## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 240 and 249

**[Release No. 34–37157; File No. S7–16–95]**

**RIN 3235–AG48**

### Relief From Reporting by Small Issuers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission is announcing the adoption of revisions to Rules 12g–1, 12g–4 and 12h–3 under the Securities Exchange Act of 1934, which will increase the number of issuers not subject to the registration and reporting requirements of the Exchange Act, by increasing the total assets threshold from $5 million to $10 million.

**EFFECTIVE DATE:** The rule amendments will be effective on May 9, 1996.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance at (202) 942–2950 or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910.

**SUPPLEMENTARY INFORMATION:** On June 27, 1995,[1] the Commission published for comment proposed amendments to Rules 12g–1, 12g–4 and 12h–3[2] under the Securities Exchange Act of 1934.[3] These proposals were designed to increase the number of issuers classified as exempt from the registration and reporting provisions of the Exchange Act by changing the total asset threshold from $5 million to $10 million. Conforming changes also were proposed to be made to Form 15.[4] Having considered the comments received, the Commission is adopting the revisions as proposed.[5]

I. Discussion

Under the current rules, an issuer that has 500 or more record holders of a class of equity securities and total assets of $5 million or more must register its securities under the Exchange Act.[6] Issuers that must register are required to comply with the periodic reporting and other provisions applicable to public companies contained in the Exchange Act.[7] The asset threshold was originally set at $1 million in Section 12(g). Pursuant to its authority under Section 12(h) of the Exchange Act,[8] the Commission has increased the amount on two occasions: from $1 million to $3 million in 1982,[9] and from $3 million to the current $5 million in 1986.[10]

The proposal to increase the asset threshold to $10 million was designed, in part, to increase the utility of the Commission's small offering exemptions, such as Regulation A, a principal benefit of which is that companies conducting such offerings do not automatically become subject to Exchange Act reporting. The Commission has long recognized that the cost of compliance with Exchange Act reporting requirements is relatively greater for smaller companies than for larger ones.[11] The amendments adopted today are designed to strike the appropriate balance between such costs and investors' needs for the information required in Exchange Act reports. Commenters generally agreed that this change would be beneficial for smaller companies and would be consistent with investor protection. In light of the foregoing, the Commission finds that the increase in the asset threshold is not inconsistent with the public interest or the protection of investors and is adopting the rule changes as proposed.

Under today's revision to Rule 12g–1, an issuer now will not be required to register under Section 12(g) until it has 500 or more record holders of a class of equity securities and total assets of $10 million or more.[12] This revision does not change existing requirements that securities traded on national exchanges[13] or the National Association of Securities Dealers Automated Quotation System (''Nasdaq'')[14] be registered pursuant to Section 12 of the Exchange Act. In addition, a company that conducts a public offering registered under the Securities Act of 1933 (''Securities Act'')[15] will continue to be subject to reporting pursuant to Section 15(d) of the Exchange Act unless the company becomes eligible to suspend such reporting. The revisions also raise the asset threshold for termination of Section 12(g) registration and suspension of Section 15(d) reporting from $5 million to $10 million, but do not change the other tests for such termination and suspension.[16] Finally, the description of Form 15 is being amended to indicate that the total assets criterion is $10 million. These new thresholds should make the exemptive, termination and suspension provisions more useful to small businesses and lower their costs of compliance with the federal securities laws.

There are approximately 650 issuers with between $5 million and $10 million in total assets that report with the Commission. Had the new asset threshold previously been in effect, these companies would not have been required to register and report with the Commission, unless they had voluntarily decided to do so, either because their securities are traded on a national securities exchange or Nasdaq, or because they chose to conduct a Securities Act registered offering. Of

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[1] Release No. 33–7186 (June 27, 1995) [60 FR 35642] (''Proposing Release''). The comment letters received are available for inspection and copying at the Commission's public reference room, 450 Fifth Street, N.W., Washington, D.C. 20549. Please refer to File Number S7–16–95.

[2] 17 CFR 240.12g–1, 240.12g–4 and 240.12h–3.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 249.323. Form 15 is filed by an issuer to notify the Commission that it is terminating its registration under Section 12(g) of the Exchange Act [15 U.S.C. 78*l*(g)] or suspending its reporting under Section 15(d) [15 U.S.C. 78o(d)].

[5] As explained more fully below, the proposed changes to certain of the Commission's definitions of a ''small entity'' for purposes of the Regulatory Flexibility Act [5 U.S.C. 601–612] have not been adopted.

