

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 PARAGRAPH (F): A registrant that qualifies as a smaller reporting company under the public float thresholds identified in paragraphs (f)(1)(i) and (f)(2)(iii)(A) of this section will qualify as a smaller reporting company regardless of its revenues.

INSTRUCTION 2 TO PARAGRAPH (F): 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.

[47 FR 11401, Mar. 16, 1982, as amended at 52 FR 21260, June 5, 1987; 58 FR 14665, Mar. 18, 1993; 58 FR 62029, Nov. 23, 1993; 60 FR 32824, June 23, 1995; 64 FR 61443, Nov. 10, 1999; 68 FR 4831, Jan. 30, 2003; 70 FR 1593, Jan. 7, 2005; 73 FR 956, Jan. 4, 2008; 76 FR 46617, Aug. 3, 2011; 83 FR 32018, July 10, 2018; 83 FR 50209, Oct. 4, 2018; 84 FR 12716, Apr. 2, 2019; 85 FR 17241, Mar. 26, 2020; 86 FR 2126, Jan. 11, 2021]

Subpart 229.100—Business

§ 229.101 (Item 101) Description of business.

(a) *General development of business.* Describe the general development of the business of the registrant, its subsidiaries, and any predecessor(s).

(1) In describing developments, only information material to an understanding of the general development of the business is required. Disclosure may include, but should not be limited to, the following topics:

(i) Any material changes to a previously disclosed business strategy;

(ii) The nature and effects of any material bankruptcy, receivership, or any similar proceeding with respect to the registrant or any of its significant subsidiaries;

(iii) The nature and effects of any material reclassification, merger or consolidation of the registrant or any of its significant subsidiaries; and

(iv) The acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business.

(2) Notwithstanding the provisions of § 230.411(b) or § 240.12b-23(a) of this chapter, as applicable, a registrant may only forgo providing a full discussion of the general development of its business for a filing other than an initial registration statement if it provides an update to the general development of its business, disclosing all of the material developments that have occurred since the most recent registration statement or report that includes a full discussion of the general development of its business. In addition, the registrant must incorporate by reference, and include one active hyperlink to one registration statement or report that includes, the full discussion of the general development of the registrant's business.

(3) Registrants:

(i) Filing a registration statement on Form S-1 (§ 239.11 of this chapter) under the Securities Act or on Form 10

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(§ 249.210 of this chapter) under the Exchange Act;

(ii) Not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately before the filing of such registration statement; and

(iii) That (including predecessors) have not received revenue from operations during each of the three fiscal years immediately before the filing of such registration statement, shall provide the following information:

(A) If the registration statement is filed prior to the end of the registrant's second fiscal quarter, a description of the registrant's plan of operation for the remainder of the fiscal year; or

(B) If the registration statement is filed subsequent to the end of the registrant's second fiscal quarter, a description of the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year. If such information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan shall include such matters as:

(1) In the case of a registration statement on Form S-1, a statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant; the specific reasons for such opinion shall be set forth and categories of expenditures and sources of cash resources shall be identified; however, amounts of expenditures and cash resources need not be provided; in addition, if the narrative statement is based on a cash budget, such budget shall be furnished to the Commission as supplemental information, but not as part of the registration statement;

(2) An explanation of material product research and development to be performed during the period covered in the plan;

(3) Any anticipated material acquisition of plant and equipment and the capacity thereof;

(4) Any anticipated material changes in number of employees in the various

departments such as research and development, production, sales or administration; and

(5) Other material areas which may be peculiar to the registrant's business.

(b) [Reserved]

(c) *Description of business.* (1) Describe the business done and intended to be done by the registrant and its subsidiaries, focusing upon the registrant's dominant segment or each reportable segment about which financial information is presented in the financial statements. When describing each segment, only information material to an understanding of the business taken as a whole is required. Disclosure may include, but should not be limited to, the information specified in paragraphs (c)(1)(i) through (v) of this section.

(i) Revenue-generating activities, products and/or services, and any dependence on revenue-generating activities, key products, services, product families or customers, including governmental customers;

(ii) Status of development efforts for new or enhanced products, trends in market demand and competitive conditions;

(iii) Resources material to a registrant's business, such as:

(A) Sources and availability of raw materials; and

(B) The duration and effect of all patents, trademarks, licenses, franchises, and concessions held;

(iv) A description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or sub-contracts at the election of the Government; and

(v) The extent to which the business is or may be seasonal.

(2) Discuss the information specified in paragraphs (c)(2)(i) and (ii) of this section with respect to, and to the extent material to an understanding of, the registrant's business taken as a whole, except that, if the information is material to a particular segment, you should additionally identify that segment.

