### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**Dassault Aviation:** Docket No. FAA–2007–0369; Directorate Identifier 2007–NM–258–AD.

**Comments Due Date**

(a) We must receive comments by January 22, 2008.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Dassault Model Mystere-Falcon 50 airplanes, certificated in any category, serial numbers 294, 299, 301 through 304, 306, 307, 310, 313, 314, 316 through 320, 322 through 331, 334 through 337 and 339.

**Subject**

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

Some occurrences have been reported where life rafts were difficult to remove from inside divan compartment. Investigations revealed that:

—Life raft was incorrectly stowed, with deployment straps inboard;

—Life raft had not been repacked to specified dimensions

The purpose of this Airworthiness Directive (AD) is to verify that all life rafts are stowed correctly with deployment straps outboard, and are repacked to specified dimensions.

Corrective actions include correctly reinstalling an incorrectly stowed life raft, installing a properly repacked life raft, and installing placards.

**Actions and Compliance**

(f) Unless already done, do the following actions.

(1) Within 10 flight cycles after the effective date of this AD: Verify that the life rafts are stowed correctly, with deployment straps outboard, in accordance with the instructions specified in Dassault Service Bulletin F50–480, dated December 5, 2006, and verify that the overall dimensions of the life raft hard pack do not exceed nominal values, as indicated in Part F50–480–1 of the service bulletin.

(i) If a life raft is found incorrectly stowed, before next flight, reinstall it in accordance with the instructions specified in Part F50–480–1 of the service bulletin.

(ii) If nominal values of the overall dimensions of the life raft hard pack are exceeded, within 3 months after the effective date of this AD, install a properly repacked life raft as instructed in Part F50–480–2 of the service bulletin.

**Note 1:** Notice that with no life raft aboard, local national operating regulations may not allow some extended overwater flights.

(2) Within 3 months after the effective date of this AD: Install placards on the sofa in accordance with the instructions specified in Part F50–480–2 of Dassault Service Bulletin F50–480, dated December 5, 2006.

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows:

No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI EASA Airworthiness Directive 2006–0366, dated December 11, 2006, and Dassault Service Bulletin F50–480, dated December 5, 2006, for related information.

Issued in Renton, Washington, on December 12, 2007.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–24698 Filed 12–19–07; 8:45 am]

**BILLING CODE 4910–13–P**

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR PART 239

**[Release No. 33–8871; File No. S7–30–07]**

**RIN 3235–AK02**

## Revisions to Form S–11 To Permit Historical Incorporation by Reference

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend Form S–11, a registration statement used by real estate entities to register offerings under the Securities Act of 1933. The amendments would permit an entity that has filed at least one annual report and that is current in its reporting obligations under the Securities Exchange Act of 1934 to incorporate by reference into Form S–11 information from its previously filed Exchange Act reports and documents. The proposed amendments are identical to amendments to Forms S–1 and F–1 previously adopted by the Commission and effective as of December 1, 2005.

**DATES:** Comments should be received on or before January 22, 2008.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–30–07 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–30–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Michael McTiernan at (202) 551–3852 or Daniel Greenspan at (202) 551–3430, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010.

**SUPPLEMENTARY INFORMATION:** On June 29, 2005, we adopted rules [1] that modified the registration, communications and offering processes under the Securities Act of 1933.[2] In order to integrate further the Securities Act and the Securities Exchange Act of 1934,[3] the Commission adopted amendments to Form S–1 [4] and Form F–1 [5] to permit a reporting issuer that has filed at least one annual report and that is current in its reporting obligation under the Exchange Act to incorporate by reference into its Form S–1 or Form F–1 information from its previously filed Exchange Act reports and documents. At that time, we did not adopt similar amendments to Form S–11.[6] We believe it is appropriate to extend to issuers using Form S–11 the same ability to take advantage of incorporation by reference. The proposed amendments therefore would make the requirements of Form S–11 consistent with Forms S–1 and F–1 with respect to incorporation by reference.

