## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 228, 229, 240 and 249

**[Release Nos. 33–7944, 34–43892; File No. S7–04–01]**

**RIN 3235–AI01**

## Disclosure of Equity Compensation Plan Information

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** We are publishing for comment proposed amendments to the disclosure requirements applicable to proxy statements and periodic reports under the Securities Exchange Act of 1934. We seek to enhance disclosure of the number of securities authorized for issuance under, and received by or allocated to participants pursuant to, equity compensation plans.

**DATES:** Comments should be submitted on or before April 2, 2001.

**ADDRESSES:** You should submit three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. You also may submit your comments electronically to the following electronic mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–04–01; please include this file number in the subject line if you use electronic mail. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We will post electronically submitted comment letters on our Internet web site <http://www.sec.gov>.[1]

**FOR FURTHER INFORMATION CONTACT:** Raymond A. Be, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2886.

**SUPPLEMENTARY INFORMATION:** Today, we are publishing for comment proposed amendments to Item 201[2] of Regulation S–B,[3] Item 201[4] of Regulation S–K[5] and Form 10–K,[6] Form 10–KSB[7] and Schedule 14A[8] under the Securities Exchange Act of 1934.[9] Schedule 14C[10] under the Exchange Act also would be affected by the proposed amendments. These amendments would require disclosure in a registrant's proxy statement or annual report on Form 10–K or 10–KSB of the following information:

- The number of securities authorized for issuance under each equity compensation plan of the registrant in effect as of the end of the most recently completed fiscal year;
- The number of securities issued pursuant to equity awards made during the last completed fiscal year, plus the number of securities to be issued upon the exercise of options, warrants or rights granted during the last completed fiscal year, under each plan;
- The number of securities to be issued upon the exercise of outstanding options, warrants or rights under each plan; and
- Other than securities to be issued upon the exercise of outstanding options, warrants or rights, the number of securities remaining available for future issuance under each plan.

We also are making a non-substantive change to Exchange Act Rule 14a–3[11] to make clear that this disclosure is not required in an annual report to security holders.

## I. Discussion of Proposals

### *A. Background*

Today, the use of equity compensation, particularly in the form of stock options, appears to be growing.[12] As the use of equity incentives has grown, so too have concerns about their impact.[13] These concerns involve:

- The absence of full disclosure to security holders about equity compensation plans;
- The potential dilutive effect of equity compensation plans; and
- The adoption of many plans without the approval of security holders.

Our current rules do not require disclosure of the total number of securities that a registrant has authorized for issuance under its entire equity compensation program. Although our rules require disclosure in a registrant's proxy statement of the material features of a compensation plan when submitting the plan for security holder action,[14] including, in the case of a plan containing options, warrants or rights, the title and amount of securities underlying such options, warrants or rights,[15] that disclosure need address only the plan upon which action is being taken.[16] Accordingly, we have been urged to consider greater transparency of all equity compensation plans, whether or not the plans have received security holder approval.[17] This information is important if investors are to assess the effect that equity compensation plans have on their ownership or to compare the equity compensation plans of a registrant with those of its competitors.

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[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] 17 CFR 228.201.

[3] 17 CFR 228.10, *et seq.*

[4] 17 CFR 229.201.

[5] 17 CFR 229.10, *et seq.*

[6] 17 CFR 249.310.

[7] 17 CFR 249.310b.

[8] 17 CFR 240.14a–101.

[9] 15 U.S.C. § 78a, *et seq.*

[10] 17 CFR 240.14c–101.

[11] 17 CFR 240.14a–3(b)(9).

[12] The National Center for Employee Ownership, a non-profit research organization, estimates that nearly 10 million employees currently receive stock options, up from one million in 1992. *See* Pallavi Gogol, *When Good Options Go Bad,* Bus. Wk., Dec. 11, 2000, at EB 96. *See also Broad-based Stock Options—1999 Update,* William J. Mercer, Inc. (1999) (survey of 350 major industrial and service corporations finding that 39.4% have broad-based (at least 50% of employees eligible to participate) stock option plans and 18% made grants under such plans; compared with 17% of companies offering broad-based stock option plans and 5.7% making grants in 1993).

[13] *See* Eric D. Roiter, *The NYSE Wrestles with Shareholder Approval of Stock Option Plans,* Corp. Gov. Adv., Vol. 8, No. 1 (Jan./Feb. 2000), at 1. *See also,* for example, Gretchen Morgenson, *Hidden Costs of Stock Options May Soon Come Back to Haunt,* N.Y. Times, June 13, 2000, at A1; Robert McGough, *Tech Companies' Liberal Use of Stock Options Could Swamp Investors, Drain Firms' Resources,* Wall St. J., July 28, 2000, at C1; Shawn Tully, *The Party's Over,* Fortune, June 26, 2000, at 156.

[14] See Item 10(a)(1) of Schedule 14A [17 CFR 240.14a–101, Item 10(a)(1)].

[15] See Item 10(b)(2)(i)(A) of Schedule 14A [17 CFR 240.14a–101, Item 10(b)(2)(i)(A)].

[16] Similarly, while Item 402(c) of Regulation S–B [17 CFR 228.402(c)] and Item 402(c) of Regulation S–K [17 CFR 229.402(c)] require disclosure of the number of stock option grants during the last fiscal year, that disclosure need address only the named executive officers of the registrant (as defined in the item). *See also* Item 402(b)(2)(iv)(B) of Regulation S–B [17 CFR 228.402(b)(2)(iv)(B)] and Item 402(b)(2)(iv)(B) of Regulation S–K [17 CFR 229.402(b)(2)(iv)(B)].

