SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239, and 240

Release No. 33-7141; 34-35396; IC-20903 File No. S7-7-95

RIN 3235-AG40

Prospectus Delivery; Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing revisions to its rules and forms and a new rule under the Securities Act of 1933 in order to implement two solutions to prospectus delivery issues arising in connection with the change to T+3 securities transaction settlement. The proposals are based on recommendations submitted by representatives of financial intermediaries. In addition, the Commission is proposing to amend an exemption from T+3 clearance and settlement for purchases and sales of securities pursuant to a firm commitment offering. Such exemption is proposed to be limited to offerings of asset-backed securities and structured securities and would provide an extended settlement time frame to firm commitment offerings under certain conditions.

DATES: Comments should be received on or before March 31, 1995.

ADDRESSES: Comment letters should refer to File Number S7–7–95 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 6–1, Washington, D.C. 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT:

Anita Klein, Michael Mitchell or Joseph Babits, (202) 942-2900, Division of Corporation Finance; and, with regard to questions concerning the T+3 settlement proposals, Jerry W. Carpenter or Christine Sibille, (202) 942-4187, Division of Market Regulation; and, with regard to questions concerning Rule 15c2–8 proposals, Alexander Dill, (202) 942-4892, Division of Market Regulation; and, with regard to questions concerning the application of the proposal to investment companies, Kathleen Clarke, (202) 942-0721 Division of Investment Management, U.S. Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Under the Securities Act of 1933 (the "Securities Act"), 1 a prospectus used after a registration statement has been filed must meet the disclosure requirements of Section 10 of the Securities Act. ² The term "prospectus" is defined broadly to include any written communication that "offers a security for sale or confirms the sale of any security." 3 Because information generally contained in a confirmation typically does not satisfy the disclosure requirements of Section 10, a prospectus meeting Section 10(a) requirements must be sent or given prior to or at the same time with the confirmation. 4 In addition, the Securities Act prohibits persons from sending securities through interstate commerce "for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements" of Section 10(a).5

On October 6, 1993, the Commission adopted Rule 15c6–1 under the Securities Exchange Act of 1934 (the "Exchange Act") 6 to establish three business days after trade (hereinafter, "T+3") as the standard settlement time frame for most broker-dealer trades. 7 Rule 15c6–1 covers all securities other than exempted securities, government securities, municipal securities, 8 commercial paper, bankers' acceptances, or commercial bills. That Rule is scheduled to become effective on June 7, 1995. 9

When Rule 15c6–1 was proposed in February 1993, it provided that public offerings of debt and equity securities

would have to be settled by T+3. Commentators on the proposal raised concerns that new issues of securities 10 could not be settled by T+3 because the prospectus could not be printed prior to the trade date (the date on which the securities are priced) and therefore the prospectus printing and delivery process could not be completed within a T+3 time frame. To address those concerns, Rule 15c6-1 was modified upon adoption to provide a limited exemption from T+3 for the sale of securities for cash pursuant to firm commitment offerings registered under the Securities Act. 11 Accordingly, an underwriter can set any settlement period for such offerings. Resales of such securities, other than the sale to an initial purchaser by a broker-dealer participating in such offering, remain subject to the T+3 time frame.

Since the adoption of Rule 15c6–1, members of the brokerage community have suggested that the Commission eliminate this exemption from T+3 and ease the problems associated with prospectus delivery within T+3 by other means. The primary reasons expressed for requiring T+3 settlement of such offerings are: (i) the secondary market for a new issue may be subject to greater price fluctuations or instability, which in turn may expose underwriters, dealers and investors to disproportionate credit and market risk; and (ii) the bifurcated settlement cycle created for initial sales and resales of new issues would be disruptive to broker-dealer operations and to the clearance and settlement system. In particular, it has been noted that if a purchaser of a new issue sells on the first or second day after pricing, the purchaser's broker will not be able to settle with the buyer's broker on a T+3 schedule because the securities will not yet be available for settlement purposes. As a result, all such trades by the purchasers would "fail" and result in expense, inefficiencies and greater settlement risk for all participants. 12 A bifurcated settlement cycle also may require the maintenance of separate computer systems and additional internal procedures.

¹ 15 U.S.C. 77a et seq.

 $^{^2}$ 15 U.S.C. 77j. See also Section 5(b)(1) of the Securities Act, 15 U.S.C. § 77e(b)(1).

 $^{^3}$ See Section 2(10) of the Securities Act, 15 U.S.C. 77b(10).

⁴The Securities Act provides that "a communication provided after the effective date of the registration statement * * * shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of" Section 10(a) is provided. See Section 2(10)(a) of the Securities Act, 15 U.S.C. 77b(10)(a).

A written confirmation must be sent to a purchaser prior to settlement pursuant to Rule 10b–10 under the Securities Exchange Act of 1934, 17 CFR 240.10b–10.

 $^{^5}$ See Section 5(b)(2) of the Securities Act, 15 U.S.C. 77e(b)(2).

⁶¹⁵ U.S.C. 78a et seq.

 $^{^7\,17}$ CFR 240.15c6–1. See Exchange Act Release No. 33023 (Oct. 6, 1993) [58 FR 52891].

⁸The Commission has published notice of a proposed rule change of the Municipal Securities Rulemaking Board that will require transactions in municipal securities to settle by T+3. Exchange Act Release No. 34541 (Aug. 17, 1994) [59 FR 43603].

⁹ The effective date was changed from June 1, 1995 to June 7, 1995 in Exchange Act Release No. 34952 (Nov. 9, 1994) [59 FR 59137].

¹⁰The term "new issues" is used herein to refer to both initial public offerings by issuers and offerings of additional securities by reporting companies.

¹¹ Rule 15c6–1 also contains a specific exemption for sales of unlisted limited partnership interests.

¹² A system for when-issued trading could be developed to help alleviate such failed transactions, but commentators have suggested that when-issued trading would not be a solution since, among other reasons, many institutional customers are unable to engage in when-issued trading. See letter from Joseph McLaughlin, infra footnote 15.