## I. Discussion

### *A. Background*

Form S–11 is the form that real estate entities must use to register offerings under the Securities Act.[7] The form is mandatory for the registration of securities issued by real estate investment trusts and securities issued by other issuers whose business is primarily that of acquiring and holding for investment real estate, interests in real estate, or interests in other issuers whose business is primarily that of acquiring and holding real estate or interests in real estate for investment.[8] Form S–11 currently does not permit an issuer to satisfy the disclosure requirements of the form through incorporation by reference to the reports and other documents that the issuer previously has filed under the Exchange Act.

### *B. Reasons For Proposal*

On June 29, 2005 we adopted amendments to Forms S–1 and F–1 to permit companies filing those forms to incorporate by reference information from their previously filed Exchange Act reports and documents.[9] The purpose of the amendments was to integrate further the Exchange Act and the Securities Act.[10] The ability to incorporate by reference is conditioned on the company having filed its annual report for the most recent fiscal year, being current in its reporting obligations under the Exchange Act, and making the incorporated Exchange Act reports and documents available and accessible on a Web site maintained by or for the registrant.[11] Blank check companies, shell companies and penny stock registrants are not permitted to use incorporation by reference. Successor registrants may incorporate by reference if their predecessors are eligible.[12]

At that time, we did not adopt a similar amendment to Form S–11. However, we believe that Form S–11 should be consistent with Form S–1 with respect to incorporation by reference. Both Form S–11 and Form S–1 are long-form registration statements intended for new and unseasoned issuers. The only substantive difference between the two forms is that Form S–11 contains certain additional disclosure requirements specific to real estate entities. Since the Commission's interest in integrating disclosure under the Exchange Act and Securities Act extends equally to the disclosure obligations of real estate entities, we propose to amend Form S–11 to permit incorporation by reference on the same terms as we permit it in Forms S–1 and F–1.

### *C. Proposed Amendments to Form S–11*

#### 1. Eligibility

We are proposing to permit a reporting issuer that has filed at least one annual report and that is current in its reporting obligations under the Exchange Act to incorporate by reference into its Form S–11 information from previously filed Exchange Act reports and documents. Under the proposal, a successor registrant would be able to incorporate information by reference on the same terms if its predecessor were eligible to do so.[13] Consistent with Form S–1, the

[1] See *Securities Offering Reform*, Release No. 33–8591 (Jul. 19, 2005) [70 FR 44722].

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 239.13.

[5] 17 CFR 239.33.

[6] 17 CFR 239.18.

[7] Real estate entities may also use Forms S–3 and S–4 if they meet the applicable eligibility requirements of those forms. When no other form is available, these entities are required to file on Form S–11 rather than Form S–1.

[8] See General Instruction A of Form S–11.

[9] See Release No. 33–8591.

[10] Id. at 237.

[11] See General Instruction VII of Form S–1 and General Instruction VI of Form F–1.

[12] Id.

[13] The succession would have to be either primarily for the purpose of changing the state or jurisdiction of incorporation of the issuer or forming a holding company and the assets and liabilities of the successor would have to be substantially the same as the predecessor at the time of the succession, or all of the predecessor issuers would have to be eligible at the time of the

Continued

following issuers would not be able to incorporate by reference into a Form S–11:

- Reporting issuers who are not current in their Exchange Act reports; [14]
- Issuers who are or were, or any of whose predecessors were during the past three years:
  - Blank check issuers;
  - Shell companies (other than business combination related shell companies); or
  - Issuers for offerings of penny stock.[15]

In addition, to enhance the availability to investors of incorporated information, the ability to incorporate by reference would be conditioned on the issuer making its incorporated Exchange Act reports and other materials readily accessible on a Web site maintained by or for the issuer. By conditioning the ability to incorporate by reference on the ready accessibility of an issuer's incorporated Exchange Act reports and other materials on its Web site, we are proposing to provide investors the ability to obtain the information from those reports and materials at the same time that they would have been able to obtain the information if it was set forth directly in the registration statement. Issuers would be able to satisfy this condition by including hyperlinks directly to the reports or other materials filed on EDGAR or on another third-party Web site where the reports or other materials are made available in the appropriate time frame and access to the reports or other materials is free of charge to the user.