[17] *See,* for example, the letter dated September 1, 2000 from Keith Johnson, Chief Legal Counsel, State of Wisconsin Investment Board, the letter dated August 28, 2000 from James P. Hoffa, General President, International Brotherhood of Teamsters, the letter dated August 23, 2000 from Peter C. Clapman, Senior Vice President & Chief Counsel, Investments, Teachers Insurance and Annuity Association—College Retirement Equities Fund and the letter dated August 17, 2000 from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors, each to the Commission responding to Self-Regulatory Organizations; New York Stock Exchange, Inc. (''NYSE''); Notice of Filing of Proposed Rule Change by the NYSE to Extend the Pilot Relating to Shareholder Approval of Stock Option Plans, Securities Exchange Act Release No. 43111 (Aug. 2, 2000) [65 FR 49046 (Aug. 10, 2000)]. These letters are available in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549–0609, in File No. SR–NYSE–00–32. *See also* Self-Regulatory Organizations; NYSE; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments Nos. 1 and 2 Thereto Relating to Shareholder Approval of Stock Option Plans, Securities Exchange Act Release No. 41479 (June 4, 1999) [64 FR 31667 (June 11, 1999)].

Disclosure of the overall number of securities of a registrant authorized for issuance under employee stock option plans then in effect is sometimes available indirectly through the registrant's financial statements included in its annual report to security holders.[18] This disclosure is not necessarily effective, however, since it is not consistently available in any one location or format, may not include non-derivative securities awarded to employees and may not include stock options granted to non-employees.[19]

In addition, significant concern has arisen as to the level of potential dilution that equity compensation plans now represent. This concern relates to dilutive potential from the standpoint of both economic and voting power. Issuance of equity securities under these plans may result in a significant reallocation of ownership in the enterprise between existing security holders and management and employees.[20]

Finally, many equity compensation plans may not receive security holder approval. At the state level, approval by security holders is required in only a few jurisdictions.[21] At the federal level, approval by security holders is required only to qualify for favorable treatment under the federal income tax laws[22] or in the case of the issuance of options, warrants or rights by a business development company.[23] While the rules of self-regulatory organizations require publicly-traded companies to obtain security holder approval for some plans,[24] these rules contain exceptions that enable companies to implement many employee stock plans without security holder approval.[25] Accordingly, some market participants have expressed concern that a growing number of employee stock plans escape security holder scrutiny because they are not submitted for approval.[26]

We are proposing amendments that would require registrants to disclose, at least annually, information about the total number of securities that have been authorized for issuance under equity compensation plans in effect[27] as of the end of the last completed fiscal year, whether or not the plans have been approved by security holders. The purpose of the amendments is to promote investor understanding of a registrant's equity compensation policies and practices so that investors can make informed voting and investment decisions.

This disclosure would be set forth in a tabular format:

- In the registrant's proxy statement[28] whenever the registrant is seeking security holder action regarding a compensation plan;[29] or
- In the registrant's annual report on Form 10–K[30] in years when the registrant is not seeking security holder action regarding a compensation plan.

*B. Proposed Disclosure*

The proposed amendments would require a registrant to provide a table identifying each equity compensation plan in effect as of the end of the last completed fiscal year and containing the following information with respect to each plan:

- The number of securities that have been authorized for issuance by the registrant's board of directors;
- The number of securities issued pursuant to equity awards made during the last completed fiscal year, plus the number of securities to be issued upon the exercise of options, warrants or rights granted during the last completed fiscal year;[31]
- The number of securities to be issued upon the exercise of outstanding options, warrants or rights;[32] and
- Other than securities to be issued upon the exercise of outstanding options, warrants or rights, the number of securities remaining available for future issuance.

This information would be provided with respect to any equity compensation plan[33] that provides for the award of a registrant's securities or the grant of options, warrants or rights to purchase

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[18] *See* Exchange Act Rule 14a–3(b) [17 CFR 240.14a–3(b)]. Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation,* (Oct. 1995), requires that an entity disclose in its financial statements the number of shares authorized for grants of options or other equity instruments (¶ 46), the number and weighted-average exercise prices of options outstanding at the beginning of the year, outstanding at the end of the year, exercisable at the end of the year and granted, exercised, forfeited or expired during the year for each year for which an income statement is presented (¶ 47(a)) and the number, weighted-average exercise price and weighted-average remaining contractual life of options outstanding and options currently exercisable at the date of the latest statement of financial position presented (¶ 48).

[19] In a recent annual study on stock plan dilution, the Investor Responsibility Research Center, Inc. (''IRRC'') found that about 20% of the companies surveyed did not disclose the number of shares available for future awards under their employee stock plans. *See Potential Dilution—1999, The Potential Dilution from Stock Plans at the S&P Super 1,500 Companies,* IRRC (2000) (''IRRC Dilution Study'').

[20] The amount of securities allocated for equity compensation plans has been increasing for several years. A recent study of the stock-based pay practices at the nation's 200 largest corporations indicates that these companies allocated 13.7% of outstanding shares (calculated on a fully diluted basis) for management and employee equity incentives in 1999, compared to only 6.9% in 1989. *See 1999 Equity Stake, Study of Management Equity Participation in the Top 200 Corporations,* Pearl Meyers & Partners, Inc. (1999). The percentage may be even higher in some industries, such as the high-technology sector. *See Trends in Equity Compensation 1996–2000,* iQuantic, Inc. (2000) (number of options outstanding as a percentage of the total number of common shares outstanding for 200 major high-technology companies was 15.8% in 1999 compared to 12.4% in 1997). This figure does not take into account securities available for future grant. *See also IRRC Dilution Study* (average potential dilution for 1,175 companies studied was 13.5% in 1999 compared to 11.6% in 1997; average potential dilution of 434 ''S&P 600 SmallCap'' companies studied was 16.3% in 1999 compared to 13.8% in 1997).

[21] *See* Herbert Kraus, *Executive Stock Options and Stock Appreciation Rights,* L.J. Press (2000), at 2.07. These states include Alaska (Alaska Stat. § 10.06.343), Hawaii (Haw. Rev. Stat. § 415–20), Maine (13A Me. Rev. Stat. Ann. § 508[3]), New Mexico (N.M. Stat. Ann. § 53–11–20), South Dakota (S.D. Comp. L. § 47–3–48 (security holder approval required for issuance of shares to officers or employees)), Vermont (Vt. Stat. Ann. § 6.24) and West Virginia (W. Va. Code Ann. § 31–1–84). *See also* N.Y. Bus. Corp. Law § 505(d). Prior to October 11, 2000, Section 505(d) of the Business Corporations Law of the State of New York required approval of any stock option plan by a majority of a corporation's shareholders. As amended by S. 6780 (Oct. 11, 2000), this provision now requires approval of a stock option plan by a majority of the shareholders only where the corporation's shares are not listed or authorized for trading on a stock exchange or automated quotation system.

