appropriate balance between physical delivery of prospectus information and publication by filing. Should the full description of securities required by Item 202 of Regulation S–K be required to be physically delivered? If so, would such description cause the abbreviated supplementing memorandum to become so lengthy that the timing difficulties associated with prospectus delivery would not be surmounted? Should the proposed rule require physical delivery of other offering-specific information, such as disclosure of risk factors?

Offerings registered through shortform registration currently proceed frequently with delivery of only a final prospectus, although a preliminary or base prospectus is prepared for filing with the Commission.⁶⁶ Those offerings could proceed under the proposed rule only if a preliminary or base prospectus is delivered. Although base prospectuses are commonly prepared well in advance of a takedown from the delayed shelf, comment is requested with respect to whether a preliminary prospectus could be prepared and delivered sufficiently in advance of pricing in such offerings to warrant adoption of the proposed rule as it relates to non-shelf offerings made in short-form registration. If not, what alternative document should be allowed to be used to convey the required information? On the other hand, commenters should address whether physical delivery of all offering-specific information should be required for offerings using short-form registration.

3. Conforming Changes to Rule 15c2-8

Although the delivery of a prospectus to investors in advance of the final prospectus is not required by the Securities Act, paragraph (b) of Rule 15c2–8 under the Exchange Act ⁶⁷ requires broker-dealers, in the case of certain initial public offerings, to deliver a copy of the preliminary prospectus at least 48 hours prior to the mailing of the confirmation. ⁶⁸ Other provisions of Rule 15c2–8 govern the furnishing of the prospectus to broker-dealers participating in the offering to ensure that they have the latest available information when they solicit investors.

The Commission is proposing amendments to Rule 15c2–8 to reflect

the provisions of proposed Rule 434 and new means of disseminating confirmations and prospectuses. The proposed revisions would add new paragraph (j) that states that, for purposes of Rule 15c2–8, the terms preliminary prospectus" and "final prospectus" include the terms 'prospectus subject to completion'' and "Section 10(a) prospectus," respectively, as such terms are used in proposed Rule 434. Also, the proposals substitute the term "sending" for the term "mailing." These proposed revisions are not intended to make substantive changes to Rule 15c2-8. Commenters are requested to provide their views on whether these proposals are appropriate in light of proposed Rule 434, and whether any other changes to Rule 15c2-8 are necessary in light of Securities Act rule revisions proposed herein.

4. Scope of the Proposed Rule

a. Exchange Offers and Business Combinations; Best Efforts Offerings. Proposed Rule 434 extends only to offerings where the sole consideration given in exchange for securities is cash. Offerings such as exchange offers and business combinations would not be included. In those offerings, the final prospectus is traditionally used to begin the process of soliciting votes or consents to a transaction. Thus, the logistical difficulties of prospectus delivery intended to be minimized by the proposal should not be associated with those offerings.

The proposed rule also does not extend to offerings that are made other than on a firm commitment basis with underwriters. The SIA Proposal would cover agency transactions in securities registered on a delayed shelf registration statement. In a firm commitment underwriting, the underwriter(s) agree to purchase the securities from the issuer for a fixed price and then resells the securities to the public, thereby assuming the risk of market fluctuations in the price of securities. According to the SIA Proposal, the prospectus delivery pressures appear to be greatest in such firm commitment offerings where the underwriter must make payment of its own funds to the issuer on a specified date, whether or not its customers have paid for the securities. In contrast, in a best efforts offering,69 the broker-dealer is required to pay customers' funds promptly to the issuer (or to a separate bank or escrow account in the case of a contingency) upon

receipt. In that case, a broker-dealer would not pay out funds that it has not received, or use its own funds to pay for securities that have not been sold.

Comment is requested as to whether there are other types of offerings with comparable timing pressures to which the proposed rule ought to be expanded. Should the proposal be extended to some or all agency transactions in delayed-shelf-registered securities? Are such transactions subject to particular timing pressures in connection with settlement that are absent in best efforts offerings? Are such transactions sold to such a large number of investors that mass printing and delivery is required?

b. Offerings of Asset-backed Securities. The SIA Proposal recommends including firm commitment underwritten offerings of asset-backed securities ("ABS") within the scope of the proposed rule. The Commission, however, has determined to exclude ABS offerings from proposed Rule 434 for several reasons.⁷⁰ First, it appears that settlement in connection with ABS offerings currently takes place outside of the T+3 time frame, on approximately a T+10 cycle, and is likely to continue to do so. The existing settlement schedule is the result primarily of factors unique to these offerings, which include: (i) the distinctive structuring process for most ABS offerings; (ii) the time needed for identification of the specific pool of collateral which will support the ABS; and (iii) the necessity of assembling the prospectus (or prospectus supplement). which describes all material features of the collateral and the transaction's structure, shortly before sale of the ABS. Furthermore, concerns relating to a bifurcated settlement cycle do not appear to be a pressing problem in the ABS market.

The SIA Proposal treats ABS offerings the same as other offerings using short-form registration. Unlike other issuers using short-form registration, however, the special purpose ABS issuer is not required to have a history of filing Exchange Act reports to use such forms. In fact, these special purpose issuers typically are newly created with each securities offering. Investors in ABS offerings have recourse only to the special purpose issuer's assets as the

⁶⁶ Offerings of novel or complex securities, even when done through short-form registration, are sometimes sold through use of a preliminary prospectus.

^{67 17} CFR 240.15c2-8(b).

⁶⁸ Any person who is expected to receive a confirmation must have been sent a preliminary prospectus at least 48 hours prior to the sending of the confirmation. This requirement is satisfied by delivering a preliminary prospectus that is current at the time of its delivery.

⁶⁹ In a best efforts offering, the underwriter acts as an agent for the issuer and agrees to use its best efforts to sell the securities on behalf of the issuer.

^{70 &}quot;Asset-backed security" is defined for purposes of this release the same way it is defined in General Instruction I.B.5. of Form S–3: a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders.