

Securities and Exchange Commission

(d) Is traded on a national securities exchange registered pursuant to Section 6(a) of the Act (15 U.S.C. 78f(a)).

[77 FR 20549, Apr. 5, 2012]

§ 240.12a-11 Exemption of security-based swaps sold in reliance on Securities Act of 1933 Rule 240 (\$230.240) from section 12(a) of the Act.

(a) The provisions of Section 12(a) of the Act (15 U.S.C. 78l(a)) do not apply to any security-based swap offered and sold in reliance on § 230.240 of this chapter.

(b) This section will expire on February 11, 2018.

[82 FR 10707, Feb. 15, 2017]

REGULATION 12B: REGISTRATION AND REPORTING

SOURCE: Sections 240.12b-1 through 240.12b-36 appear at 13 FR 9321, Dec. 31, 1948, unless otherwise noted.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

GENERAL

§ 240.12b-1 Scope of regulation.

The rules contained in this regulation shall govern all registration statements pursuant to sections 12(b) and 12(g) of the Act and all reports filed pursuant to sections 13 and 15(d) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

[47 FR 11464, Mar. 16, 1982]

§ 240.12b-2 Definitions.

Unless the context otherwise requires, the following terms, when used in the rules contained in this regula-

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tion or in Regulation 13A or 15D or in the forms for statements and reports filed pursuant to sections 12, 13 or 15(d) of the act, shall have the respective meanings indicated in this rule:

Accelerated filer and large accelerated filer—(1) *Accelerated filer*. The term *accelerated filer* means an issuer after it first meets the following conditions as of the end of its fiscal year:

(i) The issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$75 million or more, but less than \$700 million, as of the last business day of the issuer's most recently completed second fiscal quarter;

(ii) The issuer has been subject to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) for a period of at least twelve calendar months; and

(iii) The issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act; and

(iv) The issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, as applicable.

(2) *Large accelerated filer*. The term *large accelerated filer* means an issuer after it first meets the following conditions as of the end of its fiscal year:

(i) The issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter;

(ii) The issuer has been subject to the requirements of section 13(a) or 15(d) of the Act for a period of at least twelve calendar months; and

(iii) The issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act; and

(iv) The issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, as applicable.

(3) *Entering and exiting accelerated filer and large accelerated filer status*.

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(i) The determination at the end of the issuer's fiscal year for whether a non-accelerated filer becomes an accelerated filer, or whether a non-accelerated filer or accelerated filer becomes a large accelerated filer, governs the deadlines for the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports to be filed thereafter while the issuer remains an accelerated filer or large accelerated filer.

(ii) Once an issuer becomes an accelerated filer, it will remain an accelerated filer unless: The issuer determines, at the end of a fiscal year, that the aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates was less than \$60 million, as of the last business day of the issuer's most recently completed second fiscal quarter; or it determines that it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, as applicable. An issuer that makes either of these determinations becomes a non-accelerated filer. The issuer will not become an accelerated filer again unless it subsequently meets the conditions in paragraph (1) of this definition.

(iii) Once an issuer becomes a large accelerated filer, it will remain a large accelerated filer unless: It determines, at the end of a fiscal year, that the aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates ("aggregate worldwide market value") was less than \$560 million, as of the last business day of the issuer's most recently completed second fiscal quarter or it determines that it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, as applicable. If the issuer's aggregate worldwide market value was \$60 million or more, but less than \$560 million, as of the last business day of the issuer's most recently completed second fiscal quarter, and it is not eligible to use the requirements for smaller reporting companies

under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, as applicable, it becomes an accelerated filer. If the issuer's aggregate worldwide market value was less than \$60 million, as of the last business day of the issuer's most recently completed second fiscal quarter, or it is eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, it becomes a non-accelerated filer. An issuer will not become a large accelerated filer again unless it subsequently meets the conditions in paragraph (2) of this definition.