[22] *See* 26 U.S.C. 162(m) and 422 (1998).

[23] *See* Section 61(a)(3)(A)(iv) of the Investment Company Act of 1940, 15 U.S.C. § 80a–61(a)(3)(A)(iv).

[24] *See* NYSE, NYSE Listed Company Manual, ¶ 312.03(a) (Foundation 1996); American Stock Exchange, LLC (''AMEX''), AMEX Company Guide, § 711 (Foundation 1996); Nasdaq Stock Market Rule 4460(i)(1)(A), NASD Securities Dealer Manual (CCH) at 5512 (1996 Supp).

[25] *Id. See also* Randall S. Thomas and Kenneth J. Martin, *The Determinants of Shareholder Voting on Stock Option Plans,* 35 Wake Forest L. Rev. 31, 48 (2000).

[26] *See* n. 17 above.

[27] An equity compensation plan that provides for the grant of options, warrants or rights is considered to be in effect as long as securities remain available for future grant under the plan or options, warrants or rights previously granted under the plan remain outstanding.

[28] The discussion of proxy statements in this release also includes information statements.

[29] As discussed in section I.B. below, the required disclosure would encompass each equity compensation plan of the registrant in effect as of the end of the last completed fiscal year other than the compensation plan or plans subject to security holder action. Those plans, of course, would be subject to the existing disclosure requirements of Item 10 of Schedule 14A.

[30] The discussion of Form 10–K in this release also includes Form 10–KSB.

[31] This disclosure would not apply to any plan, contract, authorization or arrangement for the issuance of warrants or rights on substantially similar terms to all security holders of the registrant generally that did not discriminate in favor of officers or directors of the registrant. *See* Proposed Item 201(d), Instruction 2, of Regulation S–B and Regulation S–K.

[32] *See* n. 31 above.

[33] This would include, without limitation, employee stock purchase plans that provide for the acquisition of authorized but unissued securities or repurchased or ''treasury'' shares, but would exclude so-called ''open market'' employee stock purchase plans.

the registrant's securities [34] to officers, directors and employees of the registrant or its parent or subsidiary corporations, or to any other person.[35] Individual arrangements that contemplate the award of a registrant's securities or the grant of options, warrants or rights providing for the purchase of the registrant's securities may be aggregated and disclosed as a single item.[36]

This information would be provided without regard to whether the equity compensation plan was previously approved by a registrant's security holders. Registrants would be required to identify, either in the table or through a narrative statement, which of the equity compensation plans, if any, was adopted without security holder approval. They also would be required to provide a brief, narrative description of the material features of each plan adopted without security holder approval during the last completed fiscal year.[37] Finally, this information would be provided without regard to whether the securities to be issued under the equity compensation plan were authorized but unissued securities of the registrant or repurchased or ''treasury'' shares.

We request comment as to the appropriateness of the proposed disclosure. Would narrative disclosure be preferable to the proposed tabular format? Are there any additional categories of information (such as weighted average exercise price information) or different categories of information that should be included in the disclosure? Is it useful to disclose information about the number of securities awarded and the number of options, warrants or rights granted during the last completed fiscal year? Would disclosure of prior awards and grants over a different time period be more appropriate, and, if so, what period? Is it necessary, as proposed, for registrants to provide totals for the information set forth in each column of the tabular disclosure? When disclosure is being made in a registrant's proxy statement because the registrant is seeking security holder action regarding a compensation plan, should the tabular disclosure also cover the plan upon which action is being taken?

Is aggregated disclosure of individual arrangements appropriate? If not, what alternative approach would be preferable? Should aggregated disclosure be permitted in the case of certain equity compensation plans (such as plans that are assumed by the acquiring company in a merger, consolidation or other acquisition transaction)?

Should additional or different disclosure be required with respect to equity compensation plans that have been adopted without security holder approval (such as the information currently required under Item 10 of Schedule 14A)? Should disclosure be required if the plan was adopted in a year prior to the most recently completed fiscal year? Is it sufficient to require the disclosure of such plan's ''material features,'' or should we identify the specific terms and conditions of the plan that must be disclosed (such as exercise price, vesting and expiration date information, or the existence of reload, stock swap, loan or option repricing features)? In lieu of, or in addition to, the disclosure required for an equity compensation plan that has been adopted without security holder approval, should a registrant be required to file any such plan as an exhibit to the registrant's annual report on Form 10–K for the fiscal year in which the plan was adopted? [38] Should specific disclosure about equity compensation plans that involve the use of repurchased or ''treasury'' shares be required?

*C. Location of Disclosure*

1. Disclosure in Proxy Statement

We believe that an understanding of a registrant's equity compensation policies and practices is relevant to a security holder's decision regarding the adoption of a new compensation plan or the modification of an existing plan. Accordingly, if security holders are acting on a plan at a meeting, the proposed amendments would require that the disclosure be included in the registrant's proxy statement relating to the meeting at which security holders will be voting on the compensation plan.[39]

2. Disclosure in Annual Report on Form 10–K

Even in years when a registrant is not submitting a compensation plan for security holder action, we believe that it is important for security holders to know the extent to which the registrant has awarded securities or granted options, warrants or rights to participants under its existing equity compensation plans. The proposed amendments would require a registrant to disclose in its annual report on Form 10–K the information required by Proposed Item 201(d) of Regulation S–K.[40] This information would be included in Part III of Form 10–K. As such, the information could be incorporated by reference from a registrant's definitive proxy statement that involves the election of directors, if the definitive proxy statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10–K.[41]

We request comment as to the appropriateness of the location for the proposed disclosure. Should disclosure be required in the proxy statement whether or not a registrant is submitting a compensation plan for security holder action? If so, how would the disclosure

[34] Notwithstanding that an equity compensation plan may permit alternative types of awards (for example, restricted stock *or* stock options), the securities authorized for issuance under the plan and remaining available for future issuance under the plan are to be counted only once.

