exacerbated when a preliminary prospectus is distributed before staff comments on the document are resolved and multiple changes to the document are reflected in the supplementing memorandum? Are concerns that investors might not be shown all changes made in response to staff comments appropriate? Is the purported function of the supplementing memorandum inconsistent with its anticipated brevity?

Investors also may be required to examine multiple documents in order to obtain price-related information. Purchasers in secondary trades may receive prospectus information that does not disclose pricing information included only in the confirmations in connection with the primary offering. Would such delivery be adequate with respect to secondary market trading transactions effected during the prospectus delivery period specified in Securities Act Section 4(3) and Rule 174 thereunder? 74

Investors who receive a supplementing memorandum may not have retained, or may have difficulty locating, a copy of the preliminary prospectus previously sent. Does this possibility compromise the utility of this proposed method for prospectus delivery?

Is there a risk that investors who receive more than one preliminary prospectus will be unwilling to be responsible for matching related supplementing memoranda to such preliminary prospectuses? How significant are concerns relating to investor confusion from mismatches or the inability to match related documents?

Will investors require the delivery of a traditional final prospectus (even if delivered after the confirmation) for convenience of reference or for other reasons?

b. Monitoring Delivery. Because prospectus information would be delivered incrementally, would participants in the offering require redelivery of the preliminary prospectus at the time any supplementing memorandum is delivered? If so, to what extent would this negate the intended benefits of the modified delivery method? Would new recordkeeping burdens be incurred in connection with recording the delivery of the prospectus where delivery is effected incrementally? Would other variables exist under this delivery scheme that would impose substantial additional monitoring and recordkeeping burdens on underwriters? In the event an issuer delivers more than one version of the preliminary prospectus, would recordkeeping regarding which investors received which versions be burdensome? Commenters also should consider whether broker-dealers will be able to comply with Rule 15c2–8 and, if not, specifically discuss why compliance would not be feasible.

c. Third Parties' Opinions. Would issuers' and underwriters' counsel have difficulty giving opinions as to the adequacy of disclosure in the supplementing memorandum and preliminary prospectus, particularly if the supplementing memorandum only summarizes certain changes fully set forth in the filing declared effective? Auditors also may be expected to perform additional work. The additional work required by third parties may result in higher legal and accounting costs to issuers. How likely is it that disagreements, or the time required to reach agreement, among the parties about the content of a supplementing memorandum will negate the purported benefits of the proposal?

III. Revision of the Rule 15C6–1 Exemption

Because the difficulties associated with prospectus delivery within a T+3 time frame were the principal reason for the current exemption for firm commitment offerings in Rule 15c6–1, the Commission believes that the necessity for such exemption should be reconsidered in light of the proposals to alleviate those timing difficulties. It is consistent with the purposes of Rule 15c6-1 to establish T+3 as the standard settlement cycle for firm commitment offerings. It has been estimated that approximately \$20 billion in new issues may be subject to settlement risk in any given day.75 Rule 15c6-1 was intended to reduce the credit and market risk inherent in the settlement of securities transactions. Thus, by including these trades within a T+3 settlement time frame, the goal of risk reduction will be greatly enhanced. Moreover, by revising the exemption, the Commission believes that it will provide certainty to the industry in the form of a written standard.

As discussed above in connection with the SIA Proposal, offerings of asset-backed securities raise concerns different from other offerings, and it does not appear that settlement of such offerings typically will occur within a T+3 time frame. The Commission therefore preliminarily believes that it

would be appropriate to continue to exempt from T+3 settlement sales of asset-backed securities sold pursuant to a firm commitment offering.

The release adopting Rule 15c6–1 includes an interpretation with respect to the treatment of a type of assetbacked security, mortgage pass-throughs in the to-be-announced market. With respect to the purchase or sale of such securities, the Commission interprets Rule 15c6-1 to permit settlement to occur within three days after the date a specific pool of mortgages is identified as collateral for the securities for purposes of the sales agreement with the customer. The Commission invites comment as to whether a similar interpretation should be applied to all asset-backed securities. If such an interpretation is provided, is an express exemption still needed for offerings of asset-backed securities?

While it appears that offerings of structured securities 76 currently settle within a T+5 settlement cycle, it may be difficult to settle offerings of structured securities by T+3 because of the time difficulties associated with prospectus delivery. As proposed, Rule 434 would not apply to such securities. The revisions contemplated in connection with the Four Firms Proposal, however, would provide the same benefits with respect to prospectus delivery in offerings of structured securities as to other offerings. Although an exemption for offerings of structured securities may create problems in secondary market trading as described above, the Commission currently believes that it is preferable that the exemption for firm commitment offerings be continued for offerings of structured securities because of the possible difficulties of settling such instruments within a T+3 time frame. The Commission invites comment as to the feasibility of this approach. In addition, the Commission invites comment as to the proposed Rule 15c6-1 definition of structured securities. Does the definition provide sufficient guidance as to the class of securities included?

The Commission invites commenters to address the merits of the proposed Rule 15c6–1 amendments. Assuming the adoption of the proposals relating to prospectus delivery, should the exemption for firm commitment

⁷⁵ See letter from Joseph McLaughlin, supra footnote 15, page 4.

⁷⁶ For purposes of Rule 15c6–1, a structured security is proposed to be defined as a security whose cash flow characteristics depend upon one or more indices or that have imbedded forwards or options or a security where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows. *See* proposed Rule 15c6–1(c)(2), 17 CFR 240.15c6–1(c)(2).

^{74 15} U.S.C. § 77d(3); 17 CFR 230.174.