(i) The material effects that compliance with government regulations, including environmental regulations,

may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries, including the estimated capital expenditures for environmental control facilities for the current fiscal year and any other material subsequent period; and

(ii) A description of the registrant's human capital resources, including the number of persons employed by the registrant, and any human capital measures or objectives that the registrant focuses on in managing the business (such as, depending on the nature of the registrant's business and workforce, measures or objectives that address the development, attraction and retention of personnel).

(d) [Reserved]

(e) *Available information.* Disclose the information in paragraphs (e)(1), (e)(2) and (e)(3) of this section in any registration statement you file under the Securities Act (15 U.S.C. 77a *et seq.*), and disclose the information in paragraph (e)(3) of this section in your annual report on Form 10-K (§ 249.310 of this chapter). Further disclose the information in paragraph (e)(4) of this section if you are an accelerated filer or a large accelerated filer (as defined in § 240.12b-2 of this chapter) filing an annual report on Form 10-K (§ 249.310 of this chapter):

(1) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the SEC.

(2) 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>).

(3) Disclose your internet address, if you have one.

(4)(i) Whether you make available free of charge on or through your Internet website, if you have one, your annual report on Form 10-K, quarterly reports on Form 10-Q (§ 249.308a of this chapter), current reports on Form 8-K (§ 249.308 of this chapter), and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C.

78m(a) or 78o(d)) as soon as reasonably practicable after you electronically file such material with, or furnish it to, the SEC;

(ii) If you do not make your filings available in this manner, the reasons you do not do so (including, where applicable, that you do not have an Internet website); and

(iii) If you do not make your filings available in this manner, whether you voluntarily will provide electronic or paper copies of your filings free of charge upon request.

(f) *Reports to security holders.* Disclose the following information in any registration statement you file under the Securities Act:

(1) If the SEC's proxy rules or regulations, or stock exchange requirements, do not require you to send an annual report to security holders or to holders of American depository receipts, describe briefly the nature and frequency of reports that you will give to security holders. Specify whether the reports that you give will contain financial information that has been examined and reported on, with an opinion expressed "by" an independent public or certified public accountant.

(2) For a foreign private issuer, if the report will not contain financial information prepared in accordance with U.S. generally accepted accounting principles, you must state whether the report will include a reconciliation of this information with U.S. generally accepted accounting principles.

(g) *Enforceability of civil liabilities against foreign persons.* Disclose the following if you are a foreign private issuer filing a registration statement under the Securities Act:

(1) Whether or not investors may bring actions under the civil liability provisions of the U.S. Federal securities laws against the foreign private issuer, any of its officers and directors who are residents of a foreign country, any underwriters or experts named in the registration statement that are residents of a foreign country, and whether investors may enforce these civil liability provisions when the assets of the issuer or these other persons are located outside of the United States. The disclosure must address the following matters:

(i) The investor's ability to effect service of process within the United States on the foreign private issuer or any person;

(ii) The investor's ability to enforce judgments obtained in U.S. courts against foreign persons based upon the civil liability provisions of the U.S. Federal securities laws;

(iii) The investor's ability to enforce, in an appropriate foreign court, judgments of U.S. courts based upon the civil liability provisions of the U.S. Federal securities laws; and

(iv) The investor's ability to bring an original action in an appropriate foreign court to enforce liabilities against the foreign private issuer or any person based upon the U.S. Federal securities laws.

(2) If you provide this disclosure based on an opinion of counsel, name counsel in the prospectus and file as an exhibit to the registration statement a signed consent of counsel to the use of its name and opinion.

(h) *Smaller reporting companies.* A smaller reporting company, as defined by § 229.10(f)(1), may satisfy its obligations under this Item by describing the development of its business pursuant to this paragraph (h). In describing developments under paragraphs (h)(1) through (3), information should be provided for the period of time that is material to an understanding of the general development of the business. Notwithstanding the provisions of § 230.411(b) or § 240.12b-23(a) of this chapter as applicable, a smaller reporting company may only forgo providing a full discussion of the general development of its business for a filing other than an initial registration statement if it provides an update to the general development of its business disclosing all of the material developments that have occurred since the most recent registration statement or report that includes a full discussion of the general development of its business. In addition, the smaller reporting company must incorporate by reference, and include one active hyperlink to one registration statement or report that includes, the full discussion of the general development of the registrant's business. If the smaller reporting company has not been in business for three

years, provide the same information for predecessor(s) of the smaller reporting company if there are any. This business development description should include:

(1) Form and year of organization;

(2) Any bankruptcy, receivership or similar proceeding; and

(3) Any material reclassification, merger, consolidation, or purchase or sale of a significant amount of assets not in the ordinary course of business.

