and consents contained in the earlier effective registration statement were drafted to apply to any subsequent registration statement filed solely to increase the offering up to the 20% threshold.³³ Where consents cannot be incorporated, duplicated or facsimile versions of manual signatures would be accepted in the new consents required to be filed.³⁴ Comment is requested with regard to whether some or all of these changes to facilitate expedited registration to increase a Rule 430A offering should be extended to all registered offerings.

The Commission also is proposing to increase registrants' flexibility with respect to the amount of securities registered in Rule 430A offerings and thereby minimize the instances in which an increase in offering size results in the need to file a new registration statement. Such offerings would be permitted to be registered by specifying only the title of the class of securities to be registered and the proposed maximum aggregate offering price in the "Calculation of Registration Fee" section.35 The amount of securities to be registered and the proposed maximum offering price per unit would no longer be required to be set forth.36

Under the proposal, an issuer would register a specified dollar amount of a class of securities, such as \$50 million of common stock, and would not be required to register more if the number of shares to be offered was increased, unless the aggregate amount of the offering would exceed the total dollar amount registered. If registrants register a dollar amount greater than what is used for the offering, Rule 429 under the Securities Act could be used to save any amount of the registration fee paid to the Commission for the remaining dollar amount. Under Rule 429, the registrant, in a new registration statement filed in the future for another offering of that class of securities, could simply indicate that part of the registration fee had been paid previously in connection with the earlier registration. Comment is requested with regard to whether the flexibility provided by specifying the dollar amount of the class of securities registered should be extended to all registered offerings.

b. Changes in Offering Size; Deviation from Price Range. The Commission also is proposing to address the concerns raised in the Four Firms Proposal with respect to filings resulting from a 20% decrease of the offering size or a 20% deviation from the estimated price range. Currently, a post-effective amendment is not required to be filed where there is a decrease in volume of securities offered or a price chosen that is outside the disclosed estimated price range, unless the volume decrease or price change would materially change the disclosure included in the registration statement at the time of effectiveness.37

The proposal would provide that a post-effective amendment need not be filed if there is a decrease in the offering size of up to 20% or a deviation in price from the estimated price range of up to 20%.38 In addition, the proposal would provide that, where an increase of up to 20% in the offering size would not require additional securities to be registered, such an increase also would not result in the need to file a posteffective amendment.³⁹ Comment is requested with respect to whether lower thresholds, such as 15%, or higher thresholds, such as 25%, should be used. Commenters also should consider whether this proposal would facilitate non-Rule 430A offerings and should be extended to those offerings as well. While the proposal contemplates that no post-effective amendment need be filed, issuers would continue to be responsible for evaluating the effect of such a volume change or price deviation on the accuracy and completeness of disclosure made to investors, including disclosure regarding the use of offering proceeds, dilution and debt coverage.

4. Immediate Takedowns from a Shelf Registration

The Four Firms Proposal also requests that the Commission permit immediate takedowns after a shelf registration

statement becomes effective. Immediate offerings from an effective shelf registration statement currently are permitted. At the time of effectiveness, the shelf registration statement must accurately reflect all information known. If an offering of securities is certain at the time the registration statement becomes effective, the relevant information (e.g., description of securities, plan of distribution and use of proceeds) must be disclosed and the Rule 430A undertakings should be included, if the issuer wants Rule 430A pricing flexibility. Accordingly, no rule amendments are required to address this request.

5. Acceleration of Effectiveness

The Four Firms Proposal also recommends that requests to accelerate effectiveness of registration statements be accepted by fax transmission. Rule revisions are proposed to allow such transmissions. 40 The Four Firms Proposal also suggests that the Commission accept oral acceleration requests. Rule revisions also are proposed to permit oral requests for acceleration to be made, provided that a version of the registration statement filed with the Commission is accompanied by a letter indicating that the registrant and the managing underwriter may make oral requests for acceleration and that they are aware of their obligations under the Securities Act.⁴¹ Comment is requested regarding whether oral acceleration requests present greater risks of being transmitted by persons without the authority to do so, or being transmitted without the knowledge of all participants in the offering. If so, should written requests continue to be required?

6. Four-Day Settlement Period

Finally, the Four Firms Proposal suggests that Rule 15c6–1 be amended to provide that, if the offering is priced after the close of the market, payment of funds and delivery of securities may occur not later than the fourth business day thereafter ("T+4"). When such securities are priced late in the day, it is difficult to print the final prospectus for delivery by T+3. Further, the majority of secondary trading in the securities generally does not begin until

³³ See Rule 411(c) under the Securities Act, 17 CFR 230.411(c), proposed Rule 439(b) under the Securities Act, 17 CFR 230.439(b), and proposed changes to General Instructions of Forms SB–1, SB–2, S–1, S–2, S–3, S–11, F–1, F–2 and F–3.

 $^{^{34}}$ See proposed changes to Rules 402 and 439 under the Securities Act, 17 CFR 230.402 and 230.439.

³⁵ See proposed revisions to Rule 457(o) under the Securities Act, 17 CFR 230.457(o). Such flexibility already is provided in connection with unallocated shelf registration statements.

³⁶ In most non-shelf offerings, such information currently is required to be included on the cover page of the registration statement. *See, e.g.,* the "Calculation of Registration Fee" section in Form S–1. The registrant would continue to be required in Rule 430A offerings to specify in the prospectus, however, the amount of securities offered and, where the registrant is not a reporting company, a bona fide estimate of the range of the maximum offering price.

³⁷ See Securities Act Release No. 6964 (Oct. 22, 1992) [57 FR 48970] for a discussion of the materiality standard as it applies to these changes.

³⁸ See proposed revision to Instruction to Paragraph (a) of Rule 430A, 17 CFR 230.430A. As proposed, a change or deviation beyond the 20% threshold would continue to require a post-effective amendment only if it materially changes the previous disclosure.

³⁹ *Id*.

⁴⁰ See Securities Act Rule 461(a), 17 CFR 230.461(a). The facsimile or duplicate version need not be followed by transmission of the manually signed version to the Commission.

⁴¹ See Securities Act Rule 461(a), 17 CFR 230.461(a). The liability of persons who sign the registration statement, the underwriters and others under Section 11(a) of the Securities Act, 15 U.S.C. § 77k(a), is based upon the registration statement at the time it becomes effective.