(iv) The determination at the end of the issuer's fiscal year for whether an accelerated filer becomes a non-accelerated filer, or a large accelerated filer becomes an accelerated filer or a non-accelerated filer, governs the deadlines for the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports to be filed thereafter while the issuer remains an accelerated filer or non-accelerated filer.

NOTE TO PARAGRAPHS (1), (2) AND (3): The aggregate worldwide market value of the issuer's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity.

(4) For purposes of paragraphs (1), (2), and (3) of this definition only, a business development company is considered to be eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, provided that the business development company meets the requirements of the test using annual investment income under Rule 6-07.1 of Regulation S-X (17 CFR 210.6-07.1) as the measure of its "annual revenues" for purposes of the test.

Affiliate. An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by,

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or is under common control with, the person specified.

Amount. The term “amount,” when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

Associate. The term “associate” used to indicate a relationship with any person, means (1) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

Business combination related shell company: The term *business combination related shell company* means a shell company (as defined in § 240.12b-2) that is:

(1) Formed by an entity that is not a shell company solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(2) Formed by an entity that is not a shell company solely for the purpose of completing a business combination transaction (as defined in § 230.165(f) of this chapter) among one or more entities other than the shell company, none of which is a shell company.

Certified. The term “certified,” when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

Charter. The term “charter” includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

Common equity. The term “common equity” means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

Control. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Depository share. The term “depository share” means a security, evidenced by an American Depository Receipt, that represents a foreign security or a multiple of or fraction thereof deposited with a depository.

Emerging growth company. (1) The term *emerging growth company* means an issuer that had total annual gross revenues of less than \$1,235,000,000 during its most recently completed fiscal year.

(2) An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of:

(i) The last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,235,000,000 or more;

(ii) The last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(iii) The date on which such issuer has, during the previous three year period, issued more than \$1,000,000,000 in non-convertible debt; or

(iv) The date on which such issuer is deemed to be a large accelerated filer, as defined in Rule 12b-2 (§ 240.12b-2 of this chapter).

Employee. The term “employee” does not include a director, trustee, or officer.

Fiscal year. The term “fiscal year” means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

Majority-owned subsidiary. The term “majority-owned subsidiary” means a

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subsidiary more than 50 percent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.

Managing underwriter. The term "managing underwriter" includes an underwriter (or underwriters) who, by contract or otherwise, deals with the registrant; organizes the selling effort; receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

Material. The term "material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered.

Material weakness. The term *material weakness* is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of the registrant's annual or interim financial statements will not be prevented or detected on a timely basis.

Parent. A "parent" of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

Predecessor. The term "predecessor" means a person the major portion of the business and assets of which an other person acquired in a single succession or in a series of related successions in each of which the acquiring person acquired the major portion of the business and assets of the acquired person.

Previously filed or reported. The terms "previously filed" and "previously reported" mean previously filed with, or reported in, a statement under section

12, a report under section 13 or 15(d), a definitive proxy statement or information statement under section 14 of the act, or a registration statement under the Securities Act of 1933: *Provided*, That information contained in any such document shall be deemed to have been previously filed with, or reported to, an exchange only if such document is filed with such exchange.

Principal underwriter. The term "principal underwriter" means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

Promoter. (1) The term "promoter" includes:

(i) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or

(ii) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(2) All persons coming within the definition of "promoter" in paragraph (1) of this definition may be referred to as "founders" or "organizers" or by another term provided that such term is reasonably descriptive of those persons' activities with respect to the issuer.

Prospectus. Unless otherwise specified or the context otherwise requires, the term "prospectus" means a prospectus meeting the requirements of section 10(a) of the Securities Act of 1933 as amended.

Registrant. The term "registrant" means an issuer of securities with respect to which a registration statement or report is to be filed.

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Registration statement. The term “registration statement” or “statement”, when used with reference to registration pursuant to section 12 of the act, includes both an application for registration of securities on a national securities exchange pursuant to section 12(b) of the act and a registration statement filed pursuant to section 12(g) of the act.

Share. The term “share” means a share of stock in a corporation or unit of interest in an unincorporated person.

