

Exchange	FY 1994-1996 average annual costs for review services
Minneapolis Grain Exchange	29,728.52
Philadelphia Board of Trade	2,893.69
Total	940,159.01

Second, the staff calculates the trading volume for the past three fiscal years to determine the cumulative volume for each exchange and its percentage of total volume across all exchanges during that same period. The trading volume figures for that period are as follows:

Exchange	FY 1994-1996 cumulative volume (of contracts)	Percentage of total volume across all exchanges
Chicago Board of Trade	657,641,820	43.5642
Chicago Mercantile Exchange	561,261,279	37.1797
New York Mercantile/COMEX Exchange	228,952,651	15.1665
Coffee, Sugar and Cocoa Exchange	35,326,602	2.3401
New York Cotton/New York Futures Exchange	17,810,325	1.1798
Kansas City Board of Trade	5,665,084	0.3753
Minneapolis Grain Exchange	2,810,771	0.1862
Philadelphia Board of Trade	123,281	0.0082
Total	1,509,591,813	100.00

Finally, the staff calculates the current fees by applying the appropriate exchange data to the formula. The following is an example of how the rule enforcement and financial review fees for exchanges are calculated.

Example: The Minneapolis Grain Exchange (MGE) average annual cost is \$29,728.52 and its percentage of total volume over the last three years is 0.1862. The annual average total cost for all exchanges during that same

time period is \$940,159.01. As a result, the MGE fee for fiscal 1997 is:
 $(.5)(\$29,728.52) + (.5)(.001862)(\$940,159.01) =$
 current fee or
 $\$14,864.26 + \$856.85 = \$15,721.11$

As stated in 1993 when the formula was adopted, if the calculated fee using this formula is higher than actual costs, the exchange pays actual costs. If the calculated fee using the formula is less than actual costs then the exchange pays the calculated fee. No exchange will pay more than actual costs. Also, if an exchange has no volume over the three-year period it pays a flat 50% of actual costs.

The National Futures Association (NFA) is a registered futures association which is responsible for regulating the practices of its members. In its oversight role, the Commission performs rule enforcement and financial reviews of the NFA. The Commission's average annual cost for reviewing the National Futures Association during fiscal years 1994 through 1996 is \$308,107.27. The National Futures Association will continue to be charged 100% of its actual costs.

Based upon this formula the fees for all of the exchanges and the NFA for fiscal 1997 are as follows:

Exchange	FY 1997 fee
Chicago Board of Trade ...	\$264,818.49
Chicago Mercantile Exchange	230,161.08
New York Mercantile/COMEX Exchange	178,257.22
Coffee Sugar and Cocoa Exchange	56,393.14
New York Cotton/New York Futures Exchange..	48,744.34
Kansas City Board of Trade	10,604.16
Minneapolis Grain Exchange	15,721.11
Philadelphia Board of Trade	1,484.42
NFA	308,107.27
Total	1,114,291.23

V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission.

Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairperson, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

* * * * *
 Issued in Washington, DC on May 8, 1997, by the Commission.

Jean A. Webb,
Secretary of the Commission.
 [FR Doc. 97-12687 Filed 5-13-97; 8:45 am]
 BILLING CODE 6351-01-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 230, 239, 240 and 249

[Release Nos. 33-7419 and 34-38581; File No. S7-23-96]

RIN 3235-AG82

Expansion of Short-Form Registration To Include Companies With Non-Voting Common Equity

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is adopting amendments to Forms S-3, F-2 and F-3 under the Securities Act of 1933 ("Securities Act") to include non-voting as well as voting common equity in the computation of the \$75 million aggregate market value of common equity held by non-affiliates of the registrant. The Commission also is adopting conforming amendments to include non-voting as well as voting common equity in calculating the float used in determining small business issuer status and in stating the amount of the public float on Forms 10-K and 10-KSB under the Securities Exchange Act of 1934 ("Exchange Act").

EFFECTIVE DATE: The rule revisions are effective June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Mary J. Kosterlitz, Special Counsel, (202) 942-2900, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 3-3, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 30, 1996, the Commission published for comment proposed amendments to

Forms S-3¹ and F-3² under the Securities Act³ to include non-voting common equity in the computation of the required public float. Conforming changes were also proposed to Forms F-2,⁴ 10-K,⁵ and 10-KSB⁶ and to the definition of "small business issuer" in Rule 405,⁷ in Item 10 of Regulation S-B⁸ under the Securities Act, and in Rule 12b-2⁹ under the Exchange Act.¹⁰ Having considered the comments received, the Commission is adopting the revisions as proposed.¹¹

I. Discussion of Rule Changes

A. Changes to Forms S-3 and F-3

The Commission's short-form registration statements, Forms S-3 and F-3, require as one condition to eligibility for registration of a primary offering of non-investment grade securities that the company have at least \$75 million of voting stock held by non-affiliates (referred to as the "public float").¹² Some companies, both domestic and foreign, that have significant amounts of non-voting common stock held by non-affiliates (but not significant amounts of voting stock) are not eligible to use these forms for such an offering because non-voting stock is not included in the calculation of the required public float. The revisions adopted today make Forms S-3 and F-3 available to these issuers, provided they otherwise qualify for these forms. These changes will provide additional flexibility for registered capital raising transactions by extending the availability of the short form registration statements.

The amendments relating to the use of Forms S-3 and F-3 for primary offerings of non-investment grade securities

change the transaction requirements outlined in the General Instructions to the Forms to provide that non-voting common equity is included in the calculation of the \$75 million float requirement.¹³ These changes are accomplished by removing the term "voting stock" as it appears in these sections and substituting the phrase "shares of voting and non-voting common equity." The meaning of the term "common equity" is as defined in Rule 405 under the Securities Act.¹⁴

B. Conforming Changes to Other Commission Rules and Forms Referencing Public Float

The Commission also is adopting the proposed conforming changes to Forms F-2, 10-K and 10-KSB, as well as to the definition of "small business issuer" in Rule 405 and in Item 10 of Regulation S-B under the Securities Act and to Rule 12b-2 under the Exchange Act. Pursuant to these changes, the public float calculations will include the aggregate market value of both voting and non-voting common equity.

II. Cost-Benefit Analysis

The Commission solicited comment to assist in its evaluation of the costs and benefits that might result from the expansion of the short-form registration to include non-voting common equity in the calculation of required float and to the proposed conforming revisions. It was anticipated that the revisions would have a benefit to issuers with filing obligations that would become eligible to use short form registration, by decreasing their costs. It was also expected that a small number of issuers currently able to use the small business issuer disclosure system might have increased costs due to their inability to use this system. No detrimental effects to investors were expected. Commenters supported the position that revisions would have a benefit to issuers that would become eligible to use short form registration. No comments were received concerning the impact on small business issuers. Consequently, the Commission has determined to adopt the changes as proposed.

III. Summary of Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis was prepared in accordance with 5 U.S.C. 604 concerning the changes to

Forms S-3 and F-3 under the Securities Act to include non-voting common equity in the computation of the required public float and conforming changes to Forms F-2, 10-K, 10-KSB and to the definition of "small business issuer" in Rule 405 and in Item 10 of Regulation S-B under the Securities Act and in Rule 12b-2 under the Exchange Act.

The final regulatory flexibility analysis notes that the amendments will revise forms and rules, which may increase the availability of Forms S-3, F-2 and F-3 and possibly decrease the availability of the small business disclosure system (Forms SB-1, SB-2, 10-SB, 10-KSB and 10-QSB) for some issuers.

As discussed more fully in the analysis, the amendments may affect persons that are small entities, as defined in the Commission's rules, because the changes to the definition of small business issuer could cause some issuers that have non-voting common equity held by non-affiliates to become ineligible to use the small business disclosure system. The Commission estimated that approximately three percent of the small business issuers may become subject to more detailed reporting obligations in the future, or may otherwise be impacted by the rule revisions.

These estimates were the result of estimates provided by the staff of the Division of Corporation Finance based on its expertise from the review of corporate filings and on estimates provided by the Commission's Office of Economic Analysis ("OEA"). The OEA estimates confirmed the estimates made by the Division of Corporation Finance and have been incorporated into the final regulatory flexibility analysis. As a result, the Commission does not expect that the number of companies that will become ineligible to meet the definition of small business issuer will be significant. The Commission also does not expect that materially increased reporting, recordkeeping and compliance burdens will result from the changes.

