

EDGAR FUNCTIONS

§ 232.501 Modular submissions and segmented filings.

An electronic filer may use the following procedures to submit information to the EDGAR system for subsequent inclusion in an electronic filing:

(a) *Modular submissions.* (1) One or more electronic format documents may be submitted for storage in the non-public EDGAR data storage area as a modular submission for subsequent inclusion in one or more electronic submissions.

(2) An electronic filer shall be permitted a maximum of ten modular submissions in the non-public EDGAR data storage area at any time, not to exceed a total of one megabyte of digital information. If an electronic filer attempts to submit a modular filing which would cause either of these limits to be exceeded, EDGAR will suspend the modular submission and notify the electronic filer by electronic mail. After six business days, the modular submission held in suspense will be deleted from the system.

(3) A modular submission may be corrected or amended only by resubmitting the entire modular submission.

(b) *Segmented filings.* (1) Segments of a document intended to become an electronic filing may be submitted to the non-public EDGAR data storage area for assembly as a segmented filing.

(2) Segments shall be submitted no more than six business days in advance of the anticipated filing date and are not limited in number or size. They may be submitted from several geographic locations by more than one filing entity. Segments may be included in only one electronic filing. Once used, segments will be removed from the non-public EDGAR data storage area. The assembly of segments into a segmented filing shall be effected pursuant to the applicable provisions of the EDGAR Filer Manual. If segments are not prepared in accordance with the EDGAR Filer Manual, the filing will not be constructed. The filing date of a segmented filing shall be the date upon which the filing is assembled and satisfies the requirements of Rule 13(a) of Regulation S-T (§ 232.13(a)).

(3) Segments may be corrected or amended only by resubmitting the entire segment.

(c) A modular submission or segment shall not:

(1) be publicly available;

(2) Be deemed filed with the Commission for purposes of Securities Act section 11 (15 U.S.C. 77k), Exchange Act section 18 (15 U.S.C. 78r), Trust Indenture Act section 323 (15 U.S.C. 77www), or Investment Company Act section 34(b) (15 U.S.C. 80a-33(b)) prior to its inclusion in a filing; or

(3) Be deemed to constitute an official filing prior to its inclusion in a filing under the federal securities laws. Once a modular submission or segment has been included in an electronic filing, the liability and anti-fraud provisions of the Securities Act, the Exchange Act, the Trust Indenture Act, and the Investment Company Act shall apply to the electronic filing.

[58 FR 14670, Mar. 18, 1993; 58 FR 21349, Apr. 21, 1993, as amended at 65 FR 24801, Apr. 27, 2000; 76 FR 71876, Nov. 21, 2011]

FOREIGN PRIVATE ISSUERS AND FOREIGN GOVERNMENTS

§§ 232.600–232.903 [Reserved]

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Sec.

239.0–1 Availability of forms.

Subpart A—Forms for Registration Statements

239.4–239.10 [Reserved]

239.11 Form S–1, registration statement under the Securities Act of 1933.

239.12 [Reserved]

239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

239.14 Form N–2, for closed-end management investment companies registered on Form N–8A.

239.15 [Reserved]

239.15A Form N–1A, registration statement of open-end management investment companies.

239.16 Form S–6, for unit investment trusts registered on Form N–8B–2.

239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be

- offered to employees pursuant to employee benefit plans.
- 239.17 [Reserved]
- 239.17a Form N-3, registration statement for separate accounts organized as management investment companies.
- 239.17b Form N-4, registration statement for separate accounts organized as unit investment trusts.
- 239.17c Form N-6, registration statement for separate accounts organized as unit investment trusts that offer variable life insurance policies.
- 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.
- 239.19 [Reserved]
- 239.20 Form S-20, for standardized options.
- 239.23 Form N-14, for the registration of securities issued in business combination transactions by investment companies and business development companies.
- 239.24 Form N-5, form for registration of small business investment company under the Securities Act of 1933 and the Investment Company Act of 1940.
- 239.25 Form S-4, for the registration of securities issued in business combination transactions.
- 239.26-239.30 [Reserved]
- 239.31 Form F-1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.
- 239.32 [Reserved]
- 239.33 Form F-3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.
- 239.34 Form F-4, for registration of securities of foreign private issuers issued in certain business combination transactions.
- 239.35 [Reserved]
- 239.36 Form F-6, for registration under the Securities Act of 1933 of depository shares evidenced by American Depositary Receipts.
- 239.37 Form F-7, for registration under the Securities Act of 1933 of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing securityholders.
- 239.38 Form F-8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.
- 239.39 [Reserved]
- 239.40 Form F-10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.
- 239.41 Form F-80, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.
- 239.42 Form F-X, for appointment of agent for service of process and undertaking for issuers registering securities on Form F-8, F-10, or F-80 (§§ 239.38, 239.39, 239.40, or 239.41), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F, or 14D-9F (§§ 240.13e-102, 240.14d-102, or 240.14d-103 of this chapter), by any non-U.S. person acting as trustee with respect to securities registered on Form F-7 (§ 239.37), F-8, F-10, or by a Canadian issuer qualifying an offering statement pursuant to Regulation A (§ 230.251 *et seq.* of this chapter) on Form 1-A (§ 239.90), or by any non-U.S. issuer providing Form CB (§ 249.480 of this chapter) to the Commission in connection with a tender offer, rights offering or business combination.
- 239.43 Form F-N, appointment of agent for service of process by foreign banks and foreign insurance companies and certain of their holding companies and finance subsidiaries making public offerings of securities in the United States.
- 239.44 Form SF-1, registration statement under the Securities Act of 1933 for offerings of asset-backed securities.
- 239.45 Form SF-3, for registration under the Securities Act of 1933 for offerings of asset-backed issuers offered pursuant to certain types of transactions.
- 239.46-239.62 [Reserved]
- 239.63 Form ID, uniform application for access codes to file on EDGAR.
- 239.64 Form SE, form for submission of paper format exhibits by electronic filers.
- 239.65 Form TH, Notification of reliance on temporary hardship exemption.