Shell company: The term *shell company* means a registrant, other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

- (1) No or nominal operations; and
- (2) Either:
 - (i) No or nominal assets;
 - (ii) Assets consisting solely of cash and cash equivalents; or
 - (iii) Assets consisting of any amount of cash and cash equivalents and nominal other assets.

NOTE: For purposes of this definition, the determination of a registrant's assets (including cash and cash equivalents) is based solely on the amount of assets that would be reflected on the registrant's balance sheet prepared in accordance with generally accepted accounting principles on the date of that determination.

Significant deficiency. The term *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the registrant's financial reporting.

Significant subsidiary. The term *significant subsidiary* means a subsidiary, including its subsidiaries, which meets any of the conditions in paragraph (1), (2), or (3) of this definition; however, if the registrant is a registered investment company or a business development company, the tested subsidiary meets any of the conditions in paragraph (4) of this definition instead of any of the conditions in paragraph (1), (2), or (3) of this definition. A registrant that files its financial statements in accordance with or provides a reconciliation to U.S. Generally Accepted Accounting Principles (U.S.

GAAP) must use amounts determined under U.S. GAAP. A foreign private issuer that files its financial statements in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board (IFRS-IASB) must use amounts determined under IFRS-IASB.

(1) *Investment test.* (i) For acquisitions, other than those described in paragraph (1)(ii) of this definition, and dispositions this test is met when the registrant's and its other subsidiaries' investments in and advances to the tested subsidiary exceed 10 percent of the aggregate worldwide market value of the registrant's voting and non-voting common equity, or if the registrant has no such aggregate worldwide market value, the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year.

(A) For acquisitions, the “investments in” the tested subsidiary is the consideration transferred, adjusted to exclude the registrant's and its subsidiaries' proportionate interest in the carrying value of assets transferred by the registrant and its subsidiaries consolidated to the tested subsidiary that will remain with the combined entity after the acquisition. It must include the fair value of contingent consideration if required to be recognized at fair value by the registrant at the acquisition date under U.S. GAAP or IFRS-IASB, as applicable; however if recognition at fair value is not required, it must include all contingent consideration, except contingent consideration for which the likelihood of payment is remote.

(B) For dispositions, the “investments in” the tested subsidiary is the fair value of the consideration, including contingent consideration, for the disposed subsidiary when comparing to the aggregate worldwide market value of the registrant's voting and non-voting common equity, or, when the registrant has no such aggregate worldwide market value, the carrying value of the disposed subsidiary when comparing to total assets of the registrant.

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(C) When determining the aggregate worldwide market value of the registrant's voting and non-voting common equity, use the average of such aggregate worldwide market value calculated daily for the last five trading days of the registrant's most recently completed month ending prior to the earlier of the registrant's announcement date or agreement date of the acquisition or disposition.

(ii) For a combination between entities or businesses under common control, this test is met when either the net book value of the tested subsidiary exceeds 10 percent of the registrant's and its subsidiaries' consolidated total assets or the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated.

(iii) In all other cases, this test is met when the registrant's and its other subsidiaries' investments in and advances to the tested subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year.

(2) *Asset test.* This test is met when the registrant's and its other subsidiaries' proportionate share of the tested subsidiary's consolidated total assets (after intercompany eliminations) exceeds 10 percent of such total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year.

(3) *Income test.* (i) This test is met when:

(A) The absolute value of the registrant's and its other subsidiaries' equity in the tested subsidiary's consolidated income or loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interests exceeds 10 percent of the absolute value of such income or loss of the registrant and its subsidiaries consolidated for the most recently completed fiscal year; and

(B) The registrant's and its other subsidiaries' proportionate share of the tested subsidiary's consolidated total revenue from continuing operations (after intercompany eliminations) exceeds 10 percent of such total revenue

of the registrant and its subsidiaries consolidated for the most recently completed fiscal year. This paragraph (3)(i)(B) does not apply if either the registrant and its subsidiaries consolidated or the tested subsidiary did not have material revenue in each of the two most recently completed fiscal years.