[6] *See* Exchange Act Section 12(g) and Rule 12g–1.

[7] *E.g.*, the proxy requirements of Section 14 [15 U.S.C. 78n] and the short-swing profit provisions of Section 16 of the Exchange Act [15 U.S.C. 78p].

In addition, any entity, including an issuer, must register under the Exchange Act as a transfer agent if it performs the function of a transfer agent with respect to any security which is registered under Section 12 of the Exchange Act or which would be required to be registered except for the exemptions provided by subsection 12(g)(2)(B) or (g)(2)(G). 15 U.S.C. 78q–1(c)(1). As a result of the revisions adopted in this release, the number of entities, including issuers, that can perform transfer agent functions without registration with the Commission may increase.

[8] 15 U.S.C. 78*l*(h).

[9] Release No. 34–18647 (April 15, 1982) [47 FR 17046].

[10] Release No. 34–23406 (July 8, 1986) [51 FR 25360].

[11] See Release No. 33–6605 (September 30, 1985) [50 FR 41162].

[12] This modification to Rule 12g–1 retains the standard with respect to foreign private issuers, which provides that if a foreign private issuer has securities quoted in an automated interdealer quotation system it remains subject to registration under Section 12(g).

[13] Securities traded on a national securities exchange must be registered under the Exchange Act pursuant to Section 12(b) [15 U.S.C. 78*l*(b)] of that Act.

[14] Pursuant to Schedule D to the NASD's By-Laws, securities traded on the Nasdaq system must be registered pursuant to Section 12 of the Exchange Act, CCH NASD Manual para. 1803.

[15] 15 U.S.C. 77a *et seq.*

[16] Rules 12g–4 and 12h–3 currently allow for termination of registration of a class of securities under Section 12(g) and suspension of the duty to file reports under Section 15(d) when the class of securities is held of record by less than 300 persons, or by less than 500 persons where the total assets of the issuer have not exceeded $5 million on the last day of each of the issuer's three most recent fiscal years. Also, the Section 15(d) reporting obligation cannot be suspended under Rule 12h–3 for a fiscal year in which a Securities Act registration statement relating to the class of securities becomes effective. The revisions amend Rules 12g–4 and 12h–3 to change the asset test from $5 million to $10 million.

these 650, approximately 540 are traded on an exchange or Nasdaq, and approximately 110 are not.

Today's rule changes affect the asset threshold for entering and exiting reporting, but do not affect the other criteria under the rules for determining when a company may cease reporting. Consequently, the effect on currently reporting companies is modest, with approximately 10 companies becoming eligible to cease reporting at this time; [17] about another 20 companies could terminate their reporting obligations if they decided to delist their securities from an exchange or Nasdaq.

While the number of companies that would be able to stop reporting is relatively small, the rule should provide significant benefits for small, growing companies. These companies will have more flexibility to raise equity capital and grow before becoming subject to the Commission's reporting requirements.

## II. Regulatory Flexibility Act Definitions

The Commission proposed to modify the definitions of ''small entity'' for purposes of the Regulatory Flexibility Act by raising the total assets level to $10 million.[18] In the intervening period since the proposals were published, Congress has enacted amendments to the Regulatory Flexibility Act.[19] The Commission has determined not to adopt these proposed rule revisions at this time, but will give them further consideration once it has had an opportunity to evaluate fully these recent statutory changes.

## III. Effective Date

The Commission has determined to make the rule changes effective on May 9, 1996, the date of publication in the Federal Register. Early effectiveness is appropriate under the Administrative Procedure Act inasmuch as the raising of these thresholds ''grants or recognizes an exemption'' [20] from registration and reporting requirements to a larger class of companies than existed under previous requirements.

## IV. Future Initiatives

Some commenters recommended further revision of the reporting thresholds. For example, one commenter suggested the adoption of an exemption for small business issuers whose public float or trading activity is so low as to show insufficient market interest. Another recommended eliminating the shareholder numerical test from the various rules. The Commission has considered these suggestions and has determined to evaluate them further in connection with future initiatives undertaken by the Commission as it implements recommendations of the reports of the Task Force on Disclosure Simplification,[21] and the Advisory Committee on the Capital Formation and Regulatory Processes.[22] The work of both of these groups has been dedicated to reassessing and reforming the federal securities disclosure regime where necessary and appropriate in the public interest and consistent with investor protection.