2. Procedural Requirements

As proposed, the prospectus in the registration statement at effectiveness would identify all previously filed Exchange Act reports and materials, such as proxy and information statements, that are incorporated by reference. There would be no permitted incorporation by reference of Exchange Act reports and materials filed after the registration statement is effective—known as ''forward incorporation by reference.'' Under the proposal, an issuer eligible to incorporate by reference its Exchange Act reports and other materials into its Form S–11 would include the following in the prospectus that is part of the registration statement:

- A list of the incorporated reports and materials;
- A statement that it will provide copies of any incorporated reports or materials on request;
- An indication that the reports and materials are available from us through our EDGAR system or our public reference room;
- Identification of the issuer's Web site address where such incorporated reports and other materials can be accessed; and
- Required disclosures regarding material changes in, or updates to, the information that is incorporated by reference from an Exchange Act report or other material required to be filed.

*D. Request for Comment*

We request and encourage any interested person to submit comments on the proposal and any other matters that might have an impact on the proposal. With respect to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

## II. Paperwork Reduction Act

*A. Background*

The proposed amendments to Form S–11 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[16] We are submitting these to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.[17] The title for this information is ''Form S–11'' (OMB Control No. 3235–0067).

We adopted existing Form S–11 pursuant to the Securities Act. This form sets forth the disclosure requirements for registration statements prepared by real estate entities to provide investors with the information they need to make informed investment decisions in registered offerings.

Our proposed amendments to Form S–11 are intended to allow issuers that are required to use Form S–11 to incorporate by reference previously filed Exchange Act reports and documents. The proposed amendments would conform Form S–11 to Forms S–1 and F–1 with respect to incorporation by reference.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid control number. The information collection requirements related to registration statements on Form S–11 are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system.

*B. Summary of Information Collections*

The proposals would decrease existing disclosure requirements for eligible issuers by eliminating the need to repeat information in a Form S–11 when that information was previously disclosed in Exchange Act filings. Any reporting issuer that has filed at least one annual report and that is current in its reporting obligation would be permitted to incorporate information by reference into its registration statement on Form S–11.

*C. Paperwork Reduction Act Burden Estimates*

For purposes of the Paperwork Reduction Act, we expect the annual decrease in the paperwork burden for companies to comply with Form S–11 to be approximately 36,811.5 hours of in-house company personnel time and approximately $44,173,800 for the services of outside professionals.[18] These estimates include the time and the cost of preparing and reviewing disclosure, filing documents, and retaining records. These estimates were based on the following assumptions:

- Each year, 82 registration statements on Form S–11, including post-effective amendments, would incorporate information by reference; [19]

succession and the issuer must continue to be eligible.

[14] As with Forms S–1, F–1 and S–3, under the proposal, to be current, at the time of filing the registration statement, the issuer must have filed all materials required to be filed pursuant to Exchange Act Sections 13, 14 or 15(d) [15 U.S.C. 78m, 78n, or 78o(d)] during the preceding 12 calendar months (or for such shorter period that the issuer was required to file such materials).

[15] See Securities Act Rule 419(a)(2) [17 CFR 230.419(a)(2)], Exchange Act Rule 3a51–1 [17 CFR.240.3a51–1] and Securities Act Rule 405 [17 CFR 230.405)] for definitions of ''blank check company,'' ''penny stock'' and ''shell company,'' respectively.

[16] 44 U.S.C. 3501 *et seq.*

[17] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[18] Consistent with recent rulemakings and based on discussions with several private law firms, we estimate that the cost of outside professionals retained by the issuer is an average of $400 per hour.

[19] We estimate that issuers that would have been eligible to incorporate by reference under the proposals filed 14 new registration statements on Form S–11 and 68 post-effective amendments to registration statements on Form S–11 (excluding post-effective amendments filed for the purpose of deregistering shares) from September 1, 2006 to August 31, 2007. With the elimination of small business registration forms, we estimate that the number of registration statements filed on Form S–11 will increase by 15 for a total of 29 new registration statements. See SEC Press Release No. 2007–233 (Nov. 15, 2007), available at *http://www.sec.gov/news/press/2007/2007–233.htm.*

• The estimated paperwork burden for a Form S–11 that does not incorporate information by reference is 1,977 hours, which consists of 494.25 internal hours and 1,482.75 professional hours.[20]

• The estimated paperwork burden for a Form S–11 that incorporates information by reference would be the same as the burden currently imposed by Form S–3, which is 459 hours, which consists of 114.75 internal hours and 344.25 professional hours.

• The amount of time eliminated for each Form S–11 that incorporates information by reference would be 1,518 hours per form (1,977 hours for a Form S–11 that does not incorporate information by reference minus 459 hours for a Form S–11 that incorporates information by reference).

• We estimate that the annual decrease in compliance burden resulting from the proposal would be 147,246 hours (97 registration statements multiplied by 1,518 hours per form). This would include 36,811.5 hours of issuer personnel time (97 registration statements times 379.5 [21] hours of issuer personnel time per registration statement) and 110,434.5 hours of professional time (97 registration statements times 1,138.5 [22] hours of professional time per registration statement).

• The annual cost savings would be approximately $44,173,800 for the services of outside professionals.

*D. Request for Comment*

We request comment in order to evaluate the accuracy of our estimate of the burden of the collection of information. Any member of the public may direct to us any comments concerning the accuracy of these burden estimates. Persons submitting comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–30–07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–30–07, and be submitted to the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE., Washington, DC, 20549–0609. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

**III. Cost-Benefit Analysis**

*A. Summary of Proposal*

We are proposing revisions to Form S–11 that would allow real estate entities to take advantage of incorporation by reference for their previously filed Exchange Act reports and documents. Forms S–1 and F–1, which are similar long-form registration statements, currently permit this type of incorporation by reference. The proposed amendment, if adopted, would amend Form S–11 to permit incorporation by reference on the same terms as currently provided in Forms S–1 and F–1. The purpose of the amendments is to integrate further the disclosure obligations of the Exchange Act and the Securities Act for real estate entities.

*B. Benefits*

We anticipate that our proposal would enable real estate entities to access the capital markets at a lower cost. It would enable eligible issuers to use their Exchange Act filings to satisfy a portion of their Form S–11 disclosure requirements without having to incur costs to replicate information that they already have disclosed in previously filed Exchange Act reports and other documents. For purposes of our Paperwork Reduction Act analysis, we estimate that our proposed amendments to Form S–11 would reduce the annual paperwork burden by approximately 36,811.5 hours for issuer personnel time at a cost of approximately $6,442,013 [23] and by a cost of approximately $44,173,800 for the services of outside professionals. In addition, we believe that the reduction in the size of the prospectus as a result of incorporation by reference would also result in some cost savings and efficiencies in printing and delivering prospectuses.

The proposed amendments are intended to result in regulatory simplification and efficiency by permitting incorporation by reference on Form S–11 and conforming the requirements of Form S–11 to the requirements of Forms S–1 and F–1 in that respect. Incorporation by reference would allow eligible issuers to avoid duplicating disclosure in Form S–11 when the information has already been disclosed in Exchange Act reports. In addition, the revisions would simplify the disclosure regime for long-form registration statements by permitting incorporation by reference equally, regardless of industry.

*C. Costs*

We expect that, if adopted, the proposed amendments would result in some ongoing costs to issuers that elect to use incorporation by reference. These potential costs relate to the issuer's obligation to make the incorporated Exchange Act reports and documents available on its Web site and include creating and/or maintaining a Web site as well as actually posting the required filings on the Web site. However, we believe that a substantial majority of issuers eligible to use incorporation by reference already maintain Web sites and thus would not have to incur any additional costs to establish a new Web site for this purpose. In addition, we believe that many issuers eligible to use incorporation by reference already post their Exchange Act reports on their Web sites. Those that do not would incur incremental costs to post the required filings. Given that the proposed amendments would not mandate use of incorporation by reference, issuers that are unwilling to bear the cost of complying with the Web site requirement could simply elect not to incorporate information by reference.

We also recognize that permitting incorporation by reference may impose an analytical burden on investors. For example, for offerings on Form S–11 today, much of the relevant information regarding an offering and the issuer is required to be contained in the registration statement. Under our proposal, offerings pursuant to Form S–11 could require an investor to assemble and assimilate information from various Exchange Act reports and the registration statement in order to compile all of the relevant information regarding an offering. Investors would have to compile the information integrated into the registration statement

[20] Assumes that 25% of total burden is borne by internal staff and 75% by professionals.