The Commission sought comment on its preliminary estimates of the number of small entities that would be impacted by the proposed rules and on whether these proposed amendments would result in significant new burdens for small entities. No comments were received concerning the impact of the amendments on small entities.

As stated in the analysis, several possible significant alternatives to the amendments were considered, including, among others, establishing different compliance or reporting

¹ 17 CFR 239.13.

² 17 CFR 239.33.

³ 15 USC 77a et seq.

⁴ 17 CFR 239.32.

⁵ 17 CFR 249.310.

⁶ 17 CFR 249.310b.

⁷ 17 CFR 230.405.

⁸ 17 CFR 228.10.

⁹ 17 CFR 240.12b-2.

¹⁰ 15 U.S.C. 78a et seq.

¹¹ The Commission received letters from two commenters. These letters are available for inspection and copying in the Commission's public reference room, File No. S7-23-96. Both commenters were generally supportive of the proposed changes, but also suggested that the proposed revisions be expanded to include certain types of preferred stock in the calculation of the required public float. After considering these suggested changes, the Commission has determined to proceed with adoption of the revisions as proposed. However, these comments will be considered by the Commission in connection with future rulemaking.

¹² See General Instruction I.B.1 of Forms S-3 and F-3. General registrant requirements for Forms S-3 and F-3 eligibility are outlined in General Instruction I.A to these forms.

¹³ The amendments do not alter any other requirements of Forms S-3 or F-3, including the amount of the public float.

¹⁴ Rule 405 defines "common equity" as "any class of common stock, or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest."

requirements for small entities or exempting them from all or part of the amended requirements. As discussed more fully in the analysis, the nature of these amendments does not lend themselves to separate treatment, nor would they impose significant additional burdens on small entities. A copy of the final regulatory flexibility analysis may be obtained by contacting Mary J. Kosterlitz, Office of Chief Counsel, Division of Corporation Finance, Mail Stop 3-2, 450 Fifth Street, N.W., Washington, D.C. 20549.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1965 (the "Act")(44 U.S.C. 3501 *et seq.*) the staff submitted to the Office of Management and Budget ("OMB") for review proposals to amend the following forms under the Securities Act and the Exchange Act: "Form S-1," "Form S-2," "Form S-3," "Form F-1," "Form F-2," "Form F-3," "Form SB-1," "Form SB-2," "Form 10-K," "Form 10-Q," "Form 10-KSB," "Form 10-QSB," "Form 10," and "Form 10-SB." The collection of information contained in the fourteen forms at issue is required for the registration of various securities for sale to the public under the Securities Act and periodic reporting obligations under the Exchange Act. The Commission solicited comment on the compliance burdens associated with the proposals but received no public comment on the burden estimates. The Commission is adopting the amendments as proposed.

V. Statutory Basis for the Amendments

The amendments to the Commission's rules and forms are being adopted by the Commission pursuant to Sections 6, 7, 8, 10, 19(a), and 27A of the Securities Act and Sections 12, 13, 14, 15(d), 21E, 23(a) and 35A of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

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

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m,

78n, 78o, 78w, 78ll, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

§ 228.10 [Amended]

2. By amending § 228.10(a)(1) by removing the word "securities" in the *Provided however* sentence immediately following § 228.10(a)(1)(iv) and adding the words "voting and non-voting common equity" in its place.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

§ 230.405 [Amended]

4. By amending § 230.405 the definition of "Small Business Issuer" by removing the words "outstanding securities" in the *Provided however* clause and adding the words "outstanding voting and non-voting common equity" in their place.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

§ 239.13 [Amended]

§ 239.32 [Amended]

§ 239.33 [Amended]

6. 17 CFR 239 is amended by removing the words "voting stock" and adding, in their place, the words "voting and non-voting common equity" in the following sections:

- (a) 17 CFR 239.13(b)(1)
- (b) 17 CFR 239.32(b)(2)(i)
- (c) 17 CFR 239.33(b)(1)

7. By amending Form S-3 (referenced in § 239.13) by amending the General Instruction I.B.1 of Form S-3, by removing the words "voting stock" and adding, in their place, the words "voting and non-voting common equity" and by revising the Instruction to General Instruction I.B.1 to read as follows:

(Note: The text of Form S-3 does not and the amendments will not appear in the Code of Federal Regulations.)