Subpart B—Forms Pertaining to Exemptions

- 239.90 Form 1-A, offering statement under Regulation A.
- 239.91 Form 1-K.
- 239.92 Form 1-SA.
- 239.93 Form 1-U.
- 239.94 Form 1-Z.
- 239.95-239.143 [Reserved]
- 239.144 Form 144, for notice of proposed sale of securities pursuant to § 230.144 of this chapter.
- 239.145-239.199 [Reserved]
- 239.200 Form 1-E, notification under Regulation E.
- 239.201 Form 2-E, report of sales pursuant to Rule 609 of Regulation E.
- 239.202-239.300 [Reserved]
- 239.500 Form D, notice of sales of securities under Regulation D and section 4(a)(5) of the Securities Act of 1933.
- 239.701 [Reserved]
- 239.800 Form CB, report of sales of securities in connection with an exchange offer or a rights offering.
- 239.900 xxx

§ 239.0-1

AUTHORITY: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, 80a-37, and sec. 71003 and sec. 84001, Pub. L. 114-94, 129 Stat. 1321, unless otherwise noted.

Sections 239.31, 239.32 and 239.33 are also issued under 15 U.S.C. 78l, 78m, 78o, 78w, 80a-8, 80a-29, 80a-30, 80a-37 and 12 U.S.C. 241.

Sections 239.63 and 239.64 are also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 80a-8, 80a-24, 80a-29, and 80a-37.

SOURCE: 33 FR 18991, Dec. 20, 1968, unless otherwise noted.

§ 239.0-1 Availability of forms.

(a) This part identifies and describes the forms prescribed for use under the Securities Act of 1933.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549. Any persons may inspect the forms at this address and at the Commission's regional offices. (See § 200.11 of this chapter for the addresses of the SEC regional offices.)

[46 FR 17757, Mar. 20, 1981, as amended at 47 FR 26820, June 22, 1982; 59 FR 5945, Feb. 9, 1994; 73 FR 970, Jan. 4, 2008]

Subpart A—Forms for Registration Statements

§§ 239.4-239.10 [Reserved]

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

This Form shall be used for the registration under the Securities Act of 1933 of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 229.1101(c).

[79 FR 57332, Sept. 24, 2014]

17 CFR Ch. II (4-1-23 Edition)

§ 239.12 [Reserved]

§ 239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

This instruction sets forth registrant requirements and transaction requirements for the use of Form S-3. Any registrant which meets the requirements of paragraph (a) of this section ("Registrant Requirements") may use this Form for the registration of securities under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in paragraph (b) of this section ("Transaction Requirement") provided that the requirement applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see paragraph (c) of this section. With respect to well-known seasoned issuers and majority-owned subsidiaries of well-known seasoned issuers, see paragraph (d) of this section.

(a) *Registrant requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of securities offered in the transactions specified in paragraph (b) of this section:

(1) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories.

(2) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (*Exchange Act*) or a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act;

(3) The registrant: (i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and

(ii) Has filed in a timely manner all reports required to be filed during the

twelve calendar months and any portion of a month immediately preceding the filing of the registration statement, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, 6.03 or 6.05 of Form 8-K (§249.308 of this chapter). If the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) §240.12b-25(b) of this chapter with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that section; and

(4) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of the last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (i) Failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted (A) on any installment or installments on indebtedness for borrowed money, or (B) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(5) A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in paragraph (a)(1) of this section relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (a)(3) of this section.

(6) If the registrant is a successor registrant, it shall be deemed to have met conditions in paragraph (a)(1), (2), (3), and (5) of this section if:

(i) 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

(ii) If all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(7) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S-T (§232.101 of this chapter) shall have:

(i) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S-T (§232.201 or §232.202(d) of this chapter); and

(ii) Submitted electronically to the Commission all Interactive Data Files required to be submitted pursuant to §232.405 of this chapter during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit such files).

(b) *Transaction requirements.* Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) *Primary and secondary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; *provided* that the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant is \$75 million or more.

Instruction to paragraph (b)(1): The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. See the definition of affiliate in Securities Act Rule 405 (§230.405 of this chapter).

(2) *Primary offerings of non-convertible securities other than common equity.* Non-convertible securities, other than common equity, to be offered for cash by or on behalf of a registrant, provided the registrant:

(i) Has issued (as of a date within 60 days prior to the filing of the registration statement) at least \$1 billion in non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered under the Securities Act, over the prior three years; or

(ii) Has outstanding (as of a date within 60 days prior to the filing of the registration statement) at least \$750 million of non-convertible securities, other than common equity, issued in primary offerings for cash, not exchange, registered under the Securities Act; or

(iii) is a wholly-owned subsidiary of a well-known seasoned issuer (as defined in 17 CFR 230.405); or

(iv) Is a majority-owned operating partnership of a real estate investment trust that qualifies as a well-known seasoned issuer (as defined in 17 CFR 230.405); or

(v) Discloses in the registration statement that it has a reasonable belief that it would have been eligible to use this Form S-3 as of September 1, 2011 because it is registering a primary offering of non-convertible investment grade securities, discloses the basis for such belief, and files a final prospectus for an offering pursuant to such registration statement on this Form S-3 on or before September 2, 2014.

Instruction to paragraph (b)(2). For purposes of paragraph (b)(2)(i) of this section, an insurance company, as defined in Section 2(a)(13) of the Securities Act of 1933 (15 U.S.C. 77b(a)(13)), when using this Form S-3 to register offerings of securities subject to regulation under the insurance laws of any State or Territory of the United States or the District of Columbia (“insurance contracts”), may include purchase payments or premium payments for insurance contracts, including purchase payments or premium payments for variable insurance contracts (not including purchase payments or premium payments initially allocated to investment options that are not registered under the Securities Act of 1933 (15 U.S.C. 77a)), issued in offerings registered under the Securities Act over the prior three years. For purposes of paragraph (b)(ii) of this section,

an insurance company, as defined in Section 2(a)(13) of the Securities Act of 1933, when using this Form S-3 to register offerings of insurance contracts, may include the contract value, as of the measurement date, of any outstanding insurance contracts, including variable insurance contracts (not including the value allocated as of the measurement date to investment options that are not registered under the Securities Act of 1933), issued in offerings registered under the Securities Act of 1933.

(3) *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if securities of the same class are listed and registered on a national securities exchange or are quoted on the automated quotation system of a national securities association. In addition, Form S-3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 (§ 239.16b of this chapter).

(4) *Rights offerings, dividend or interest reinvestment plans, and conversions, warrants and options.* (i) Securities to be offered:

(A) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a *pro rata* basis to all existing security holders of the class of securities to which the rights attach;

(B) Under a dividend or interest reinvestment plan; or

(C) Upon the conversion of outstanding convertible securities or the exercise of outstanding warrants or options issued by the issuer of the securities to be offered, or an affiliate of that issuer.

(ii) However, Form S-3 is available for registering these securities only if the issuer has sent, within the twelve calendar months immediately before the registration statement is filed, material containing the information required by § 240.14a-3(b) of this chapter under the Exchange Act to:

(A) All record holders of the rights;

(B) All participants in the plans; or

(C) All record holders of the convertible securities, warrants or options, respectively.

(iii) The issuer also must have provided, within the twelve calendar months immediately before the Form S-3 registration statement is filed, the information required by Items 401, 402 and 403 of Regulation S-K (§§ 229.401 through 229.403 of this chapter) to:

(A) Holders of rights exercisable for common stock;

(B) Holders of securities convertible into common stock; and

(C) Participants in plans that may invest in common stock, securities convertible into common stock, or warrants or options exercisable for common stock, respectively.

(5) This Form shall not be used to register offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

(c) *Majority-owned subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

(1) The registrant-sub-subsidiary itself meets the Registrant Requirements and the applicable Transaction Requirement;

(2) The parent of the registrant-sub-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirement in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities) are met;

(3) The parent of the registrant-sub-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and provides a full and unconditional guarantee, as defined in Rule 3-10 of Regulation S-X (§210.3-10 of this chapter), of the payment obligations on the securities being registered, and the securities being registered are non-convertible securities, other than common equity;

(4) The parent of the registrant-sub-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-sub-subsidiary being registered are full and unconditional guarantees, as defined in Rule 3-10 of Regulation S-X, of the payment obligations on the parent's non-convertible securities, other than common equity, being registered; or

(5) The parent of the registrant-sub-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-sub-subsidiary being registered are guarantees of the payment obligations on the non-convertible securities, other than common equity, being registered by another majority-owned subsidiary of the parent, where the parent provides a full and unconditional guarantee, as defined in Rule 3-10 of Regulation S-X, of such non-convertible securities.

NOTE TO PARAGRAPH (c): With regard to paragraphs (c)(3), (c)(4), and (c)(5) of this section, the guarantor is the issuer of a separate security consisting of the guarantee, which must be concurrently registered, but may be registered on the same registration statement as are the guaranteed non-convertible securities.

(d) *Automatic shelf offerings by well-known seasoned issuers.* Any registrant that is a well-known seasoned issuer as defined in Rule 405 (§230.405 of this chapter) at the most recent eligibility determination date specified in paragraph (2) of that definition may use this Form for registration under the Securities Act of securities offerings, other than pursuant to Rule 415(a)(1)(vii) or (viii) (§230.415(a)(1)(vii) or (viii) of this chapter), as follows:

(1) The securities to be offered are:

(i) Any securities to be offered pursuant to Rule 415, Rule 430A, or Rule 430B (§230.415, §230.430A, or §230.430B of this chapter) by:

(A) A registrant that is a well-known seasoned issuer by reason of paragraph (1)(i)(A) of the definition in Rule 405; or

(B) A registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 if the registrant also is eligible to register a primary offering of its securities pursuant to paragraph (b)(1) of this section;

(ii) Non-convertible securities, other than common equity, to be offered pursuant to Rule 415, Rule 430A, or Rule 430B by a registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 and does not fall within paragraph (b)(1) of this section;

(iii) Securities of majority-owned subsidiaries of the parent registrant to

be offered pursuant to Rule 415, Rule 430A, or Rule 430B if the parent registrant is a well-known seasoned issuer and the securities of the majority-owned subsidiary being registered meet the following requirements:

(A) Securities of a majority-owned subsidiary that is a well-known seasoned issuer at the time it becomes a registrant, other than by virtue of paragraph (1)(ii) of the definition of well-known seasoned issuer in Rule 405;

(B) Securities of a majority-owned subsidiary that are non-convertible securities, other than common equity, and the parent registration provides a full and unconditional guarantee, as defined in Rule 3-10 of Regulation S-X, of the payment obligations on the non-convertible securities;

(C) Securities of a majority-owned subsidiary that are a guarantee of:

(1) Non-convertible securities, other than common equity, of the parent registrant being registered;

(2) Non-convertible securities, other than common equity, of another majority-owned subsidiary being registered and the parent has provided a full and unconditional guarantee, as defined in Rule 3-10 of Regulation S-X, of the payment obligations on such non-convertible securities; or

(D) Securities of a majority-owned subsidiary that meet the conditions of the Transaction Requirement set forth in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities).

(iv) Securities to be offered for the account of any person other than the issuer ("selling security holders"), provided that the registration statement and the prospectus are not required to separately identify the selling security holders or the securities to be sold by such persons until the filing of a prospectus, prospectus supplement, post-effective amendment to the registration statement, or periodic or current report under the Exchange Act that is incorporated by reference into the registration statement and prospectus, identifying the selling security holders and the amount of securities to be sold by each of them and, if included in a periodic or current report, a prospectus or prospectus supplement is filed, as re-

quired by Rule 430B, pursuant to Rule 424(b)(7) (§ 230.424(b)(7) of this chapter);

(2) The registrant pays the registration fee pursuant to Rule 456(b) and Rule 457(r) (§ 230.456(b) and § 230.457(r) of this chapter) or in accordance with Rule 456(a) (§ 230.456(a) of this chapter);

(3) If the registrant is a majority-owned subsidiary, it is required to file and has filed reports pursuant to section 13 or section 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) and satisfies the requirements of this Form with regard to incorporation by reference or information about the majority-owned subsidiary is included in the registration statement (or a post-effective amendment to the registration statement);

(4) The registrant may register additional securities or classes of its or its majority-owned subsidiaries' securities on a post-effective amendment pursuant to Rule 413(b) (§ 230.413(b) of this chapter); and

(5) An automatic shelf registration statement and post-effective amendment will become effective immediately pursuant to Rule 462(e) and (f) (§ 230.462(e) and (f) of this chapter) upon filing. All filings made on or in connection with automatic shelf registration statements on this Form become public upon filing with the Commission.

(e) *Rights offerings by foreign private issuers.* A Foreign private issuer meeting eligibility requirements in paragraphs (a)(2) and (a)(3) of this section may use Form S-3 to register securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach. In complying with Item 11 of this Form, the registrant shall describe those material changes that have occurred since the end of the latest fiscal year for which certified financial statements were included in the registrant's latest filing on Form 20-F (17 CFR 249.220f). In complying with Item 12 of this Form, the registrant shall incorporate by reference its latest filing on Form 20-F. The registrant also shall:

(1) Furnish with the prospectus (or have furnished previously) to all its shareholders resident in the United

Securities and Exchange Commission

§ 239.16b

States, including those holding under American Depository Receipts or similar arrangements, a copy of its latest annual report to security holders, if in the English language. Such annual reports or prospectus shall contain the registrant's undertaking to send promptly to any such United States holder, upon written request, a copy of the registrant's latest filing on Form 20-F; or

(2) Furnish with the prospectus a copy of its latest filing on Form 20-F.

[47 FR 11453, Mar. 16, 1982, as amended at 56 FR 30055, July 1, 1991; 57 FR 48976, Oct. 29, 1992; 58 FR 14679, Mar. 18, 1993; 58 FR 16771, Mar. 31, 1993; 62 FR 26388, May 14, 1997; 64 FR 11116, Mar. 8, 1999; 69 FR 15618, Mar. 25, 2004; 70 FR 1618, Jan. 7, 2005; 70 FR 44820, Aug. 3, 2005; 74 FR 6816, Feb. 10, 2009; 79 FR 57332, Sept. 24, 2014; 83 FR 40877, Aug. 16, 2018]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.14 Form N-2 for closed end management investment companies registered on Form N-8A.

Form N-2 shall be used for registration under the Securities Act of 1933 of securities of all closed end management investment companies registered under the Investment Company Act of 1940 on form N-8A (§ 274.10 of this chapter). This form is also to be used for the registration statement of such companies pursuant to section 8(b) of the Investment Company Act of 1940 (§ 274.11a-1 of this chapter). This form is not applicable for small business investment companies which register pursuant to §§ 239.24 and 274.5 of this chapter.

[43 FR 39554, Sept. 5, 1978]

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

§ 239.15 [Reserved]

§ 239.15A Form N-1A, registration statement of open-end management investment companies.

Form N-1A shall be used for the registration under the Securities Act of 1933 of securities of open-end manage-

ment investment companies other than separate accounts of insurance companies registered under the Investment Company Act of 1940 (on form N-1) (§ 270.11 of this chapter). This form is also to be used for the registration statement of such companies pursuant to section 8(b) of the Investment Company Act of 1940 (§ 270.11A of this chapter). This form is not applicable for small business investment companies which register pursuant to §§ 239.24 and 274.5 of this chapter.

[48 FR 37940, Aug. 22, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N-1A, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.16 Form S-6, for unit investment trusts registered on Form N-8B-2.

This form may be used for registration under the Securities Act of 1933 of securities of any unit investment trust registered under the Investment Company Act of 1940 on Form N-8B-2 (§ 274.12 of this chapter).

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

(a) Any registrant that, immediately prior to the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to section 13 (15 U.S.C. 78m) or 15(d) (15 U.S.C. 78o(d)) of the Securities Exchange Act of 1934; has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials); is not a shell company (as defined in § 230.405 of this chapter) and has not been a shell company for at least 60 calendar days previously (subject to Instruction A.1.(a)(7) to Form S-8); and if it has been a shell company at any time previously, has filed current Form 10 information (as defined in

§ 239.17

17 CFR Ch. II (4–1–23 Edition)

Instruction A.1.(a)(6) to Form S-8) with the Commission at least 60 calendar days previously reflecting its status as an entity that is not a shell company (subject to Instruction A.1.(a)(7) to Form S-8), may use this form for registration under the Securities Act of 1933 (the Act) (15 U.S.C. 77a *et seq.*) of the following securities:

(1) Securities of the registrant to be offered to its employees or employees of its subsidiaries or parents under any employee benefit plan. The form also is available for the exercise of employee benefit plan options by an employee's family member (as defined in General Instruction A.1(a)(5) to Form S-8) who has acquired the options from the employee through a gift or a domestic relations order.

(2) Interests in the above plans, if such interests constitute securities and are required to be registered under the Act. (See Release No. 33-6188 (February 1, 1980) and section 3(a)(2) of the Act.)

(b) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S-T (§ 232.101 of this chapter) shall have:

(1) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S-T (§ 232.201 or § 232.202(d) of this chapter); and

(2) Submitted electronically to the Commission all Interactive Data Files required to be submitted pursuant to § 232.405 of this chapter during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit such files).

[55 FR 23925, June 13, 1990, as amended at 58 FR 14680, Mar. 18, 1993; 64 FR 11116, Mar. 8, 1999; 70 FR 42246, July 21, 2005; 74 FR 6817, Feb. 10, 2009; 83 FR 40877, Aug. 16, 2018]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.17 [Reserved]

§ 239.17a Form N-3, registration statement for separate accounts organized as management investment companies.

Form N-3 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable annuity contracts and which register under the Investment Company Act of 1940 as management investment companies, and certain other separate accounts. This form is also to be used for the registration statement of such separate accounts pursuant to section 8(b) of the Investment Company Act of 1940 (§ 274.11b of this chapter).

[50 FR 26160, June 25, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.17b Form N-4, registration statement for separate accounts organized as unit investment trusts.

Form N-4 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable annuity contracts and which register under the Investment Company Act of 1940 as unit investment trusts, and certain other separate accounts. This form is also to be used for the registration statement of such separate accounts pursuant to section 8(b) of the Investment Company Act of 1940 (§ 274.11c of this chapter).

[50 FR 26160, June 25, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N-4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.17c Form N-6, registration statement for separate accounts organized as unit investment trusts that offer variable life insurance policies.

Form N-6 shall be used for registration under the Securities Act of 1933 of securities of separate accounts that offer variable life insurance policies and that register under the Investment

Securities and Exchange Commission

§ 239.24

Company Act of 1940 as unit investment trusts. This form is also to be used for the registration statement of such separate accounts pursuant to section 8(b) of the Investment Company Act of 1940 (§274.11d of this chapter).

[67 FR 19870, Apr. 23, 2002]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N-6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

This form shall be used for registration under the Securities Act of 1933 of (a) securities issued by real estate investment trusts, as defined in section 356 of the Internal Revenue Code, or (b) securities issued by other issuers whose business is primarily that of acquiring and holding for investment real estate or 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. This form shall not be used, however, by any issuer which is an investment company registered or required to register under the Investment Company Act of 1940. In addition, this form shall not be used for an offering of asset-backed securities, as defined in §229.1101 of this chapter.

[33 FR 18991, Dec. 20, 1968, as amended at 70 FR 1619, Jan. 7, 2005]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.19 [Reserved]

§ 239.20 Form S-20, for standardized options.

This form may be used to register standardized options under the Securities Act of 1933 where the issuer undertakes not to issue, clear, guarantee or accept an option registered on Form S-20 unless there is a definitive options disclosure document meeting the re-

quirements of Rule 9b-1 of the Securities Exchange Act of 1934.

[47 FR 41955, Sept. 23, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-20, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.23 Form N-14, for the registration of securities issued in business combination transactions by investment companies and business development companies.

This form shall be used by a registered investment company or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940 for registration under the Securities Act of 1933 of securities to be issued:

(a) In a transaction of the type specified in paragraph (a) of Rule 145 (§230.145 of this chapter);

(b) In a merger in which the applicable state law would not require the solicitation of the votes or consents of all the security holders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any such securities acquired pursuant to this registration statement;

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

[50 FR 48383, Nov. 25, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N-14, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.24 Form N-5, form for registration of small business investment company under the Securities Act of 1933 and the Investment Company Act of 1940.

This form shall be used for registration under the Securities Act of 1933 of securities issued by any small business investment company which is registered under the Investment Company Act of 1940, and which is licensed under the Small Business Investment Company Act of 1958 or which has received the preliminary approval of the Small

§ 239.25

Business Administration and has been notified by the Administration that it may submit a license application. This form may also be used for the registration statement of such company pursuant to section 8(b) of the Investment Company Act of 1940. The initial registration of such company on this form will be deemed to be filed under both the Securities Act of 1933 and the Investment Company Act of 1940 unless it is indicated that the filing is made only for the purpose of one of such acts. (Same as § 274.5 of this chapter.)

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N-5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.25 Form S-4, for the registration of securities issued in business combination transactions.

This form may be used for registration under the Securities Act of 1933 of securities to be issued (a) in a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (b) in a merger in which the applicable state law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (c) in an exchange offer for securities of the issuer or another entity; (d) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (e) in more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

[50 FR 19001, May 6, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§§ 239.26-239.30 [Reserved]

§ 239.31 Form F-1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.

(a) Form F-1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers, as defined in rule 405 (§ 230.405 of this chapter) for

17 CFR Ch. II (4-1-23 Edition)

which no other form is authorized or prescribed. In addition, this form shall not be used for an offering of asset-backed securities, as defined in § 229.1101 of this chapter.

(b) If a registrant is a majority-owned subsidiary, which does not itself meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on the form described in § 249.229f (Form 20-F) of this chapter after the effective date of the registration statement, then it shall disclose the information specified in the form described in § 239.11 (Form S-1) of this chapter. The requirements of § 210.3-10 (Rule 3-10 of Regulation S-X) of this chapter are applicable to financial statements for a subsidiary of a parent company that issues securities guaranteed by the parent company.

[47 FR 54771, Dec. 6, 1982, as amended at 56 FR 30055, 30056, July 1, 1991; 70 FR 1619, Jan. 7, 2005]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.32 [Reserved]

§ 239.33 Form F-3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

This instruction set forth registrant requirements and transaction requirements for the use of Form F-3. Any foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), which meets the requirements of paragraph

(a) of this section (the “Registrant Requirements”) may use this Form for the registration of securities under the Securities Act of 1933 (the “Securities Act”) which are offered in any transaction specified in paragraph (b) of this section (the “Transaction Requirements”), provided that the requirements applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see paragraph (a)(5) of this section. With respect to well-known seasoned issuers and majority-owned subsidiaries of well-known seasoned issuers, see paragraph (c) of this section.

(a) *Registrant requirements.* Except as set forth in this paragraph (a), all registrants must meet the following conditions in order to use this Form F-3 for registration under the Securities Act of securities offered in the transactions specified in paragraph (b) of this section:

(1) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (“Exchange Act”) or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed at least one annual report on Form 20-F (§249.220f of this chapter), on Form 10-K (§249.310 of this chapter) or, in the case of registrants described in General Instruction A(2) of Form 40-F, on Form 40-F (§249.240f of this chapter) under the Exchange Act.

(2) The registrant:

(i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) of the Exchange Act for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this form; and

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during those twelve calendar months and that portion of a month) §240.12b-25(b) of this chapter with respect to a report or a portion of a report, that report or

portion thereof has actually been filed within the time period prescribed by §240.12b-25(b) of this Chapter.

(3) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (i) Failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted (A) on any installment or installments on indebtedness for borrowed money, or (B) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(4) If the registrant is a successor registrant, it shall be deemed to have met conditions 1, 2, 3 and 4 above if: (i) Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state or other jurisdiction 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 (ii) all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(5) *Majority-owned subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this form if:

(i) The registrant-subsiary itself meets the Registrant Requirements and the applicable Transaction Requirement;

(ii) The parent of the registrant-subsiary meets the Registrant Requirements and the conditions of the Transaction Requirement set forth in paragraph (b)(2) of this section (Offerings of Certain Debt or Preferred Securities) are met;

(iii) The parent of the registrant-subsiary meets the Registrant Requirements and the applicable Transaction Requirement, and provides a full and unconditional guarantee, as defined in Rule 3-10 of Regulation S-X (§210.33-10

of this chapter), of the payment obligation on the securities being registered, and the securities being registered are non-convertible securities, other than common equity;

(iv) The parent of the registrant-sub-sidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-sub-sidiary being registered are full and unconditional guarantees, as defined in Rule 3–10 of Regulation S-X, of the payment obligations on the parent's non-convertible securities, other than common equity, being registered; or

(v) The parent of the registrant-sub-sidiary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-sub-sidiary being registered are guarantees of the payment obligations on the non-convertible securities, other than common equity, being registered by another majority-owned subsidiary of the parent, where the parent provides a full and unconditional guarantee, as defined in Rule 3–10 of Regulation S-X, of such non-convertible securities.

NOTE 1 TO PARAGRAPH (a)(5): In the situations described in paragraphs (a)(5)(iii) through (v) of this section, the parent or majority-owned subsidiary guarantor is the issuer of a separate security consisting of the guarantee, which must be concurrently registered, but may be registered on the same registration statement as are the guaranteed non-convertible securities. Both the parent and majority-owned subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the majority-owned subsidiary will not be eligible to file annual reports on the forms described in § 249.220f (Form 20–F) or § 249.240f (Form 40–F) of this chapter after the effective date of the registration statement, then it shall disclose the information specified in the form described in § 239.13 (Form S-3) of this chapter. The requirements of § 210.3–10 (Rule 3–10 of Regulation S-X) of this chapter are applicable to financial statements of a subsidiary of a parent company that issues securities guaranteed by the parent company or guarantees securities issued by the parent company.

(6) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regula-

tion S-T (§ 232.101 of this chapter) shall have:

(i) Filed with the Commission all required electronic filings, including electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S-T (§ 232.201 or § 232.202(d) of this chapter); and

(ii) Submitted electronically to the Commission all Interactive Data Files required to be submitted pursuant to § 232.405 of this chapter during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form (or for such shorter period of time that the registrant was required to submit such files).

(b) *Transaction requirements.* Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, *provided* that the aggregate market value worldwide of the voting and non-voting common equity held by non-affiliates of the registrant is the equivalent of \$75 million or more. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

Instruction to paragraph (b)(1): The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 60 days prior to the date of filing. *See* the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

(2) *Primary offerings of non-convertible securities other than common equity.* Non-convertible securities, other than common equity, to be offered for cash by or on behalf of a registrant, *provided* the registrant:

(i) Has issued (as of a date within 60 days prior to the filing of the registration statement) at least \$1 billion in non-convertible securities, other than common equity, in primary offerings for cash, not exchange, registered

under the Securities Act, over the prior three years; or

(ii) Has outstanding (as of a date within 60 days prior to the filing of the registration statement) at least \$750 million of non-convertible securities, other than common equity, issued in primary offerings for cash, not exchange, registered under the Securities Act of 1933 (15 U.S.C. 77a); or

(iii) Is a wholly-owned subsidiary of a well-known seasoned issuer (as defined in 17 CFR 230.405); or

(iv) Is a majority-owned operating partnership of a real estate investment trust that qualifies as a well-known seasoned issuer (as defined in 17 CFR 230.405); or

(v) Discloses in the registration statement that it has a reasonable belief that it would have been eligible to use Form F-3 as of September 1, 2011 because it is registering a primary offering of non-convertible investment grade securities, discloses the basis for such belief, and files a final prospectus for an offering pursuant to such registration statement on Form F-3 on or before September 2, 2014.

Instruction to paragraph (b)(2). For purposes of paragraph (b)(2)(i) of this section, an insurance company, as defined in Section 2(a)(13) of the Securities Act of 1933 (15 U.S.C. 77b(a)(13)), when using this Form F-3 to register offerings of securities subject to regulation under the insurance laws of any State or Territory of the United States or the District of Columbia ("insurance contracts"), may include purchase payments or premium payments for insurance contracts, including purchase payments or premium payments for variable insurance contracts (not including purchase payments or premium payments initially allocated to investment options that are not registered under the Securities Act of 1933 (15 U.S.C. 77a)), issued in offerings registered under the Securities Act of 1933 over the prior three years. For purposes of paragraph (b)(ii) of this section, an insurance company, as defined in Section 2(a)(13) of the Securities Act of 1933, when using this Form F-3 to register offerings of insurance contracts, may include the contract value, as of the measurement date, of any outstanding insurance contracts, including variable insurance contracts (not including the value allocated as of the measurement date to investment options that are not registered under the Securities Act of 1933), issued in offerings registered under the Securities Act of 1933.

(3) *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In the case of such securities, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F (§ 249.220f of this chapter). In addition, Form F-3 (§ 239.33) may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 (§ 239.16b). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20-F (§ 249.220f of this chapter).

(4) *Rights offerings, dividend or interest reinvestment plans, and conversions or warrants.* Securities to be offered:

(i) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or

(ii) Pursuant to a dividend or interest reinvestment plan; or

(iii) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F (§ 249.220f of this chapter). The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs (b) (1), (2) and (3) of this section.

(c) *Automatic shelf offerings by well-known seasoned issuers.* Any registrant that is a well-known seasoned issuer as defined in Rule 405 (§ 230.405 of this chapter) at the most recent eligibility determination date specified in paragraph (2) of such definition may use this Form for registration under the Securities Act of securities offerings, other than pursuant to Rule

415(a)(1)(vii) or (viii) (§ 230.415(a)(1)(vii) or (viii) of this chapter), as follows:

(1) The securities to be offered are:

(i) Any securities to be offered pursuant to Rule 415, Rule 430A, or Rule 430B (§ 230.415, § 230.430A, or § 230.430B of this chapter) by:

(A) A registrant that is a well-known seasoned issuer by reason of paragraph (1)(i)(A) of the definition in rule 405; or

(B) A registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 if the registrant also is eligible to register a primary offering of its securities pursuant to paragraph (b)(1) of this section;

(ii) Non-convertible securities, other than common equity, to be offered pursuant to Rule 415, Rule 430A, or Rule 430B by a registrant that is a well-known seasoned issuer only by reason of paragraph (1)(i)(B) of the definition in Rule 405 and does not fall within paragraph (b)(1) of this section;

(iii) Securities of majority-owned subsidiaries of the parent registrant to be offered pursuant to Rule 415, Rule 430A, or Rule 430B if the parent registrant is a well-known seasoned issuer and the securities of the majority-owned subsidiary being registered meet the following requirements:

(A) Securities of a majority-owned subsidiary that is a well-known seasoned issuer at the time it becomes a registrant, other than by virtue of paragraph (1)(ii) of the definition of well-known seasoned issuer in Rule 405;

(B) Securities of a majority-owned subsidiary that are non-convertible securities, other than common equity, and the parent registrant provides a full and unconditional guarantee, as defined in Rule 3-10 of Regulation S-X, of the payment obligations on the non-convertible securities;

(C) Securities of a majority-owned subsidiary that are a guarantee of:

(1) Non-convertible securities, other than common equity, of the parent registrant being registered;

(2) Non-convertible securities, other than common equity, of another majority-owned subsidiary being registered and the parent registrant has provided a full and unconditional guarantee, as defined in Rule 3-10 of Regulation S-X,

of the payment obligations on such non-convertible securities; or

(D) Securities of a majority-owned subsidiary that meet the conditions of the Transaction Requirement set forth in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade securities).

(iv) Securities to be offered for the account of any person other than the issuer (“selling security holders”), provided that the registration statement and the prospectus are not required to separately identify the selling security holders or the securities to be sold by such persons until the filing of a prospectus, prospectus supplement, post-effective amendment to the registration statement, or report under the Exchange Act that is incorporated by reference into the registration statement and prospectus, identifying the selling security holders and the amount of securities to be sold by each of them and, if included in a report under the Exchange Act that is incorporated by reference, a prospectus or prospectus supplement is filed, as required by Rule 430B, pursuant to Rule 424(b)(7) (§ 230.424(b)(7) of this chapter).