[21] Reflects the difference between the amount of internal time required to prepare a Form S–11 without incorporation by reference (494.25 hours) and the amount of internal time required to prepare a Form S–11 with incorporation by reference (114.75 hours).

[22] Reflects the difference between the amount of professional time required to prepare a Form S–11 without incorporation by reference (1,483 hours) and the amount of professional time required to prepare a Form S–11 with incorporation by reference (344.25 hours).

[23] Consistent with recent rulemaking releases, we estimate the value of work performed by the company internally at a cost of $175 per hour.

or delivered by means outside of the prospectus. We note, however, that Securities Act Forms S–3 and F–3 have long permitted incorporation by reference from the issuer's Exchange Act reports, as have Forms S–1 and F–1 since December 2005, and we know of no indications that investors are unduly burdened when investing in offerings registered on these forms.

*D. Requests for Comments*

We request comment on all aspects of the cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. We also request that those submitting comments provide empirical data and other factual support for their views to the extent possible.

## IV. Consideration of Promotion on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act,[24] requires us, when engaged in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The proposed amendment, if adopted, would amend Form S–11 to permit incorporation by reference on terms equivalent to that currently provided in Forms S–1 and F–1. We believe the amendments would provide benefits, as discussed in further detail above, by reducing the costs of complying with the Form S–11 disclosure requirements by enabling eligible issuers to incorporate their Exchange Act filings. Eased filing burdens resulting from the proposed amendments would promote efficiency in capital formation for real estate entities and may provide a competitive benefit to entities filing on Form S–11 by allowing them to incorporate their periodic reports by reference to the same extent as registrants filing on Forms S–1 and F–1.

We request comment on whether the proposed amendment, if adopted, would promote efficiency, competition and capital formation. We request that commenters provide empirical data and other factual support for their views if possible.

## V. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments to Form S–11.

*A. Reasons for the Proposed Action*

In 2005, the Commission adopted revisions to Forms S–1 and F–1 to permit incorporation by reference from previously filed Exchange Act reports and other documents. Currently, real estate entities are not permitted to use Form S–1 to register offerings under the Securities Act. Consequently, these entities are unable to take advantage of the important benefit of incorporation by reference that is enjoyed by companies in all other industries that file registration statements on Form S–1. The ability to use a prospectus that does not need to include information provided in previous Exchange Act filings permits companies to streamline the preparation of registration statements and raise capital more efficiently. Companies that are not permitted to incorporate by reference have a greater burden in preparing registration statements in connection with their public offerings. We believe there is no reason to distinguish between real estate entities and other industries for purposes of incorporation by reference.

*B. Objectives*

The purpose of the proposed amendments is to further integrate the Exchange Act and Securities Act by amending Form S–11 to permit incorporation by reference of Exchange Act filings on terms equivalent to that currently provided in Forms S–1 and F–1. The amendments would extend an important benefit to real estate entities.

*C. Legal Basis*

We are proposing the amendments under the authority in Sections 6, 7, 8, 10 and 19(a) of the Securities Act, as amended.

*D. Small Entities Subject to the Proposed Amendments*

The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [25] The Commission's rules define ''small business'' and ''small organization'' for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.[26] Roughly speaking, a ''small business'' and ''small organization,'' when used with reference to an issuer other than an investment company, means an issuer with total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers, other than investment companies, that may be considered reporting small entities.[27] The proposed amendments would apply to all issuers required to file registration statements on Form S–11.

As previously noted, in the 12 months ended August 31, 2007, 82 registration statements on Form S–11 were filed, including new registration statements and post-effective amendments. We estimate that four of those were filed by small entities. We also estimate that approximately 15 registration statements were filed on Form SB–2 in the last fiscal year covering transactions by real estate entities that in the future will be required to register on Form S–11.[28] Thus, we estimate that 19 registration statements by small entities would be subject to the proposed amendments.

We request comment on the number of small entities that would be impacted by our proposals, including any available empirical data.