Form S-3

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form S-3

* * * * *

B. Transaction Requirements * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

8. By amending Form F-2 (referenced in § 239.32) by amending the General Instruction I.B.2.(i) of Form F-2, by removing the words "voting stock" and adding, in their place, the words "voting and non-voting common equity" and by revising Instruction 1 to General Instruction I.B.2.(i) to read as follows:

(Note: The text of Form F-2 does not and the amendments will not appear in the Code of Federal Regulations.)

Form F-2

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form F-2

* * * * *

- B. * * *
- 2. * * *

Instructions

1. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding common equity shall be computed by use of the price at which the voting and non-voting common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

9. By amending Form F-3 (referenced in § 239.33) by amending the General Instruction I.B.1 of Form F-3, by removing the words "voting stock" and adding, in their place, the words "voting and non-voting common equity" and by

revising the Instruction to General Instruction I.B.1 to read as follows:

(Note: The text of Form F-3 does not appear in the Code of Federal Regulations.)

Form F-3

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form F-3

* * * * *

B. Transaction Requirements

* * * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction

For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

PART 240—GENERAL RULE AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. 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, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

§ 240.12b-2 [Amended]

11. By amending § 240.12b-2 the definition of "Small Business Issuer" by removing the words "outstanding securities" in the *Provided however* clause and adding the words "outstanding voting and non-voting common equity" in their place.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

* * * * *

§ 249.310 [Amended]

13. By amending the front page of Form 10-K (referenced in § 249.310) by revising the paragraph before the "Note" to read as follows:

(Note: The text of Form 10-K does not and the amendments will not appear in the Code of Federal Regulations.)

Form 10-K

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the common equity was sold, or the average bid and asked prices of such common equity, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in Rule 405, 17 CFR 230.405.)

Note. * * *

14. By amending the front page of Form 10-KSB (referenced in § 249.310b) by revising the paragraph before the "Note" to read as follows:

(Note: The text of Form 10-KSB does not, and the amendments will not appear in the Code of Federal Regulations.)

Form 10-KSB

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was sold, or the average bid and asked price of such common equity, as of a specified date within the past 60 days. (See definition of affiliate in Rule 12b-2 of the Exchange Act.)

Note: * * *

Dated: May 8, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-12637 Filed 5-13-97; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 310, 316, and 317

Privacy Act of 1974; Implementation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document corrects administrative errors in Department of Defense's privacy rules published in title 32 of the Code of Federal Regulations.

EFFECTIVE DATE: May 14, 1997.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum or P. Toppings, 703-697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Parts 310, 316, and 317

Privacy.

Under the authority of 10 U.S.C. 301, title 32, chapter I, subchapter O is amended as follows:

PART 310—[AMENDED]

1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1996 (5 U.S.C. 552a).

§ 310.3 [Amended]

2. Section 310.3, the definition for *Access*, is amended by removing the parenthetical phrase "(see also paragraph (h) of this section.)" and placing a period after the word "individual".

§ 310.41 [Amended]

3. The hearing of § 310.41 (h) is amended by removing "General Services Administration."

Appendix D to Part 310 [Amended]

4. Appendix D to Part 310 is amended by revising "GSA" to read "NARA".

PART 316 DEFENSE INFORMATION SYSTEMS AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR Part 316 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. The heading for part 316 is revised to read as set forth above.

§ 316.2 [Amended]

3. Section 316.2 is amended by revising "DCA" to read "Defense Information Systems Agency (DISA)" the first time it appears and by revising "DCA" to read "DISA" the second time it appears.

§ 316.4 [Amended]

4. Section 316.4 is amended by revising "DCA" to read "DISA" each time it appears.

§ 316.5 [Amended]

5. Section 316.5 is amended in the introductory text and paragraph (a) (b) by revising "DCA" to read "DISA".

§ 316.6 [Amended]

6. Section 316.6 is amended in paragraphs (a), (c) introductory text, (c) (3) (i), (c)(3) (viii) (C), (c) (3) (ix) through (c) (3) (xii), (c) (3) (xiv), (d) introductory text, (e) (1), concluding paragraph after