(2) The registrant pays the registration fee pursuant to Rules 456(b) and 457(r) (§ 230.456(b) and § 230.457(r) of this chapter) or in accordance with Rule 456(a) (§ 230.456(a) of this chapter);

(3) If the registrant is a majority-owned subsidiary, it is required to file and has filed reports pursuant to section 13 or section 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) and satisfies the requirements of this Form with regard to incorporation by reference or information about the majority-owned subsidiary is included in the registration statement (or a post-effective amendment to the registration statement);

(4) The registrant may register additional securities or classes of its or its subsidiaries’ securities on a post-effective amendment pursuant to Rule 413(b) (§ 230.413(b) of this chapter); and

(5) An automatic shelf registration statement and post-effective amendment will become effective immediately pursuant to Rule 462(e) and (f) (§ 230.462(e) and (f) of this chapter) upon filing. All filings made on or in connection with automatic shelf registration

Securities and Exchange Commission

§ 239.37

statements on this Form become public upon filing with the Commission.

[47 FR 54776, Dec. 6, 1982, as amended at 56 FR 30055, 30057, July 1, 1991; 58 FR 14681, Mar. 18, 1993; 59 FR 21652, Apr. 26, 1994; 62 FR 26388, May 14, 1997; 70 FR 1620, Jan. 7, 2005; 70 FR 44825, Aug. 3, 2005; 74 FR 6817, Feb. 10, 2009; 83 FR 40877, Aug. 16, 2018]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.34 Form F-4, for registration of securities of foreign private issuers issued in certain business combination transactions.

This form may be used by any foreign private issuer, as defined in rule 405 (§ 230.405 of this chapter), for registration under the Securities Act of 1933 (“Securities Act”) of securities to be issued:

(a) In a transaction of the type specified in paragraph (a) of rule 145 (§ 230.145 of this chapter);

(b) In a merger in which the applicable law would not require the solicitation of the votes or consents of all of the securityholders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any such securities acquired pursuant to this registration statement; or

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

[56 FR 30058, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.35 [Reserved]

§ 239.36 Form F-6, for registration under the Securities Act of 1933 of depositary shares evidenced by American Depositary Receipts.

Form F-6 may be used for the registration under the Securities Act of 1933 (the *Securities Act*) of Depositary shares evidenced by American Depositary Receipts (*ADRs*) issued by a depositary against the deposit of the securi-

ties of a foreign issuer (regardless of the physical location of the certificates) if the following conditions are met:

(a) The holder of the ADRs is entitled to withdraw the deposited securities at any time subject only to (1) temporary delays caused by closing transfer books of the depositary or the issuer of the deposited securities or the deposit of shares in connection with voting at a shareholders’ meeting, or the payment of dividends, (2) the payment of fees, taxes, and similar charges, and (3) compliance with any laws or governmental regulations relating to ADRs or to the withdrawal of deposited securities;

(b) The deposited securities are offered or sold in transactions registered under the Securities Act or in transactions that would be exempt therefrom if made in the United States; and

(c) As of the filing date of this registration statement, the issuer of the deposited securities is reporting pursuant to the periodic reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 or the deposited securities are exempt therefrom by Rule 12g3-2(b) (§ 240.12g3-2(b) of this chapter) unless the issuer of the deposited securities concurrently files a registration statement on another form for the deposited securities.

[48 FR 12348, Mar. 24, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.37 Form F-7, for registration under the Securities Act of 1933 of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing securityholders.

(a) Form F-7 may be used for the registration under the Securities Act of 1933 (the “Securities Act”) of the registrant’s securities offered for cash upon the exercise of rights to purchase or subscribe for such securities that are granted to its existing securityholders in proportion to the number of securities held by them as of the record date for the rights offer.

(b) Form F-7 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer; and

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting.

Instruction: For purposes of this Form, “foreign private issuer” shall be construed in accordance with Rule 405 under the Securities Act.

(c) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a “business combination”), the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies’ most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case

satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies’ most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(d) The rights in connection with the transaction granted to securityholders that are U.S. holders shall be granted upon terms and conditions not less favorable than those extended to any other holder of the same class of securities. The securities offered or sold upon exercise of rights granted to U.S. holders may not be registered on this Form if such rights are transferable other than in accordance with Regulation S under the Securities Act.

Instruction: For purposes of this Form, the term “U.S. holder” shall mean any person whose address appears on the records of the registrant, any voting trustee, any depository, any share transfer agent or any person acting on behalf of the registrant as being located in the United States.

(e) This Form shall not be used if the registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

(f) Any non-U.S. person acting as trustee with respect to the securities

being registered shall file a Form F-X (§239.42 of this chapter) with the Commission at the time of filing this Form.

[56 FR 30060, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.38 Form F-8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F-8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

(b) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(c) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction: For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(d) In the case of an exchange offer, Form F-8 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada, or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) \$75 million or more; *provided, however*, that such public float requirement need not be satisfied if the issuer of the securities to be exchanged is also the registrant on this Form.

Instructions: 1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(e) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the securities to be exchanged (the “subject securities”) for the securities of the registrant.

(f) In the case of an exchange offer, if the registrant is a successor registrant subsisting after a business combination, the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (d)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies’ most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from

continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies’ most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(g) In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 25 percent of the class of subject securities outstanding shall be held by U. S. holders.

Instructions: 1. For purposes of exchange offers, the term “U. S. holder” shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with rule 14d-1(b) under the Securities Exchange Act of 1934 (the “Exchange Act”), the issuer of the subject securities will be presumed to be a foreign private issuer and U. S. holders will be presumed to hold less than 25 percent of such outstanding securities, *unless* (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. (“CDN”) over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U. S. holders hold 25

percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U. S. ownership equals or exceeds 25 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E-4F, Schedule 14D-1F, and/or Form F-8 or Form F-80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U. S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

(h) In the case of a business combination, Form F-8 is available if:

(1) Each company participating in the business combination, including the successor registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) Each company participating in the business combination other than the successor registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however*, that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the

participating companies' most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) The aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination other than the successor registrant is (CN) \$75 million or more; *provided, however*, that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further*, that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F-8, Form F-10 or Form F-80, or a tender offer in connection with which Schedule 13E-4F or 14D-1F was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

(i) In the case of a business combination, less than 25 percent of the class of securities to be offered by the successor registrant shall be held by U.S. holders as if measured immediately after completion of the business combination.

Instructions: 1. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U.S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

§ 239.39

(j) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities, is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F-X (§239.42 of this chapter) with the Commission at the time of filing this Form.

[56 FR 30061, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-8, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.39 [Reserved]

§ 239.40 Form F-10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.