## V. Cost-Benefit Analysis

The Commission solicited comment to assist in its evaluation of the costs and benefits that might result from the possible increase in the assets threshold. Several commenters, while not addressing the solicitation of comment specifically, supported the proposal as part of the Commission's efforts to reduce both the regulatory burden and the costs of raising capital and compliance for small issuers. The Commission continues to believe that as a result of this action, compliance burdens will be decreased without significant impact upon the needs of investors, as it stated in the proposing release. As required by Section 23(a) of the Exchange Act, the Commission has specifically considered the impact these rulemaking actions would have on competition and has concluded that they would not impose a significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

## VI. Final Regulatory Flexibility Analysis

The Commission has prepared a final regulatory flexibility analysis in accordance with 5 U.S.C. 603 regarding the changes to Exchange Act Rules 12g–1, 12g–4, and 12h–3 and the description of Form 15. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the Proposing Release. A copy of the final regulatory flexibility analysis may be obtained by contacting James R. Budge, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 at (202) 942–2910.

## VII. Statutory Basis

The amendments to the Commission's rules and form are being adopted by the Commission pursuant to Sections 12, 13, 15 and 23(a) of the Securities Exchange Act.

## List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

## Text of the Amendments

Accordingly, 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

## PART 249—FORMS, 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, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

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2. The authority citation for Part 249 continues to read, in part, as follows:

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[17] These issuers would be able to terminate their registration because they have:

—Assets between $5 and $10 million;

—No securities traded on an exchange or Nasdaq;

—No current 15(d) reporting obligation arising from registering a securities offering in the last year;

—In each of the last three fiscal years, assets not exceeding $10 million; and

—Between 300 and 500 shareholders.

[18] The definitions are found at 17 CFR 230.157, 17 CFR 240.0–10, and 17 CFR 260.0–7.

[19] See the Small Business Regulatory Fairness Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996), signed by the President on March 29, 1996.

[20] 5 U.S.C. 553(d)(1).

[21] The Task Force on Disclosure Simplification was organized in August 1995 to review forms and rules relating to capital-raising transactions, periodic reporting pursuant to the Exchange Act, proxy solicitations, and tender offers and beneficial ownership reports under the Williams Act. Its goal was to identify where the disclosure process could be simplified and, consistent with investor protection, to make regulation of capital formation more efficient. Following a seven-month review, the Task Force completed its report, including a number of recommendations, which the Commission authorized for publication on March 5, 1996. This report is available for inspection and copying at the Commission's public reference room. It also is available through the Commission's Internet web site [http://www.sec.gov].

[22] The Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes was established in February 1995. See Release No. 33–7135 (February 17, 1995) [60 FR 9415]. The objective of the Committee is to assist the Commission in evaluating the efficiency of the regulatory process relating to public offerings of securities, secondary market trading and corporate reporting. The Committee's focus has been the development of a company registration system for adoption by the Commission, which would allow eligible companies to offer and sell securities relying on a more company-focused, as opposed to transaction-focused, system. The Committee plans to issue a report containing its recommendations in the near future.

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

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3. 17 CFR Parts 240 and 249 are amended by removing the reference to ''$5 million'' and adding in its place ''$10 million'' in the following sections:

(a) 17 CFR 240.12g–1
(b) 17 CFR 240.12g–4(a)(1)(ii)
(c) 17 CFR 240.12g–4(a)(2)(ii)
(d) 17 CFR 240.12h–3(b)(1)(ii)
(e) 17 CFR 240.12h–3(b)(2)(ii)
(f) 17 CFR 249.323(a)

Dated: May 1, 1996.

By the Commission.

Jonathan G. Katz,

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 230

**[Release No. 33–7285; File No. S7–15–95]**

**RIN 3235–AG51**

## Exemption for Certain California Limited Issues

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** In order to reduce regulatory burdens associated with certain offers and sales of securities, the Securities and Exchange Commission (''Commission'') today is adopting a new exemption from its registration requirements for limited offerings of up to $5 million that are exempt from qualification under a 1994 California state securities law.

**EFFECTIVE DATE:** The effective date of Rule 1001 and the amendment to Rule 144 will be effective June 10, 1996.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942–2950 or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942–2910, 450 Fifth Street, N.W., Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** The Commission today is adopting, as proposed, new Rule 1001[1] under Section 3(b)[2] of the Securities Act of 1933 (''Securities Act'').[3] The new rule exempts from the registration requirements of the Securities Act offers and sales up to $5 million that are exempt from state qualification under paragraph (n) of Section 25102 of the California Corporations Code.[4] Securities Act Rule 144[5] also has been amended to include securities issued in reliance upon Rule 1001 in the definition of ''restricted securities.''