*E. Reporting, Recordkeeping and Other Compliance Requirements*

The proposed amendments are expected to impact all capital raising and selling security holder transactions that are registered under the Securities Act on Form S–11. Small entities required to register on Form S–11 would be able to take advantage of the ability to incorporate by reference previously filed Exchange Act reports and documents. We expect that permitting the incorporation by reference of previously filed Exchange Act reports and documents would reduce the costs incurred by small entities of preparing a registration statement on Form S–11 by $9,914,438.[29]

These estimates were based on the following assumptions:

- Each year, 19 registration statements filed by small entities on Form S–11, including post-effective amendments, could incorporate information by reference.
- The paperwork burden for a Form S–11 that does not incorporate information by reference is 1,977 hours,

[24] 15 U.S.C. 77b(b).

[25] 5 U.S.C. 601(6).

[26] Rules 157 under the Securities Act [17 CFR 230.157], 0–10 under the Exchange Act [17 CFR 240.0–10] and 0–10 under the Investment Company Act [17 CFR 270.0–10] contain the applicable definitions.

[27] The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database.

[28] See SEC Press Release No. 2007–233 (Nov. 15, 2007), available at *http://www.sec.gov/news/press/2007/2007–233.htm*.

[29] See n. 18 and n. 23.

which consists of 494.25 internal hours and 1,482.75 professional hours.[30]

• The paperwork burden for a Form S–11 that incorporates information by reference would be the same as the burden currently imposed by Form S–3, which is 459 hours, which consists of 114.75 internal hours and 344.25 professional hours.

• The amount of time eliminated for each Form S–11 that incorporates information by reference would be 1,518 hours per form (1,977 hours for a Form S–11 that does not incorporate information by reference minus 459 hours for a Form S–11 that incorporates information by reference).

• We estimate that the annual decrease in compliance burden to small entities resulting from the proposal would be 28,842 hours (19 registration statements multiplied by 1,518 hours per form). This would include 7,210.5 hours of issuer personnel time (19 registration statements times 379. 5 [31] hours of issuer personnel time per registration statement) and 21,631.5 hours of professional time (19 registration statements times 1,138.5 [32] hours of professional time per registration statement).

• The annual cost savings to small entities would be approximately $8,652,600 for the services of outside professionals.

We expect that small entities eligible to register on Form S–11 may need to incur some insignificant additional costs related to complying with the Web site requirements related to incorporation by reference, although issuers could avoid such costs by electing not to incorporate information by reference.

We encourage written comments regarding this analysis. We solicit comments as to whether the proposed amendments could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

[30] Assumes that 25% of total burden borne by internal staff and 75% by professionals.

[31] Reflects the difference between the amount of internal time required to prepare a Form S–11 without incorporation by reference (494.25 hours) and the amount of internal time required to prepare a Form S–11 with incorporation by reference (114.75 hours).

[32] Reflects the difference between the amount of professional time required to prepare a Form S–11 without incorporation by reference (1,483 hours) and the amount of professional time required to prepare a Form S–11 with incorporation by reference (344.25 hours).

*F. Duplicative, Overlapping or Conflicting Federal Rules*

We believe that the proposed amendments would not duplicate, or overlap or conflict with other federal rules.

*G. Significant Alternatives*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposal, the Regulatory Flexibility Act requires us to consider the following alternatives:

1. Establishing different compliance or reporting requirements that take into account the resources of small entities;

2. The clarification, consolidation, or simplification of disclosure for small entities;

3. Use of performance standards rather than design standards; and

4. Exempting smaller entities from coverage of the disclosure requirements or any part thereof.

Our proposal would extend the benefit of incorporation by reference to small entities that are required to file registration statements on Form S–11. Establishing a different standard for small business entities would impose a greater compliance burden on small entities and would be inconsistent with the benefits provided for small entities that register on Form S–1 and Form F–1.

*H. Solicitation of Comment*

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

• The number of small entities that may be affected by the proposed amendments;

• The existence or nature of the potential impact of the proposed amendments on small entities as discussed in this analysis; and

• How to quantify the impact of the proposed amendments.

We ask those submitting comments to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

## VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[33] a rule is ''major'' if it has resulted, or is likely to result in:

• An annual effect on the U.S. economy of $100 million or more;

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

• The potential effect on the U.S. economy on an annual basis;

• Any potential increase in costs or prices for consumers or individual industries; and

• Any potential effect on competition, investment, or innovation.