[35] Thus, disclosure would be required with respect to all equity compensation plans, without regard to whether the plan participants are employees, directors, general partners, trustees, officers, consultants and advisors, vendors or independent contractors.

[36] *See* Proposed Item 201(d) of Regulation S–B and Regulation S–K. Item 402(a)(6)(ii) of Regulation S–B [17 CFR 228.402(a)(6)(ii)] and Item 402(a)(7)(ii) of Regulation S–K [17 CFR 229.402(a)(7)(ii)] define the term ''plan'' to include any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, that is applicable to one or more persons.

[37] *See* Proposed Item 201(d)(3) of Regulation S–B and Regulation S–K. In 1992, we eliminated the requirement under Item 10 of Schedule 14A (and Item 1 of Schedule 14C) that a registrant provide extensive disclosure of all existing plans when seeking security holder approval of a compensation plan. *See* Executive Compensation Disclosure, Securities Exchange Act Release No. 31327, section II.L (Oct. 16, 1992) [57 FR 48126 (Oct. 21, 1992)]. We are not proposing to reinstate that specific requirement. We seek to ensure that adequate information is available to security holders, however, about the number of securities authorized for issuance under a registrant's existing equity compensation plans, whether or not the plans have been approved by security holders.

Once disclosure of the material terms of an equity compensation plan that was adopted without security holder approval has been made, in subsequent years a registrant need only identify the filing containing the narrative description of the plan if the plan was still in effect as of the end of the last completed fiscal year.

[38] Currently, Item 601(b)(10)(iii)(A) of Regulation S–K [17 CFR 229.601(b)(10)(iii)(A)] requires the filing of any compensatory plan, contract or arrangement in which any director or any of the named executive officers of the registrant, as defined by Item 402(a)(3) (17 CFR 229.402(a)(3)), participates, as well as any other compensatory plan, contract or arrangement in which any other executive officer of the registrant participates unless immaterial in amount or significance. *See also* Item 601(b)(10)(ii)(A) of Regulation S–B [17 CFR 228.601(b)(10)(ii)(A)].

[39] *See* Proposed Item 10(c) of Schedule 14A. This would include a vote to modify an existing compensation plan, such as a vote to increase the number of securities authorized for issuance under the plan.

[40] *See* Proposed Item 11 of Form 10–KSB and Proposed Item 12 of Form 10–K.

[41] *See* General Instruction E(3) to Form 10–KSB [17 CFR 249.310b] and General Instruction G(3) to Form 10–K [17 CFR 249.310].

requirements be made applicable to registrants that are subject to reporting under section 15(d) of the Exchange Act?[42] Alternatively, is it necessary to provide disclosure in years when a registrant is not submitting a compensation plan for security holder action? Is similar information currently available to security holders,[43] and, if so, is this information adequate? Should the proposed disclosure be required in registration statements filed under the Securities Act of 1933?[44]

## II. General Request for Comments

Any interested person wishing to address the rule changes that are the subject of this release, to suggest additional or different changes or to comment on other matters that may have an effect on the proposals contained in this release, is requested to submit comments. We request comment from the point of view of registrants, security holders and other users of information about the use of securities to compensate officers, directors, employees, consultants and advisors.

## III. Paperwork Reduction Act

Portions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[45] or PRA. We are submitting the proposed amendments to the Office of Management and Budget, or OMB, for review in accordance with the PRA.[46] The titles for the collections of information are (1) ''Regulation 14A (Commission Rules 14a–1 through 14b–2 and Schedule 14A),'' (2) ''Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C),'' (3) ''Form 10–K,'' (4) ''Form 10–KSB,'' (5) ''Regulation S–B'' and (6) ''Regulation S–K.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulation 14A (OMB Control No. 3235–0059) was adopted pursuant to section 14(a) of the Exchange Act[47] and prescribes information that a registrant must include in its proxy statement to ensure that security holders are provided information that is material to their voting decisions. Preparing and sending a proxy statement is a collection of information.

Regulation 14C (OMB Control No. 3235–0057) was adopted pursuant to section 14(c) of the Exchange Act[48] and prescribes information that a registrant must include in an information statement when a security holder vote is to be held but proxies are not being solicited. Schedule 14C refers to Schedule 14A for the disclosure requirements related to compensation plans. Preparing and sending an information statement is a collection of information.

Form 10–K (OMB Control No. 3235–0063) was adopted pursuant to sections 13[49] and 15(d) of the Exchange Act and prescribes information that a registrant must disclose annually to the market about its business. Preparing and filing an annual report on Form 10–K is a collection of information.

Form 10–KSB (OMB Control No. 3235–0420) was adopted pursuant to sections 13 and 15(d) of the Exchange Act and prescribes information that a registrant that is a ''small business issuer'' as defined under our rules[50] must disclose annually to the market about its business. Preparing and filing an annual report on Form 10–KSB is a collection of information.

Regulation S–B (OMB Control No. 3235–0417) was adopted pursuant to the Securities Act and the Exchange Act and is the source of disclosure requirements for ''small business issuer'' filings under the Securities Act and the Exchange Act. Preparing this disclosure involves a collection of information.

Regulation S–K (OMB Control No. 3235–0071) was adopted pursuant to the Securities Act and the Exchange Act and sets forth the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act and registration statements under section 12,[51] annual and other reports under sections 13 and 15(d), going-private transaction statements under section 13, tender offer statements under sections 13 and 14, annual reports to security holders and proxy and information statements under section 14 and any other documents required to be filed under the Exchange Act. Preparing this disclosure involves a collection of information.

The proxy disclosure requirements of section 14 of the Exchange Act, as well as the reporting requirements of section 13 of the Exchange Act, apply to those entities that have securities registered under section 12 of the Exchange Act. The reporting requirements of section 15(d) of the Exchange Act apply to those entities with effective registration statements under the Securities Act that are not otherwise subject to the registration requirements of section 12 of the Exchange Act. The likely respondents, therefore, include entities with more than 500 security holders and more than $10 million in assets (section 12(g)),[52] entities with securities listed on a national exchange (section 12(b))[53] and entities with an effective registration statement under the Securities Act (section 15(d)).

