summary section, which logically can appear only near the front of the prospectus, and the discussion of risk factors must remain in the forepart of the prospectus, although those sections may immediately follow a "pricing information" section which would include disclosure likely to be subject to change at pricing, such as: use of proceeds, the plan of distribution and capitalization.<sup>21</sup> Accordingly, certain Commission rules that specify the location of other information in the forepart of the prospectus, or in a specified order within the prospectus, are proposed to be eliminated.22 No revision to the remaining order and location rules, which relate to specific and limited classes of transactions, are proposed at this time.23 Comment is requested as to whether the Commission should require that the summary and risk factors disclosure immediately follow the cover page of the prospectus. In addition, should other rules that would continue to specify order or location also be revised to accommodate expedited printing of prospectuses?

## 2. Extension of Pricing Period

Under Rule 430A under the Securities Act,<sup>24</sup> if a prospectus supplement containing pricing and other information omitted from a registration statement is not filed by the later of five business days after the effective date of the registration statement or any posteffective amendment thereto, the information omitted must be filed in a post-effective amendment rather than under Rule 424(b). Unlike a filing under Rule 424(b), a post-effective amendment must be declared effective prior to any sale of the securities. The second modification suggested by the Four Firms Proposal is a revision to Rule 430A to extend, from five business days to ten business days, the period during which an offering in reliance on that rule may be priced and a supplement filed. According to the Four Firms Proposal, issuers delay the time at which they seek to have registration statements effective, and therefore printing of the prospectus, because they have only five days thereafter in which to price and file the required pricing supplement. By extending the time in which to file the pricing supplement,

the Commission would encourage issuers to have their filings become effective earlier, and consequently start the printing earlier.

The principal purpose of the five business day limitation was to ensure that delays in pricing securities under Rule 430A would not permit delayed offerings to be made by persons that do not meet the criteria for use of shelf registration.<sup>25</sup> An extension of the fiveday period would not appear to defeat the purpose of that limitation. The Commission therefore proposes to extend the period during which the pricing supplement may be filed from five business days to ten business days after the effective date of the registration statement. Comment is requested as to whether any problems could arise from the extension, and whether such extension would in fact encourage earlier printing of all or a portion of the prospectus. Comment also is requested as to whether a longer period, such as 15, 25 or 30 business days, would provide additional flexibility and further expedite prospectus delivery for purposes of complying with T+3.

3. Changes in Offering Size and Estimated Price Range

The Four Firms Proposal also states that delays in printing prospectuses in 430A offerings arise because a posteffective amendment must be filed if there is a material decrease in the amount of securities offered or the pricing of the securities falls outside the range estimated in the effective registration statement. Printing and sales are delayed until such amendment is declared effective. Similarly, where participants decide to increase the size of the offering, a new registration statement to register the additional securities must be filed and declared effective.26 The Four Firms Proposal suggests that no filing with the Commission be required if the size of the offering is increased or decreased up to 20% or the price deviates from the estimated price range by up to 20%.

a. *Increases in Offering Size.* Where a registrant wishes to offer and sell more securities than were included in the registration statement at the time it became effective, the Securities Act requires that it register the additional securities.<sup>27</sup> The Commission

understands that the determination of offering size, particularly in certain market climates, can change at the time when prospectus printing is imminent. In light of the timing difficulties presented by that situation, the Commission is proposing changes to facilitate expedited registration in a Rule 430A offering if it is done solely for the purpose of increasing an offering size by up to 20%.

Under the proposal, a short-form version of such a registration statement would be accepted.<sup>28</sup> Such registration would consist of: the facing page, a statement incorporating the contents of the earlier registration statement relating to the offering, all required consents and opinions, the signature page, and any information required in the new registration statement that is not in the earlier registration statement.<sup>29</sup> To ensure that no delay would result from Commission processing, such registration statements would be made effective automatically upon filing.<sup>30</sup> Such a short-form registration statement would be deemed to be a part of the earlier registration statement relating to the offering.31

To expedite preparation of such registration statements, the Commission also would provide that duplicated or facsimile versions of manual signatures could be included on the signature page of such registration statements, rather than the manual signatures currently required.<sup>32</sup> In addition, opinions and consents required in such registration statements could be incorporated by reference to the extent that the opinions

<sup>29</sup> Information regarding the effect of the increase in offering size may be required in the new registration statement and would not have been contained in the earlier registration statement.

A similar short-form procedure was adopted by the Commission for registration of additional securities for employee benefit plans. *See* General Instruction E to Form S–8.

<sup>30</sup> See proposed Rule 462(b), 17 CFR 230.462(b). This registration statement would be required to be filed within two business days of the pricing of the securities registered on the earlier registration statement. While indications of interest may exceed the amount of securities registered in the earlier registration statement, no offers would be permitted prior to the filing of the registration statement with respect to the additional 20% and no sales of the additional 20% would be permitted prior to the effectiveness thereof.

 $^{31}See$  newly proposed Rule 430A(b), 17 CFR 230.430A(b).

<sup>32</sup> See proposed revisions to Rule 402 under the Securities Act, 17 CFR 230.402. In addition, Items 601(b)(24) of Regulations S–K and S–B, 17 CFR 229.601(b)(24) and 17 CFR 228.601(b)(24), are proposed to be revised so that a power of attorney included in the earlier registration statement relating to the offering may also relate to the shortform registration statement filed to register the additional securities.

 $<sup>^{21}</sup>$  See proposed revisions to Item 503(c) of Regulation S–K, 17 CFR 229.503(c) and Item 503(c) of Regulation S–B, 17 CFR 228.503(c).

<sup>&</sup>lt;sup>22</sup> See proposed revisions to Item 503(b) of Regulation S–K, 17 CFR 229.503(b), Item 503(b) of Regulation S–B, 17 CFR 228.503(b) and Securities Act Industry Guide 4, 17 CFR 229.801(d).

<sup>&</sup>lt;sup>23</sup> The requirements not proposed to be changed are those set forth *supra* footnote 18 other than the rules set forth *supra* footnotes 21 and 22. <sup>24</sup> 17 CFR 230.430A.

<sup>&</sup>lt;sup>25</sup> See Securities Act Release No. 6714 (May 27, 1987) [52 FR 21252].

<sup>&</sup>lt;sup>26</sup> These increases are most common in the context of an initial public offering, since the lack of an existing market makes it difficult to estimate market demand and the appropriate price for such securities.

<sup>&</sup>lt;sup>27</sup> See Section 6 of the Securities Act, 15 U.S.C. 77f, and Rule 413 under the Securities Act, 17 CFR 230.413.

<sup>&</sup>lt;sup>28</sup> See proposed revisions to General Instructions of Forms SB-1, SB-2, S-1, S-2, S-3, S-11, F-1, F-2 and F-3.