(ii) When determining the income component in paragraph (3)(i)(A) of this definition:

(A) If a net loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interest has been incurred by either the registrant and its subsidiaries consolidated or the tested subsidiary, but not both, exclude the equity in the income or loss from continuing operations before income taxes (after intercompany eliminations) of the tested subsidiary attributable to the controlling interest from such income or loss of the registrant and its subsidiaries consolidated for purposes of the computation;

(B) Compute the test using the average described in this paragraph (3)(ii)(B) if the revenue component in paragraph (3)(i)(B) in this definition does not apply and the absolute value of the registrant's and its subsidiaries' consolidated income or loss from continuing operations before income taxes (after intercompany eliminations) attributable to the controlling interests for the most recent fiscal year is at least 10 percent lower than the average of the absolute value of such amounts for each of its last five fiscal years; and

(C) Entities reporting losses must not be aggregated with entities reporting income where the test involves combined entities, as in the case of determining whether summarized financial data must be presented or whether the aggregate impact specified in §§ 210.3-05(b)(2)(iv) and 210.3-14(b)(2)(i)(C) of this chapter is met, except when determining whether related businesses meet this test for purposes of §§ 210.3-05 and 210.8-04 of this chapter.

(4) *Registered investment company or business development company.* For a registrant that is a registered investment company or a business development company, the term *significant*

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subsidiary means a subsidiary, including its subsidiaries, which meets any of the following conditions using amounts determined under U.S. GAAP and, if applicable, section 2(a)(41) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(41)):

(i) *Investment test.* The value of the registrant's and its other subsidiaries' investments in and advances to the tested subsidiary exceed 10 percent of the value of the total investments of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(ii) *Income test.* The absolute value of the sum of combined investment income from dividends, interest, and other income, the net realized gains and losses on investments, and the net change in unrealized gains and losses on investments from the tested subsidiary (except, for purposes of § 210.6-11 of this chapter, the absolute value of the change in net assets resulting from operations of the tested subsidiary), for the most recently completed fiscal year exceeds:

(A) 80 percent of the absolute value of the change in net assets resulting from operations of the registrant and its subsidiaries consolidated for the most recently completed fiscal year; or

(B) 10 percent of the absolute value of the change in net assets resulting from operations of the registrant and its subsidiaries consolidated for the most recently completed fiscal year and the investment test (paragraph (4)(i) of this definition) condition exceeds 5 percent. However, if the absolute value of the change in net assets resulting from operations of the registrant and its subsidiaries consolidated is at least 10 percent lower than the average of the absolute value of such amounts for each of its last five fiscal years, then the registrant may compute both conditions of the income test using the average of the absolute value of such amounts for the registrant and its subsidiaries consolidated for each of its last five fiscal years.

Smaller reporting company. As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned sub-

sidiary of a parent that is not a smaller reporting company and that:

(1) Had a public float of less than \$250 million; or

(2) Had annual revenues of less than \$100 million and either:

(i) No public float; or

(ii) A public float of less than \$700 million.

(3) Whether an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act:

(A) Public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity;

(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and

(C) An issuer must reflect the determination of whether it came within the definition of smaller reporting company in its quarterly report on Form 10-Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10-Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial registration statement under the Securities Act or Exchange Act for shares of its common equity:

(A) Public float is measured as of a date within 30 days of the date of the filing of the registration statement and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity

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held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of shares of its voting and non-voting common equity included in the registration statement by the estimated public offering price of the shares;

(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and

(C) The issuer must reflect the determination of whether it came within the definition of smaller reporting company in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether it is a smaller reporting company. The issuer must re-determine its status at the end of its second fiscal quarter and then reflect any change in status as provided in

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paragraph (3)(i)(C) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to re-determine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status because it exceeded one or more of the current thresholds, it will remain unqualified unless when making its annual determination either:

(A) It determines that its public float was less than \$200 million; or

(B) It determines that its public float and its annual revenues meet the requirements for subsequent qualification included in the following chart:

Prior annual revenues	Prior public float	
	None or less than \$700 million	\$700 million or more
Less than \$100 million	Neither threshold exceeded	Public float—Less than \$560 million; and Revenues—Less than \$100 million.
\$100 million or more	Public float—None or less than \$700 million; and Revenues—Less than \$80 million	Public float—Less than \$560 million; and Revenues—Less than \$80 million.

