(i.e., prior to or at the same time as a confirmation is sent). Reliance upon this rule would allow participants in a firm commitment underwritten offering of securities for cash (hereinafter, an "eligible offering") to forego last-minute mass printing, shipping and mailing of a traditional final prospectus, which is generally undertaken only after pricing of the offering. The proposed rule sets forth two methods for delivering prospectus information: one that is available for eligible offerings not using shelf registration, and one that is available for eligible offerings using short-form registration.

1. Prospectus Delivery Method for Offerings Not Made Using Short-Form Registration

In all eligible offerings not made using short-form registration, persons could comply with their prospectus delivery obligations by delivering a preliminary prospectus, a confirmation and, as needed, a supplementing memorandum. A supplementing memorandum would be required to be delivered only if information material to investors with respect to the offering is not disclosed in the preliminary prospectus or the confirmation. This method of delivery differs from traditional prospectus delivery primarily in that it is accomplished in more than one document. Investors would be delivered information comparable to that which is currently required to be delivered.

a. Rule 430A Offerings. In Rule 430A offerings, a preliminary prospectus omitting the price-related information specified in the rule would be delivered in addition to a supplementing memorandum that contains such pricerelated information (to the extent not contained in the confirmation). The supplementing memorandum also would contain any other necessary material disclosure missing from the preliminary prospectus. Together, the preliminary prospectus and the supplementing memorandum would contain information comparable to the traditional final prospectus.53

b. Offerings Not Made in Reliance on Rule 430A. In offerings not proceeding under Rule 430A, a preliminary prospectus containing price-related information alone could be delivered to investors. Unlike in Rule 430A offerings, the price-related information

could be included in the preliminary prospectus. If such information is included in the preliminary prospectus, a supplementing memorandum would not have to be delivered unless material changes or material additions to the information in the preliminary prospectus must be disclosed. In all cases, the preliminary prospectus and any supplementing memorandum, together, would contain information comparable to the traditional final prospectus, which currently reflects the information set forth in the registration statement at the time it goes effective.

c. Use of Incremental Disclosure. As the SIA Proposal notes, the use of a preliminary prospectus and a separate supplementing memorandum may not be feasible in all offerings. Whether the latter document, which is anticipated to be brief, can convey clearly the missing or changed information will depend upon the nature and magnitude of the disclosure differences between the preliminary prospectus and the prospectus contained in the effective registration statement (as modified by post-effective amendments). In some cases, the disclosure that would have to be contained in the supplementing memorandum may not be able to be described in isolation from other disclosure in the preliminary prospectus. Where disclosure in many parts of the preliminary prospectus has changed, participants may find the option of preparing a supplementing memorandum is not of great benefit.

Comment is requested as to whether the proposal should be limited either with respect to the amount of time that could elapse between delivery of the preliminary prospectus and the supplementing memorandum, or with respect to the magnitude of changes that a supplementing memorandum could contain. If the latter, how would the acceptable magnitude be defined?

d. Filing and Review of Registration Statements. Although the method of delivering prospectus information would change under the proposed rule, neither the process of filing registration statements and amendments thereto, nor the Commission's registration statement review process, would be altered.⁵⁴ The proposed rule would require that the

preliminary prospectus and the supplementing memorandum, taken together, not materially differ from the disclosure filed with the Commission in connection with the registration statement.55 This provision would preserve the integrity of the Commission's review process and ensure that the delivered prospectus disclosure is comparable to that contained in the registration statement.

Under the proposed rule, a supplementing memorandum would be filed with the Commission pursuant to Rule 424(b)(1) under the Securities Act within two business days after the earlier of pricing and first use. Thus, the Commission staff generally would not review supplementing memoranda prior to use.56 Comment is requested as to whether the proposal should require that the supplementing memorandum be filed prior to use and, therefore, be subject to staff review.

e. Comparison With SIA Proposal. The proposed method of prospectus delivery applicable to non-short form offerings departs from the SIA Proposal in one significant respect. While the SIA Proposal contemplates that a supplementing memorandum could summarize previously undisclosed information, the proposed rule would require full disclosure of material changes or material additions. Comment is requested regarding whether a summary version of material information should be permitted under the proposed rule.

2. Prospectus Delivery Method for Offerings Using Short-Form Registration

As in the case of non-short-form offerings, the proposed delivery method for offerings using short-form registration would allow the disclosure to be contained in more than one document delivered at different times. In addition, delivery would have to occur prior to or with a confirmation. Unlike the proposed delivery method for other offerings, however, the proposal for offerings using short-form registration relies upon delivery of certain prospectus information by publication with the Commission.

Currently, in recognition of the market following that exists for issuers

⁵³ The traditional final prospectus currently reflects the information set forth in the registration statement at the time of effectiveness, any posteffective amendment and the pricing supplement. Post-effective amendments, however, are unlikely to be filed unless the pricing date exceeds the five business day limitation allowing for use of a pricing supplement.

 $^{^{54}\,\}mbox{Thus},$ investors that wish to acquire a traditional final prospectus would have access to one through the Commission, where the issuer would continue to file all required prospectus disclosure in the traditional, integrated format. Comment is requested as to whether access to a final prospectus in traditional, integrated format should be ensured other than through the Commission's facilities, such as through the issuer or underwriter(s)' facilities. See also proposed Rule 434(c)(4), 17 CFR 230.434(c)(4), with regard to short-form registrants.

⁵⁵ The delivered documents could not materially differ from the prospectus disclosure in the registration statement at the effective date, in any post-effective amendment thereto and in the pricing supplement.

⁵⁶ As under the current practice, the staff will continue to consider whether recirculation of a prospectus is needed when there are material changes in disclosure arising after the prospectus subject to completion has been given to investors See Rules 460 and 461(b) of Regulation S–K, 17 CFR 230.460 and 230.461(b).