We estimate that approximately 9,892 respondents file proxy statements under Schedule 14A and annual reports on Form 10–K or 10–KSB, approximately 253 respondents file information statements under Schedule 14C and annual reports on Form 10–K or 10–KSB and approximately 1,939 respondents just file annual reports on Form 10–K or 10–KSB. We have based the number of entities that would complete and file each of the forms on the actual number of filers during the 2000 fiscal year.

We further estimate that approximately 60% of these respondents, or 7,250 respondents, have adopted equity compensation plans and, thus, will be subject to the enhanced disclosure contemplated by the proposed amendments. We estimate that approximately 50% of these respondents, or 3,625 respondents, adopt a new equity compensation plan or modify an existing plan each year. In addition, we estimate that approximately 25% of the respondents with equity compensation plans, or 1,813 respondents, have adopted non-security holder approved plans[54] and will be required to describe the material terms of these plans as part of their enhanced disclosure. We note that, while each respondent with an equity compensation plan will need to make the required disclosure, the disclosure will appear in only one filing each year—either the proxy or information statement or the annual report on Form 10–K or 10–KSB.

Based on these assumptions, we estimate that 60% of the respondents that file proxy statements under Schedule 14A and annual reports on Form 10–K or 10–KSB, or 5,935 respondents, will need to prepare and provide the required tabular disclosure. We further estimate that 25% of these

[42] 15 U.S.C. 78o(d).

[43] *See* n. 18 above and the accompanying text.

[44] 15 U.S.C. 77a, *et seq.*

[45] 44 U.S.C. 3501, *et seq.*

[46] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[47] 15 U.S.C. 78n(a).

[48] 15 U.S.C. 78n(c).

[49] 15 U.S.C. 78m.

[50] Exchange Act Rule 12b–2 [17 CFR 240.12b–2].

[51] 15 U.S.C. 78*l*.

[52] 15 U.S.C. 78*l*(g).

[53] 15 U.S.C. 78*l*(b).

[54] *See Trends in Equity Compensation 1996–2000,* iQuantic, Inc. (2000) (estimated percentage of companies with non-security holder approved stock option plan was 27.3% in 1999 (161 survey respondents) compared to 3.2% before 1996).

respondents, or 1,484 respondents, will need to prepare and provide descriptions of their non-security holder approved equity compensation plans. We estimate that one-half of the respondents will need to include this disclosure in their proxy statements and one-half in their annual reports on Form 10–K or 10–KSB,[55] as the case may be. Finally, we estimate that preparation of the required tabular disclosure will add two burden hours to each proxy or information statement or annual report on Form 10–K or 10–KSB and, where required, preparation of the required description of an equity compensation plan's material terms will also add two burden hours.[56] Thus, we estimate that the proposed amendments will require 7,419 burden hours to prepare the required disclosure [(one-half of 5,935 respondents × 2 hours) + (one half of 1,484 respondents × 2 hours)] and will add 3,710 hours [57] to the current Schedule 14A annual burden of 179,144 hours, resulting in a total Schedule 14A annual hour burden of 182,854 hours.

We estimate that 60% of the respondents that file information statements under Schedule 14C and annual reports on Form 10–K or 10–KSB, or 152 respondents, will need to prepare and provide the required tabular disclosure. We further estimate that 25% of these respondents, or 38 respondents, will need to prepare and provide descriptions of their non-security holder approved equity compensation plans. We estimate that one-half of this disclosure will be included in respondents' information statements and one-half in respondents' annual reports on Form 10–K or 10–KSB,[58] as the case may be. Thus, we estimate that the proposed amendments will require 190 burden hours to prepare the required disclosure [(one-half of 152 respondents × 2 hours) + (one-half of 38 respondents × 2 hours)] and will add 95 hours to the current Schedule 14C annual burden of 4,582 hours, resulting in a total Schedule 14C annual hour burden of 4,677 hours.

We estimate that 60% of the respondents that just file annual reports on Form 10–K or 10–KSB, or 1,163 respondents, will need to prepare and provide the required tabular disclosure. We further estimate that 25% of these respondents, or 291 respondents, will need to prepare and provide descriptions of their non-security holder approved equity compensation plans. We estimate that 20% of the respondents will include this disclosure in their annual report on Form 10–K and 80% in their annual report on Form 10–KSB. Thus, we estimate that the proposed amendments will require 6,668 burden hours to prepare the required disclosure [{(20% of 1,163 respondents × 2 hours) + (20% of 291 respondents × 2 hours)} + {(80% [59] of one-half of 5,935 respondents × 2 hours) + (80% of one-half of 1,484 respondents × 2 hours)} [60] + {(80% of one-half of 152 respondents × 2 hours) + (80% of one-half of 38 respondents × 2 hours)} [61]] and will add 3,334 hours to the current Form 10–K annual burden of 4,463,830 hours, resulting in a total Form 10–K annual hour burden of 4,467,194 hours. We also estimate that the proposed amendments will require 3,848 burden hours to prepare the required disclosure [{(80% of 1,163 respondents × 2 hours) + (80% of 291 respondents × 2 hours)} + {(20% [62] of one-half of 5,935 respondents × 2 hours) + (20% of one-half of 1,484 respondents × 2 hours)} + {(20 % of one-half of 152 respondents × 2 hours) + (20% of one-half of 38 respondents × 2 hours)}] and will add 1,924 hours to the current Form 10–KSB annual burden of 1,070,454 hours, resulting in a total Form 10–KSB annual hour burden of 1,072,378 hours.

