronic submission may include one unofficial PDF copy of each electronic document contained in an electronic submission. Each unofficial PDF copy would have to be substantively equivalent to its associated ASCII or HTML document contained in the submission. The rule would make it clear that unofficial PDF copies are not official filings and that unofficial PDF copies that are prospectuses retain prospectus liability under Section 12 of the Securities Act of 1933.
2. Proposed Rule 105 Proposed Rule 105 would prohibit electronic filers from including in HTML documents hypertext links to sites or documents outside the HTML document. The release notes that links or references in an EDGAR filing to external sites present significant issues concerning what constitutes an "official filing" submitted to the SEC. The content of linked sites or documents could change on a regular basis, even after the "official filing" was made with the SEC. As a result, someone trying to determine the content of the "official filing" at a later date would not necessarily be able to re-create the document as it was originally filed. Proposed Rule 105 further provides that, if an accepted filing includes external links in contravention of the rule, the linked material will not be considered part of the official filing for determining compliance with reporting obligations, but such material will be subject to the civil liability and anti-fraud provisions of the federal securities laws. The release requests comment on whether allowing hypertext links to other documents or web sites in the future is advisable. Proposed Rule 105 would prohibit Form N-SAR, Form 13F, and Financial Data Schedules from being submitted in HTML. These documents would continue to be submitted in ASCII so that filers could continue to use the standard format and tagging applications that the SEC has developed for these filings.
3. Proposed Rule 106 To protect the integrity of the EDGAR system and database, proposed Rule 106 would prohibit "executable" or "disruptive" code in an official submission or an unofficial PDF copy. Executable code is defined as instructions to a computer to carry out operations that use features beyond the viewer's, reader's, or Internet browser's native ability to interpret and display HTML, PDF, and static graphic files. Disruptive code is defined as any program or set of instructions that modifies, damages, destroys or disrupts any computer, file, database or system. The SEC staff would have the authority to suspend any attempted submission that it determines contains executable or disruptive code.
4. Amendments to Rule 101(b) The amendments to Rule 101(b) would require that all exhibits to Form N-SAR be filed electronically; filing exhibits in paper would no longer be permitted.

B. Other Rule and Form Amendments in Connection with EDGAR Modernization

1. Rule 497 Rule 497 under the 1933 Act currently requires filers to submit additional copies of certain forms of profiles in the primary form intended for distribution to investors (e.g., paper), or, if the profile is distributed primarily on the Internet, to provide the electronic address (URL). The amendments to Rule 497 would instead allow filers to satisfy this requirement by filing an unofficial PDF copy.
2. Financial Data Schedules The release proposes to eliminate provisions in Forms N-1, N-1A, N-2, N-3, N-4, N-5 and S-6 requiring submission of financial data schedules. Investment companies would continue to be required to submit financial data schedules with Form N-SAR.

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