### I. Introduction

In June 1995, pursuant to its authority to provide exemptions for small offerings under Section 3(b) of the Securities Act, the Commission proposed a new rule[6] designed to assist small businesses' capital raising ability by creating a federal exemption for offerings of up to $5 million[7] that meet the qualifications of a California exemption. The California law provides an exemption from state law registration for offerings made to specified classes of qualified purchasers that are similar, but not the same as, accredited investors under Regulation D.[8] Certain methods of general solicitation are permitted under the California law.

The Commission received ten comment letters, which generally were supportive of the proposals.[9] The Commission believes that the California exemption has the potential to facilitate small business capital raising. It is anticipated that the new rule will result in compliance cost savings for small businesses and others because qualifying issuers will be exempt from both state qualification and federal registration. At the same time, the exemption assures adequate protections to investors. Therefore, the Commission is exercising its exemptive authority in Section 3(b) to provide a parallel federal exemption for the California exemption by adopting new Rule 1001.

### II. The California Exemption

On September 26, 1994, an exemption from the issuer transactions qualification provisions of the California Corporations Code became effective.[10] The provision was specifically designed ''to facilitate the ability of small companies to raise capital to finance their growth.''[11]

The exemption generally is limited to issuers that are California corporations or any other form of business entity organized in that state, including partnerships and trusts. In addition, non-California organized businesses may use the exemption if they can attribute more than 50 percent of property, payroll and sales to California and if more than 50 percent of outstanding voting securities of the issuer are held of record by persons having addresses in California. It is not available for offerings relating to a rollup transaction, nor may it be used by ''blind pool'' issuers or investment companies subject to the Investment Company Act of 1940 (the ''Investment Company Act'').[12]

Sales under the exemption must be effected only to qualified purchasers who buy for investment purposes and not for redistribution. A qualified purchaser is defined as:

- Designated professional or institutional purchasers or persons affiliated with the issuer;[13]
- Certain relatives residing with qualified purchasers;
- Promoters;
- Any person purchasing more than $150,000 of securities in the offering;[14]
- Entities whose equity owners are limited to officers, directors and any affiliate of the issuer;
- Reporting companies under the Securities Exchange Act of 1934 (the ''Exchange Act''),[15] if the transaction

[1] The rule is being added as Regulation CE (for coordinated exemptions), 17 CFR 230.1001, rather than as Regulation CA, as proposed.

[2] 15 U.S.C. 77c(b).

[3] 15 U.S.C. 77a *et seq.*

[4] Cal. Corporations Code Section 25102(n).

[5] 17 CFR 230.144.

[6] Release No. 33–7185 (June 27, 1995) [60 FR 35638] (''proposing release'').

[7] This is the maximum dollar amount permitted under the Commission's Section 3(b) exemptive authority.

[8] 17 CFR 230.501–230.508.

[9] The letters and comment summary are available for inspection and copying in the Commission's public reference room. Refer to File No. S7–15–95.

[10] Chapter 828, Statutes of 1994 (Senate Bill 1951—Killea), adding subdivision (n) to Corporations Code Section 25102.

[11] Section 3, Senate Bill 1951.

[12] 15 U.S.C. 80a-1 et seq.

[13] Officers and directors of corporate issuers (or persons performing similar duties); general partners and trustees, where the issuer is a partnership or a trust; small business investment companies; business development companies subject to the Investment Company Act; private venture capital companies exempted from the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*]; entities comprised of accredited investors; banks; savings and loan associations; insurance companies; Investment Company Act companies; non-issuer pension or profit-sharing trusts; and, organizations (corporations, business trusts or partnerships) described in Section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] with assets of more than $5 million. Individuals with a net worth of $1 million or annual income of more than $200,000 also are qualified purchasers under the California exemption. All these persons would qualify as ''accredited investors'' under Rule 501(a) [17 CFR 230.501(a)].

[14] These persons must also satisfy one of the following additional suitability standards: (1) They must have, alone or with the assistance of a professional advisor, the capacity to protect their own interests; (2) they must have the ability to bear the economic risk of the investment; or (3) the investment must not exceed 10 percent of the person's net worth. These criteria also apply to individuals who have a net worth of over $1 million or annual income exceeding $200,000.

[15] 15 U.S.C. 78a *et seq.*