In addition to the internal hours they will expend, we expect that respondents will retain outside counsel to assist in the preparation of the required disclosures. The total dollar cost of complying with Regulation 14A, revised to include the additional outside counsel costs expected from the proposed amendments, are estimated to be $93,263,250, an increase of $649,250 from the current annual burden. The total dollar cost of complying with Regulation 14C, revised to include the additional outside counsel costs expected from the proposed amendments, are estimated to be $2,385,625, an increase of $16,625 from the current annual burden. The total dollar cost of complying with Form 10–K, revised to include the additional outside counsel costs expected from the proposed amendments, are estimated to be $2,344,093,450, an increase of $583,450 from the current annual burden. The total dollar cost of complying with Form 10–KSB, revised to include the additional outside counsel costs expected from the proposed amendments, are estimated to be $562,324,700, an increase of $336,700 from the current annual burden.

We believe that the proposed amendments will enable investors to ascertain more readily the total number of securities that a registrant has authorized for issuance under its equity compensation plans. As discussed elsewhere in this release, there is growing concern about the level of potential dilution that equity compensation plans now represent. In addition, investors have expressed concern that many plans are implemented without the approval of security holders and that the current disclosure rules do not require comprehensive information about all of a company's plans. The proposed amendments will require registrants to present additional information in their proxy or information statements or their annual reports on Form 10–K or 10–KSB about their equity compensation plans. We believe that this information is important to an investor's decision to vote to approve a new compensation plan or the modification of an existing plan.

Compliance with the disclosure requirements will be mandatory for all registrants. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

We request comment in order to (a) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility, (b) evaluate the accuracy of our estimate of the burden of the proposed collections of information, (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected and (d) evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through

[55] *See* n. 59 below and the accompanying text.

[56] These time estimates are based on the fact that the information needed to make the proposed disclosure should be readily available to respondents.

[57] We estimate that respondents will prepare 50% of the required disclosure and that outside counsel will prepare the remaining 50%. Accordingly, 50% of the total burden resulting from our equity compensation disclosure rules is reflected as burden hours and the remaining 50% is reflected in the total cost of complying with the information collection requirements. We used an estimated hourly rate of $175.00 to determine the estimated cost to the respondent of the disclosure prepared by outside counsel. We arrived at that hourly rate estimate after consulting with several private law firms.

[58] *See* n. 59 below and the accompanying text.

[59] We estimate that in years where respondents are not submitting new compensation plans or modifications of existing plans for the approval of security holders, 80% of the required disclosure will be included in respondents' annual report on Form 10–K and 20% in respondents' annual report on Form 10–KSB.

[60] *See* n. 55 above and the accompanying text.

[61] *See* n. 58 above and the accompanying text.

[62] *See* n. 59 above.

the use of automated collection techniques or other forms of information technology.[63]

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609, with reference to File No. S7–04–01. Requests for materials submitted to the OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–04–01 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549–0609. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

## IV. Cost-Benefit Analysis

We have identified certain costs and benefits of the proposed amendments. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposals. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

The proposed amendments to require certain information to be provided in the proxy or information statement when submitting a compensation plan for security holder action, or in the annual report on Form 10–K or 10–KSB in fiscal years when a registrant is not submitting a compensation plan for security holder action, will, if adopted, increase the amount of information available to investors about a registrant's equity compensation program, enabling investors to better understand the forms and amounts of equity compensation paid to officers, directors, employees, consultants and advisors. The proposed amendments are consistent with our existing disclosure requirements for executive compensation,[64] and further our objective of enabling investors to make better informed voting and investment decisions.

The potential benefit to investors would include greater insight into a registrant's equity compensation policies and practices. This information would benefit investors by providing additional information in a useful format about existing equity compensation plans when called upon to consider action on a new equity compensation plan or the modification of an existing plan. In addition, this information would be of use to investors in evaluating the performance of a registrant's management and board of directors.

We believe that the proposed amendments also would benefit investors by providing information, which is not always readily available, regarding the overall potential dilutive effect of a registrant's equity compensation program. This information also would lead to greater transparency concerning a registrant's capital structure and enable greater comparability of equity compensation programs between companies. Accordingly, this information may be factored into investment decisions, thereby leading to more accurate pricing for a registrant's securities. These benefits are difficult to quantify.

The proposed amendments may increase the costs to registrant in several ways. Specifically, the amendments will increase the costs associated with the preparation of information currently required to be furnished to security holders in proxy or information statements or reported in annual reports on Form 10–K or 10–KSB. Since this information is readily available to registrants, however, and portions must be disclosed in other filings,[65] we do not expect these additional costs to be significant. As discussed in Section III of this release for purposes of the PRA, we estimate the aggregate annual paperwork cost of compliance with the proposed amendments to be $3,172,050.

The proposed amendments may have indirect effects, as well. For example, the availability of additional information about a registrant's equity compensation policies and practices may have an impact on the market price of a registrant's securities where the number of securities reserved for issuance under the registrant's equity compensation plans is higher than expected. In addition, disclosure of further information about a registrant's equity compensation policies and practices may cause the registrant to scale back its equity compensation program if not received favorably by investors. This may make it difficult for some registrants, particularly small businesses, which rely heavily on equity compensation to recruit, motivate and retain key employees. These costs, to the extent they exist, are difficult to quantify. Therefore, we request information regarding these matters. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

## V. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis, or IRFA, regarding the proposed amendments.[66] The following summarizes the IRFA:

As discussed in greater detail in the IRFA and in other sections of this release, the recent, increased use of equity compensation has raised concerns about the potential dilutive effect of equity compensation plans, the absence of the approval of security holders and the absence of full disclosure to security holders about a company's plans. These concerns may be especially acute in smaller companies, which often make liberal use of equity compensation in order to attract and retain key employees and to preserve scarce cash resources. In this regard, we are proposing amendments to our current requirements to increase the information provided to investors regarding equity compensation plans. This information will be included in proxy or information statements or in annual reports on Form 10–K or 10–KSB.

The IRFA sets forth the statutory authority for the proposed amendments. It also discusses ''small entities'' that would be subject to the proposals.[67] As described in the IRFA, we have estimated that there are approximately 2,500 Exchange Act reporting companies that currently satisfy the definition of ''small business'' under our rules. The IRFA indicates that the proposed amendments would affect all registrants. The IRFA states that the

[63] Comments are requested pursuant to 44 U.S.C. § 3506(c)(2)(B).

