According to the brokerage community, the primary reason that settlement within T+3 currently is not feasible for many new issues is the amount of time it takes to print and deliver prospectuses. Some of these timing difficulties can be expected to be alleviated as markets increasingly rely on electronic delivery of materials. In recognition of that development, the Commission staff has recently issued an interpretive letter to facilitate the use of electronic transmission to satisfy prospectus delivery requirements.13 Until the markets create systems that make electronic delivery the method of choice, and most investors have the means to accept electronic delivery, however, the Commission must address delivery of prospectuses in paper form.14

While multiple recommendations have been made that the Commission eliminate the existing T+3 exemption and facilitate the prospectus delivery process, members of the brokerage community are not in unanimity as to how the prospectus delivery process could best be expedited. Two proposals by members of the brokerage community have been presented for Commission consideration. Those proposals recommend markedly different solutions to accomplishing prospectus delivery in a T+3 time frame. The commission consideration at the complex time frame.

The approaches reflected in the two proposals are not mutually exclusive methods of expediting prospectus delivery. The Commission therefore is proposing amendments to its rules that would accomplish both proposals. Comment is sought regarding which alternative should be implemented or whether the Commission should implement both proposals and thereby allow market participants a choice as to which approach to use in any given offering. Alternatively, would some other combination of the proposals best expedite prospectus delivery? Comment also is solicited with respect to whether there is a need for any Commission action with respect to prospectus delivery to accommodate T+3 clearance and settlement.

II. The Prospectus Delivery Proposals

A. The Four Firms Proposal and Related Commission Proposals

The first proposal to facilitate T+3 settlement was made by a group of four firms: CS First Boston Corporation, Goldman, Sachs & Co., Lehman Brothers Inc. and Morgan Stanley & Co. Incorporated (hereinafter, the "Four Firms Proposal"). The Four Firms Proposal is premised on the view that the process of preparation and delivery of prospectuses in new issues can be accelerated sufficiently to comply with T+3 if six steps are taken by the Commission. According to the proponents, these steps would modify the registration process in ways that would facilitate the printing of a significant portion of the final prospectus prior to pricing, and therefore accommodate compliance with T+3. Certain aspects of the Four Firms Proposal also are proposed to apply to offerings of investment company shares. Comment is requested on whether some or all of those aspects of the Four Firms Proposal should apply to investment companies.

Re-ordering of Prospectuses

The Four Firms Proposal first suggests that the contents of prospectuses could be re-ordered so that all portions likely to be subject to change at the time of pricing are placed together at the front. The Four Firms Proposal indicates that this change would expedite printing of the prospectus because the bulk of it is unlikely to change as a result of pricing and, therefore, could be printed in advance of pricing.

delivery process. *See* Securities Act Release No. 6727 (July 31, 1987) [52 FR 29206]. Those proposals engendered opposition from commentators and were not adopted by the Commission.

In practice, prospectus information has been organized roughly in the order in which the Commission forms set forth the required items of disclosure. While information contained in a prospectus need not follow the order of the items in the form, 17 some Commission rules currently require that certain information is to be included in a specified part of the prospectus, or in a specified order. 18

Under the proposal, the Commission would not raise objections if a prospectus is re-ordered to place the sections likely to change at the front in order to expedite the printing process, ¹⁹ provided that the cover pages of the prospectus continue to contain the information currently specified by Commission rules. ²⁰ In addition, any

Rules specifying information required in the forepart of the prospectus are: (i) Item 503(b) of Regulation S–K, 17 CFR 229.503(b) (mailing address and telephone number of the registrant's executive offices); and (ii) Item 503(c) of Regulation S–K, 17 CFR 229.503(c) (a discussion of the principal risk factors related to the offering). See also Item 503(b) and Item 503(c) of Regulation S–B, 17 CFR 228.503(b) and 228.503(c).

Other rules, certain Securities Act Industry Guides, and a Commission release, which are applicable only to limited categories of transactions, specify location or order of prospectus information: (i) Items 903(a) and 904(a) of Regulation S-K, 17 CFR 229.903(a) and 229.904(a) specify, respectively, that a summary of a roll-up transaction be included in the forepart of the disclosure document and that, immediately following the summary, a reasonably detailed description of each material risk and effect of the roll-up transaction be included; (ii) Securities Act Industry Guide 4, 17 CFR 229.801(d), for oil and gas programs, specifies that disclosure throughout the prospectus should appear in the sequence indicated; (iii) Securities Act Industry Guide 5, 17 CFR 229.801(e), relating to interests in real estate limited partnerships, specifies that suitability standards, if any, to be utilized by the registrant should be described immediately following the cover page; (iv) Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979], relating to limited partnerships, requires that the forepart of the prospectus begin with a cover page, a table of contents, a summary, disclosure of risk factors and suitability standards, and requires that a glossary be located in the back of the prospectus.

¹⁹ Of course, the information set forth in the prospectus must nevertheless be presented in a clear, concise and understandable fashion, as required by Rule 421(b) under the Securities Act, 17 CFR 230.421(b). *See also* Rule 421(a), *supra*

footnote 17.

¹³ See Brown & Wood (Feb. 17, 1995). An earlier no-action letter granted relief in connection with the use of electronic means to transmit confirmations. See Thomson Financial Services, Inc. (Oct. 8, 1993).

¹⁴The Division of Corporation Finance staff, in addition to issuing the Brown & Wood letter, is considering generally delivery under the Securities Act of prospectuses through other non-paper media (e.g., audiotapes, videotapes, facsimile, directed electronic mail, and CD ROMs). The staff anticipates submitting to the Commission in the near future recommendations intended both to facilitate compliance with the Securities Act's prospectus delivery requirements and to encourage continued technological developments of non-paper delivery media.

¹⁵ See letter from Robin Shelby, CS First Boston Corporation; Goldman Sachs & Co.; Steven Barkenfield, Lehman Brothers Inc.; and John Ander, Morgan Stanley & Co. Inc. to Anita Klein, Securities and Exchange Commission, dated Jan. 24, 1995 and letter from Goldman Sachs to Anita Klein, Securities and Exchange Commission, dated Feb. 3, 1995. See also letter from Joseph McLaughlin, Brown & Wood, on behalf of the Securities Industry Association, to Anita Klein, Securities and Exchange Commission, dated Feb. 1, 1995. Copies of these proposals are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth St. NW, Washington, D.C. 20549, File Number S7–7–95.

¹⁶Today's proposal is not the first time the Commission has addressed concerns that the settlement schedule is difficult to meet in connection with firm commitment offerings of securities for cash. In 1987, the Commission issued a release, in response to industry requests, making alternative proposals to expedite the prospectus

¹⁷ See Rule 421(a) under the Securities Act, 17 CFR 230.421(a). Rule 421(a) does require that information in a prospectus be set forth in a fashion so as not to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading.

¹⁸ Rules specifying information required on the cover pages of the prospectus are: (i) Item 501 (c) of Regulation S–K, 17 CFR 229.501 (c) (information that must be contained on the outside front cover page of the prospectus); and (ii) Item 502 of Regulation S–K, 17 CFR 229.502 (information that must be contained on the inside front cover page and the outside back cover page). *See also* Item 501 and Item 502 of Regulation S–B, 17 CFR 228.501 and 228.502.

 $^{^{20}}$ But see proposed revision to Item 502(f) of Regulation S–K, 17 CFR 229.502(f).