INSTRUCTION 1 TO DEFINITION OF “SMALLER REPORTING COMPANY”: A registrant that qualifies as a smaller reporting company under the public float thresholds identified in paragraphs (1) and (3)(iii)(A) of this definition will qualify as a smaller reporting company regardless of its revenues.

Instruction 2 to definition of “smaller reporting company”: A foreign private issuer is not eligible to use the requirements for smaller reporting companies unless it uses the forms and rules designated for domestic issuers and provides financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles.

Succession: The term *succession* means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer; or the acquisition of control of a shell company in a transaction required to be reported on Form 8-K (§ 249.308 of this chapter) in compliance with Item 5.01 of that Form or on Form 20-F (§ 249.220f of this chapter) in compliance with Rule 13a-19 (§ 240.13a-19) or Rule 15d-19 (§ 240.15d-

19). Except for an acquisition of control of a shell company, the term does not include the acquisition of control of a business unless followed by the direct acquisition of its assets. The terms *succeed* and *successor* have meanings correlative to the foregoing.

Totally held subsidiary. The term “totally held subsidiary” means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent’s other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent’s other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

Voting securities. The term “voting securities” means securities the holders

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of which are presently entitled to vote for the election of directors.

Wholly-owned subsidiary. The term “wholly-owned subsidiary” means a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent’s other wholly-owned subsidiaries.

[13 FR 9321, Dec. 31, 1948]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.12b-2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

EFFECTIVE DATE NOTE: At 89 FR 14323, Feb. 26, 2024, § 240.12b-2 was amended by adding in alphabetical order the definition for “Blank check company” and adding paragraph (3)(iv) to the definition of “Smaller reporting company”, effective July 1, 2024. For the convenience of the user, the added text is set forth as follows:

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Blank check company. For purposes of section 21E of the Securities and Exchange Act of 1934 (15 U.S.C. 78u-5), the term *blank check company* means a company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

* * * * *

Smaller reporting company. * * *
(3) * * *

(iv) Upon the consummation of a de-SPAC transaction, as defined in § 229.1601(a) of this chapter (Item 1601(a) of Regulation S-K), an issuer must re-determine its status as a smaller reporting company pursuant to the thresholds set forth in paragraphs (1) and (2) of this definition prior to its first filing, other than pursuant to Items 2.01(f), 5.01(a)(8), and/or 9.01(c) of Form 8-K, following the de-SPAC transaction and reflect this re-determination in its filings, beginning 45 days after consummation of the de-SPAC transaction.

(A) Public float is measured as of a date within four business days after the consummation of the de-SPAC transaction and is computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates as of that date by the price at which the common equity was last sold, or the average of the bid and asked prices of common

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equity, in the principal market for the common equity; and

(B) Annual revenues are the annual revenues of the target company, as defined in § 229.1601(d) of this chapter (Item 1601(d) of Regulation S-K), as of the most recently completed fiscal year reported in the Form 8-K filed pursuant to Items 2.01(f), 5.01(a)(8), and/or 9.01(c) of Form 8-K.

§ 240.12b-3 Title of securities.

Wherever the title of securities is required to be stated there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as “maturing serially from 1950 to 1960”; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

§ 240.12b-4 Supplemental information.

The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall be returned to the registrant upon request, provided that:

(a) Such request is made at the time such information is furnished to the staff;

(b) The return of such information is consistent with the protection of investors; and

(c) The return of such information is consistent with the provisions of the Freedom of Information Act (5 U.S.C. 552).

[47 FR 11465, Mar. 16, 1982]