[64] *See* Item 402 of Regulation S–B [17 CFR 228.402] and Item 402 of Regulation S–K [17 CFR 229.402].

[65] *See*, for example, n. 18 above and the acompanying text.

[66] The analysis has been prepared in accordance with the Regulatory Flexibility Act, 5 U.S.C. 603.

[67] For purposes of this analysis, we have defined ''small business'' in Securities Act Rule 157 as any entity whose total assets on the last day of its most recent fiscal year were $5 million or less and is engaged, or proposes to engage, in small business financing. [17 CFR 230.157]. A registrant is considered to be engaged, or to propose to engage, in small business financing under this rule if it is conducting, or proposes to conduct, an offering of securities which does not exceed the dollar limitation prescribed by section 3(b) of the Securities Act, 15 U.S.C. 77c(b).

proposed amendments will increase costs for registrants, including some small businesses, because the proposal imposes new reporting and compliance requirements.

The new disclosure requirements would apply to small businesses only if they are subject to section 14 of the Exchange Act or have an effective registration statement under the Securities Act and if they adopt or maintain an equity compensation plan. We estimate the number of those entities to be approximately 1,500.[68] The proposed amendments relate to only one item of the proxy or information statement or annual report on Form 10–K or 10–KSB, and the information should be readily available to registrants because they already maintain records regarding their equity compensation plans. This information is needed for investors to better understand a registrant's equity compensation program. In addition, all registrants have various corporate law, financial reporting and other disclosure obligations that require maintenance of information regarding equity compensation plans similar to that covered by the proposed amendments. We believe that the proposed amendments will provide improved information for the investing public.

As explained in the IRFA, the Regulatory Flexibility Act directs us to consider alternatives that would accomplish the stated objective, while minimizing adverse impact on small entities. In that regard, we are considering the following alternatives: (a) Differing compliance or reporting requirements that take into account the resources of small entities, (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities, (c) the use of performance rather than design standards and (d) an exemption from the coverage of the proposed amendments for small entities.

We encourage the submission of comments with respect to any aspect of the IRFA. In particular, we request comment on the number of small businesses that would be affected by the proposed amendments, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposed amendments. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments. A copy of the IRFA may be obtained by contacting Raymond A. Be, Office of Rulemaking, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

## VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA'' [69] we request information regarding the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

Section 23(a)(2) of the Exchange Act [70] requires us, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule that we adopt. The proposed amendments are intended to improve the comparability of registrants' equity compensation policies and practices, which should promote competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

In addition, section 2(b) of the Securities Act and section 3(f) of the Exchange Act [71] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The proposed amendments enhance our disclosure requirements in light of trends in the use of equity compensation. The proposed amendments affect the information that registrants must provide to investors concerning their equity compensation plans. The purpose of the amendments is to promote investor understanding of a company's equity compensation policies and practices so that investors can make informed voting and investment decisions. Informed investor decisions generally promote market efficiency and capital formation. We request comment on whether the proposed amendments, if adopted, would promote efficiency and capital formation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

## VII. Statutory Authority

The amendments contained in this release are being proposed under the authority set forth in sections 3(b), 6, 7, 8, 10 and 19(a) of the Securities Act and Sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act.

## List of Subjects in 17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

## Text of Proposed Rule Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations, is proposed to be 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, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

1. By amending § 228.201 to add paragraph (d) before the *Instruction* to read as follows:

### § 228.201 (Item 201) Market for common equity and related stockholder matters.

* * * * *

(d) *Securities authorized for issuance under equity compensation plans.*

(1) In the following tabular format, provide the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to each compensation plan of the registrant under which equity securities of the registrant are authorized for issuance.

[68] This figure is based on our estimate that 60% of registrants that file proxy or information statements under section 14 of the Exchange Act or annual reports on Form 10–K or 10–KSB have adopted equity compensation plans.

[69] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[70] 15 U.S.C. 78w(a)(2).

[71] 15 U.S.C. 77b(b) and 78c(f).

EQUITY COMPENSATION PLAN INFORMATION

| Name of plan (a) | Number of securities authorized for issuance under the plan (b) | Number of securities awarded plus number of securities to be issued upon exercise of options, warrants or rights granted during last fiscal year (c) | Number of securities to be issued upon exercise of outstanding options, warrants or rights (d) | Number of securities remaining available for future issuance (e) |
|---|---|---|---|---|
| Plan #1 | | | | |
| Plan #2 | | | | |
| Plan #3 | | | | |
| Individual Arrangements (Aggregated) | | | | |
| Total | | | | |

(2) The table shall include the following information as of the end of the most recently completed fiscal year:

(i) For each plan (other than individual arrangements):

(A) The name of the plan (column (a));

(B) The number of securities authorized for issuance under the plan (column (b));

(C) The number of securities issued pursuant to equity awards made under the plan during the most recently completed fiscal year, plus the number of securities to be issued upon the exercise of options, warrants or rights granted under the plan during the most recently completed fiscal year (column (c));

(D) The number of securities to be issued upon the exercise of options, warrants or rights outstanding under the plan (column (d)); and

(E) Other than securities to be issued upon the exercise of outstanding options, warrants or rights, the number of securities remaining available for issuance under the plan (column (e)).

(ii) For individual arrangements:

(A) The number of individual arrangements being disclosed (column (a));

(B) The aggregate number of securities authorized for issuance under the individual arrangements (column (b));

(C) The aggregate number of securities to be issued upon the exercise of options, warrants or rights outstanding under the individual arrangements (column (d)); and

(D) Other than securities to be issued upon the exercise of outstanding options, warrants or rights, the aggregate number of securities remaining available for issuance under the individual arrangements, if any (column (e)).

(3) Identify each plan that was adopted without security holder approval and:

(i) If such plan was adopted during the most recently completed fiscal year, describe briefly, in narrative form, the material features of the plan; or

(ii) If such plan was adopted in a prior fiscal year, identify the filing containing such description.

(4) If any individual arrangement exceeds 25% of the aggregate number of securities disclosed pursuant to paragraph (d)(2)(ii)(B) of this Item, identify the relationship of the recipient to the registrant and describe briefly, in narrative form, the material features of the arrangement.