## VII. Statutory Authority and Text of the Proposed Amendments

The amendments described in this release are being proposed under the authority set forth in Sections 6, 7, 8, 10 and 19(a) of the Securities Act, as amended.

**List of Subjects in 17 CFR Part 239**

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll, 77mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend Form S–11 (referenced in § 239.18) as follows:

a. Add General Instruction H;

b. In Part I, add Item 28A;

c. Redesignate Item 29 as Item 29A; and

d. Add new Item 29.

The additions read as follows:

**Note:** The text of Form S–11 does not, and this amendment will not, appear in the Code of Federal Regulations.

[33] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

FORM S–11

FOR REGISTRATION UNDER THE SECURITIES ACT OF 1933 OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES

GENERAL INSTRUCTIONS

* * * * *

**H. Eligibility To Use Incorporation by Reference**

If a registrant meets the following requirements immediately prior to the time of filing a registration statement on this Form, it may elect to provide information required by Items 3 through 28 of this Form in accordance with Item 28A and Item 29 of this Form:

1. The registrant is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (''Exchange Act'').

2. The registrant has filed all reports and other materials required to be filed by Sections 13(a), 14, or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials).

3. The registrant has filed an annual report required under Section 13(a) or Section 15(d) of the Exchange Act for its most recently completed fiscal year.

4. The registrant is not:

(a) And during the past three years neither the registrant nor any of its predecessors was:

(i) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2) of this chapter);

(ii) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405 of this chapter); or

(iii) A registrant for an offering of penny stock as defined in Rule 3a51–1 of the Exchange Act (§ 240.3a51–1 of this chapter).

(b) Registering an offering that effectuates a business combination transaction as defined in Rule 165(f)(1) (§ 230.165(f)(1) of this chapter).

5. If a registrant is a successor registrant it shall be deemed to have satisfied conditions 1, 2, 3, and 4(b) above if:

(a) Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

(b) All predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

6. The registrant makes its periodic and current reports filed pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference pursuant to Item 28A or Item 29 of this Form readily available and accessible on a Web site maintained by or for the registrant and containing information about the registrant.

* * * * *

**PART I—INFORMATION REQUIRED IN PROSPECTUS**

* * * * *

**Item 28A. Material Changes**

If the registrant elects to incorporate information by reference pursuant to General Instruction H, describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10-K or Form 10-KSB and which have not been described in a Form 10-Q, Form 10-QSB, or Form 8-K filed under the Exchange Act.

**Item 29. Incorporation of Certain Information by Reference**

If the registrant elects to incorporate information by reference pursuant to General Instruction H:

(a) It must specifically incorporate by reference into the prospectus contained in the registration statement the following documents by means of a statement to that effect in the prospectus listing all such documents:

(1) The registrant's latest annual report on Form 10-K or Form 10-KSB filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10-K or Form 10-KSB was required to have been filed; and

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act or proxy or information statements filed pursuant to Section 14 of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

**Note to Item 29(a).** Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to use of material incorporated by reference.

(b)(1) The registrant must state:

(i) That it will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the reports or documents that have been incorporated by reference in the prospectus contained in the registration statement but not delivered with the prospectus;

(ii) That it will provide these reports or documents upon written or oral request;

(iii) That it will provide these reports or documents at no cost to the requester;

(iv) The name, address, telephone number, and e-mail address, if any, to which the request for these reports or documents must be made; and

(v) The registrant's Web site address, including the uniform resource locator (URL) where the incorporated reports and other documents may be accessed.

**Note to Item 29(b)(1).** If the registrant sends any of the information that is incorporated by reference in the prospectus contained in the registration statement to security holders, it also must send any exhibits that are specifically incorporated by reference in that information.

(2) The registrant must:

(i) Identify the reports and other information that it files with the SEC; and

(ii) State that the public may read and copy any materials it files with the SEC at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800-SEC–0330.

If the registrant is an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

* * * * *

By the Commission.

Dated: December 14, 2007.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E7–24617 Filed 12–19–07; 8:45 am]

**BILLING CODE 8011–01–P**

## INTERNATIONAL TRADE COMMISSION

### 19 CFR Parts 201 and 210

### Rules of General Application and Adjudication and Enforcement

**AGENCY:** International Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States International Trade Commission (''Commission'') proposes to amend its