FDC date	State	City	Airport	FDC No.	SIAP
12/16/94 12/23/94		Springfield North Platte	Capital North Platte Regional		RADAR-1 AMDT 7A VOR OR GPS RWY 35, AMDT 17

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### SECURITIES AND EXCHANGE COMMISSION

#### 17 CFR Part 230

[Release No. 33–7132; International Series Release No. 780; File No. S7–36–94]

RIN 3235-AG26

#### Adoption of Amendments To Clarify Safe Harbors for Broker-Dealer Research Reports

**AGENCY:** Securities and Exchange

Commission.

ACTION: Final rules.

**SUMMARY:** The Commission is announcing the adoption of amendments relating to the safe harbor provisions of Rules 138 and 139 under the Securities Act of 1933. The amendments clarify the availability of the safe harbor provisions of Rule 138 relating to broker-dealer research reports on individual domestic and foreign companies and the availability of the safe harbor provisions of Rule 139 for broker-dealer industry research reports which include sizable, first-time foreign registrants.

**EFFECTIVE DATE:** February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Annemarie Tierney, (202) 942–2990, Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: As described in detail below, the Commission is adopting amendments to Rule 138 <sup>1</sup> and Rule 139 <sup>2</sup> under the Securities Act of 1933 (the "Securities Act") <sup>3</sup>. The amendments adopted today were proposed by the Commission on December 13, 1994.<sup>4</sup>

- 117 CFR 230.138.
- <sup>2</sup> 17 CFR 230.139.
- <sup>3</sup> 15 U.S.C. 77a et seq.

### I. Availability of Research Report Safe Harbors

Rule 138 under the Securities Act permits publication of information, opinions and recommendations concerning qualifying issuers by brokerdealers that are participants in a distribution, so long as the reports contain information, opinions or recommendations regarding a specified class of the issuer's securities which is not the subject of the offering in which the broker-dealer is a participant. The amendments adopted today clarify that Rule 138 is available for offerings registered on Form S-3. The amendments also clarify that Form F-3 eligible issuers qualify for the rule, as do sizable first-time foreign issuers that meet the alternative offshore trading history test adopted for Rule 139.

In addition, in light of the fact that shelf registration statements often register both debt and equity securities (on an either allocated or unallocated basis), the Commission is amending Rule 138 to add an instruction codifying the staff interpretation that the rule should be applied on an offering-by-offering basis for issuers which are eligible to use Forms S–3 or F–3 and are using the Commission's shelf registration procedures. Thus, the filing of a shelf registration statement covering different classes of securities does not impede the availability of the rule.

Rule 139 under the Securities Act provides safe harbor protection from the registration requirements of that Act for the distribution by broker-dealers of information, opinions or recommendations concerning issuers in the process of registering securities under the Securities Act. The amendments adopted today make clear that the expanded eligibility requirements adopted last year 5 for sizable foreign issuers that satisfy the alternative offshore trading history test in Rule 139 are also available for those issuers' initial public offerings in the United States.

#### II. Cost-Benefit Analysis

No information was provided in response to the Commission's request regarding the costs and benefits of the amendments being adopted today. The Commission believes that the adoption of these amendments will benefit both issuers and broker-dealers without imposing any additional costs.

#### **III. Statutory Bases**

The Commission's rules are being amended pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended.

#### **IV. Effective Date**

The final amendments to the Commission's rules shall be effective immediately upon publication in the **Federal Register**, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. § 553(d)(1).

#### List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

#### **Text of Proposed Amendments**

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

# PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

2. By revising § 230.138 to read as follows:

# § 230.138 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.

(a) Where a registrant which meets the requirements of paragraph (c)(1), (c)(2) or (c)(3) of this section proposes to file, has filed or has an effective registration statement under the Act relating solely to a nonconvertible debt security or to a nonconvertible, nonparticipating preferred stock, publication or distribution in the regular course of its

<sup>&</sup>lt;sup>4</sup> See Release No. 33–7120 (Dec. 13, 1994), 59 FR 31038. One comment letter, which expressed support for the proposal, was received. That letter is available for public inspection and copying in File Number S7–36–94 at the Commission's Public Reference Room in Washington, D.C.

 $<sup>^5\</sup>mathrm{Release}$  No. 33–7053 (Apr. 19, 1994), 59 FR 21644.