*Instructions to Item 201(d).*

1. For purposes of this paragraph, the term *plan* shall be defined in accordance with Item 402(a)(6)(ii) of Regulation S–B (§ 228.402(a)(6)(ii)).

2. No disclosure is required under this Item with respect to any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, for the issuance of warrants or rights on substantially similar terms to all security holders of the registrant generally that does not discriminate in favor of officers or directors of the registrant. No disclosure is required under column (c) of Item 201(d)(1) with respect to individual arrangements involving equity awards and grants.

3. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

* * * * *

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The general authority citation for Part 229 is revised to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), and 80b–11, unless otherwise noted.

* * * * *

4. The authority citation following § 229.201 is removed.

5. By amending § 229.201 to add paragraph (d) before *Instructions to Item 201* to read as follows:

**§ 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.**

* * * * *

(d) *Securities authorized for issuance under equity compensation plans.*

(1) In the following tabular format, provide the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to each compensation plan of the registrant under which equity securities of the registrant are authorized for issuance.

EQUITY COMPENSATION PLAN INFORMATION

| Name of plan | Number of securities authorized for issuance under the plan | Number of securities awarded plus number of securities to be issued upon exercise of options, warrants or rights granted during last fiscal year | Number of securities to be issued upon exercise of outstanding options, warrants or rights | Number of securities remaining available for future issuance |
|---|---|---|---|---|
| (a) | (b) | (c) | (d) | (e) |
| Plan #1 | | | | |
| Plan #2 | | | | |
| Plan #3 | | | | |
| Individual Arrangements (Aggregated) | | | | |
| Total | | | | |

(2) The table shall include the following information as of the end of the most recently completed fiscal year:

(i) For each plan (other than individual arrangements):

(A) The name of the plan (column (a));

(B) The number of securities authorized for issuance under the plan (column (b));

(C) The number of securities issued pursuant to equity awards made under the plan during the most recently completed fiscal year, plus the number of securities to be issued upon the exercise of options, warrants or rights granted under the plan during the most recently completed fiscal year (column (c));

(D) The number of securities to be issued upon the exercise of options, warrants or rights outstanding under the plan (column (d)); and

(E) Other than securities to be issued upon the exercise of outstanding options, warrants or rights, the number of securities remaining available for issuance under the plan (column (e)).

(ii) For individual arrangements:

(A) The number of individual arrangements being disclosed (column (a));

(B) The aggregate number of securities authorized for issuance under the individual arrangements (column (b));

(C) The aggregate number of securities to be issued upon the exercise of options, warrants or rights outstanding under the individual arrangements (column (d)); and

(D) Other than securities to be issued upon the exercise of outstanding options, warrants or rights, the aggregate number of securities remaining available for issuance under the individual arrangements, if any (column (e)).

(3) Identify each plan that was adopted without security holder approval and:

(i) If such plan was adopted during the most recently completed fiscal year, describe briefly, in narrative form, the material features of the plan; or

(ii) If such plan was adopted in a prior fiscal year, identify the filing containing such description.

(4) If any individual arrangement exceeds 25% of the aggregate number of securities disclosed pursuant to paragraph (d)(2)(ii)(B) of this Item, identify the relationship of the recipient to the registrant and describe briefly, in narrative form, the material features of the arrangement.

*Instructions to Item 201(d).*

1. For purposes of this paragraph, the term *plan* shall be defined in accordance with Item 402(a)(7)(ii) of Regulation S–K (§ 229.402(a)(7)(ii)).

2. No disclosure is required under this Item with respect to any plan, contract, authorization or arrangement, whether or not set forth in any formal documents, for the issuance of warrants or rights on substantially similar terms to all security holders of the registrant generally that does not discriminate in favor of officers or directors of the registrant. No disclosure is required under column (c) of Item 201(d)(1) with respect to individual arrangements involving equity awards and grants.

3. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

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

6. The authority citation for Part 240 is revised to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

7. The authority citation following § 240.14a-3 is removed.

8. By amending § 240.14a-3 to revise paragraph (b)(9) to read as follows:

* * * * *

**§ 240.14a–3 Information to be furnished to security holders.**

* * * * *

(b) * * *

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Item 201(a), (b) and (c) of Regulation S–K (§ 229.201(a), (b) and (c) of this chapter).

* * * * *

9. By amending § 240.14a–101, Item 10 of Schedule 14A by adding paragraph (c) before the undesignated heading *Instructions* and revising Item 14(d)(4) of Schedule 14A to read as follows:

**§ 240.14a–101 Schedule 14A. Information required in proxy statement.**

* * * * *

**Item 10. Compensation Plans.** * * *

(c) *Information regarding plans and other arrangements not subject to security holder action.* The information called for by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter) with respect to each equity compensation plan in effect as of the end of the last completed fiscal year (other than the plan or plans being acted upon as described in paragraph (a) of this Item), whether or not such plan has been approved by security holders.

* * * * *

**Item 14. Mergers, consolidations, acquisitions and similar matters.** * * *

(d) *Information about parties to the transaction registered investment companies and business development companies.* * * *

* * * * *

(4) Information required by Item 201(a), (b) and (c) of Regulation S-K (§ 229.201(a), (b) and (c) of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

* * * * *

11. By amending Form 10–K (referenced in § 249.310) by revising Item 12 of Part III to read as follows:

**Note.—** The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 10–K**

**Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

* * * * *

**Part III**

* * * * *

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

Furnish the information required by Item 201(d) of Regulation S–K (§ 229.201(d) of this chapter) and by Item 403 of Regulation S–K (§ 229.403 of this chapter).

* * * * *

12. By amending Form 10–KSB (referenced in § 249.310b) by revising Item 11 of Part III to read as follows:

**Note—** The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form 10–KSB**

* * * * *

**Part III**

* * * * *

**Item 11. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

Furnish the information required by Item 201(d) of Regulation S-B and by Item 403 of Regulation S–B.

* * * * *

Dated: January 26, 2001.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–2730 Filed 1–31–01; 8:45 am]

BILLING CODE 8010–01–U