(4) *Business of the smaller reporting company.* Briefly describe the business and include, to the extent material to an understanding of the smaller reporting company:

(i) Principal products or services and their markets;

(ii) Distribution methods of the products or services;

(iii) Status of any publicly announced new product or service;

(iv) Competitive business conditions and the smaller reporting company's competitive position in the industry and methods of competition;

(v) Sources and availability of raw materials and the names of principal suppliers;

(vi) Dependence on one or a few major customers;

(vii) Patents, trademarks, licenses, franchises, concessions, royalty agreements or labor contracts, including duration;

(viii) Need for any government approval of principal products or services. If government approval is necessary and the smaller reporting company has not yet received that approval, discuss the status of the approval within the government approval process;

(ix) Effect of existing or probable governmental regulations on the business;

(x) [Reserved]

(xi) Costs and effects of compliance with environmental laws (federal, state and local); and

(xii) Number of total employees and number of full-time employees.

(5) *Reports to security holders.* Disclose the following in any registration statement you file under the Securities Act of 1933:

(i) If you are not required to deliver an annual report to security holders, whether you will voluntarily send an

annual report and whether the report will include audited financial statements;

(ii) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the Commission; and

(iii) State that the Commission maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (<http://www.sec.gov>). Disclose your internet address, if available.

(6) *Foreign issuers.* Provide the information required by Item 101(g) of Regulation S-K (§ 229.101(g)).

Instructions to Item 101: 1. In determining what information about the segments is material to an understanding of the registrant's business taken as a whole and therefore required to be disclosed, pursuant to paragraph (c) of this Item, the registrant should take into account both quantitative and qualitative factors such as the significance of the matter to the registrant (e.g., whether a matter with a relatively minor impact on the registrant's business is represented by management to be important to its future profitability), the pervasiveness of the matter (e.g., whether it affects or may affect numerous items in the segment information), and the impact of the matter (e.g., whether it distorts the trends reflected in the segment information). Situations may arise when information should be disclosed about a segment, although the information in quantitative terms may not appear significant to the registrant's business taken as a whole.

2. Base the determination of whether information about segments is required for a particular year upon an evaluation of inter-period comparability. For instance, inter-period comparability would require a registrant to report segment information in the current period even if not material under the criteria for reportability of FASB ASC Topic 280, *Segment Reporting*, if a segment has been significant in the immediately preceding period and the registrant expects it to be significant in the future.

3. The Commission, upon written request of the registrant and where consistent with the protection of investors, may permit the omission of any of the information required by this Item or the furnishing in substi-

tution thereof of appropriate information of comparable character.

[47 FR 11401, Mar. 16, 1982, as amended at 63 FR 6381, Feb. 6, 1998; 64 FR 1734, Jan. 12, 1999; 67 FR 58504, Sept. 16, 2002; 70 FR 76641, Dec. 27, 2005; 73 FR 957, Jan. 4, 2008; 76 FR 50120, Aug. 12, 2011; 83 FR 50209, Oct. 4, 2018; 85 FR 63759, Oct. 8, 2020]

§ 229.102 (Item 102) Description of property.

To the extent material, disclose the location and general character of the registrant's principal physical properties. In addition, identify the segment(s), as reported in the financial statements, that use the properties described. If any such property is not held in fee or is held subject to an encumbrance that is material to the registrant, so state and describe briefly how held.

Instruction 1 to Item 102: This item requires information that will reasonably inform investors as to the suitability, adequacy, productive capacity, and extent of utilization of the principal physical properties of the registrant and its subsidiaries, to the extent the described properties are material. A registrant should engage in a comprehensive consideration of the materiality of its properties. If appropriate, descriptions may be provided on a collective basis; detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and shall not be given.

Instruction 2 to Item 102: In determining materiality under this Item, the registrant should take into account both quantitative and qualitative factors. See Instruction 1 to Item 101 of Regulation S-K (§ 229.101).

Instruction 3 to Item 102: Registrants engaged in mining operations must refer to and, if required, provide the disclosure under §§ 229.1300 through 229.1305 (subpart 1300 of Regulation S-K), in addition to any disclosure required by this section.

Instruction 4 to Item 102: A registrant engaged in oil and gas producing activities shall provide the information required by Subpart 1200 of Regulation S-K.

Instruction 5 to Item 102: The definitions in § 210.4-10(a) of Regulation S-X [17 CFR 210] shall apply to this Item with respect to oil and gas operations.

Instruction 6 to Item 102: The attention of certain issuers engaged in oil and gas producing activities is directed to the information called for in Securities Act Industry Guide 4 (referred to in § 229.801(d)).