(a) Form F-10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act"), including securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination").

(b) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction: For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exer-

17 CFR Ch. II (4-1-23 Edition)

cises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(c) Form F-10 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 12 calendar months immediately preceding the filing of this Form, and is currently in compliance with such obligations, *provided, however*, that in the case of a business combination, each participating company other than the successor registrant must meet such 12-month reporting obligation, except that any such participating company shall not be required to meet such reporting requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting requirement; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of \$75 million or more; *provided, however*, that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each participating company other than the successor registrant is \$75 million or more, except that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public

Securities and Exchange Commission

§ 239.40

float requirement; and *provided, further*, that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F-8, Form F-10 or Form F-80 (§§ 239.38, 239.39, 239.40 or 239.41) or a tender offer in connection with which Schedule 13E-4F or 14D-1F (§§ 240.13e-102 or 240.14d-102 of this chapter) was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

Instructions: 1. For purposes of this Form, “foreign private issuer” shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, the “public float” of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

3. For purposes of this Form, “equity shares” shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(d) In the case of an exchange offer, the issuer of the securities to be exchanged (the “subject securities”) for securities of the registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

(e) In the case of a business combination, each participating company shall be incorporated or organized under the laws of Canada or any Canadian prov-

ince or territory and be a foreign private issuer.

(f) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the subject securities.

(g) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

Instructions: 1. For purposes of exchange offers, the term “U.S. holder” shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of business combinations, the term “U.S. holder” shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

3. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

(h) With respect to registration of debt securities or preferred securities on this Form, if the registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of paragraphs (c)(3) and (c)(4) of this section if the parent of the registrant-subsidary meets the requirements of paragraph (c) of this section and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares); *provided, however*, that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

(i) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the 12-month reporting requirement of paragraph (c)(3) of this section if:

§ 239.41

17 CFR Ch. II (4-1-23 Edition)

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 12-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(j) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F-X (§239.42 of this chapter) with the Commission at the time of filing this Form.

[56 FR 30064, July 1, 1991, as amended at 58 FR 62030, Nov. 23, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-10, see the List of

CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.41 Form F-80, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F-80 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

(b) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(c) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction: For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(d) In the case of an exchange offer, Form F-80 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) \$75 million or more; *provided, however*, that such public float requirement need not be satisfied if the issuer of the securities to be exchanged is also the registrant on this Form.

Instructions: 1. For purposes of this Form, “foreign private issuer” shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, “equity shares” shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

3. For purposes of this Form, the “public float” of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, the market value of the public float of outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(e) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U. S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the securities to be exchanged (the “subject secu-

rities”) for the securities of the registrant.

(f) In the case of an exchange offer, if the registrant is a successor registrant subsisting after a business combination, the registrant shall be deemed to meet the 36-month reporting requirement and the 12-month listing requirement of paragraph (d) (3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies’ most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 36-month reporting requirement;

(2) The time the successor registrant has been subject to the listing requirements of the specified exchanges, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the listing history calculation if the listing histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies’ most recently completed fiscal years immediately prior to the business combination, when combined with the listing history of

the successor registrant in each case satisfy such 12-month listing requirement; and

(3) The successor registrant has been subject to such continuous disclosure requirements and listing requirements since the business combination, and is currently in compliance with its obligations thereunder.

(g) In the case of an exchange offer, the issuer of the subject securities shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer, and less than 40 percent of the class of subject securities outstanding shall be held by U.S. holders.

Instructions: 1. For purposes of exchange offers, the term “U.S. holder” shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d-1(b) under the Securities Exchange Act of 1934 (the “Exchange Act”), the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. (“CDN”) over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 40 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S. ownership equals or exceeds 40 percent of such securities.

3. For purposes of this Form, if this Form is filed during the pendency of one or more ongoing cash tender or exchange offers for

securities of the class subject to the offer that was commenced or was eligible to be commenced on Schedule 13E-4F, Schedule 14D-1F, and/or Form F-8 or Form F-80, the date for calculation of U.S. ownership shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U.S. holders shall be made as of the end of the subject issuer’s last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer’s preceding quarter.

(h) In the case of a business combination, Form F-80 is available if:

(1) Each company participating in the business combination, including the successor registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer;

(2) Each company participating in the business combination other than the successor registrant has had a class of its securities listed on The Montreal Exchange, The Toronto Stock Exchange or the Senior Board of the Vancouver Stock Exchange for the 12 calendar months immediately preceding the filing of this Form, has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form, and is currently in compliance with obligations arising from such listing and reporting; *provided, however*, that any such participating company shall not be required to meet such 36-month reporting requirement or 12-month listing requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies’ most recently completed fiscal years, each meet such reporting and listing requirements; and

(3) The aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination other than

Securities and Exchange Commission

§ 239.42

the successor registrant is (CN) \$75 million or more; *provided, however*, that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and, *provided further*, that such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F-8, Form F-10 or Form F-80, or a tender offer in connection with which Schedule 13E-4F or 14D-1F was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

(i) In the case of a business combination, less than 40 percent of the class of securities to be offered by the successor registrant shall be held by U.S. holders, as if measured immediately after completion of the business combination.

Instructions: 1. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

2. For purposes of business combinations, the calculation of U.S. holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

(j) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F-X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

[56 FR 30065, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-80, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.42 Form F-X, for appointment of agent for service of process and undertaking for issuers registering securities on Form F-8, F-10, or F-80 (§§ 239.38, 239.39, 239.40, or 239.41), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F, or 14D-9F (§§ 240.13e-102, 240.14d-102, or 240.14d-103 of this chapter), by any non-U.S. person acting as trustee with respect to securities registered on Form F-7 (§ 239.37), F-8, F-10, or by a Canadian issuer qualifying an offering statement pursuant to Regulation A (§ 230.251 *et seq.* of this chapter) on Form 1-A (§ 239.90), or by any non-U.S. issuer providing Form CB (§ 249.480 of this chapter) to the Commission in connection with a tender offer, rights offering or business combination.

Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Form F-8, F-10, or F-80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40-F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40-F, if it has not previously filed a Form F-X in connection with the class of securities in relation to which the obligation to file a report on Form 40-F arises;

§ 239.43

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F, or 14D-9F;

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F-7, F-8, F-10, or F-80;

(f) By a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A; and

(g) By any non-U.S. issuer providing Form CB to the Commission in connection with a tender offer, rights offering or business combination.

[73 FR 972, Jan. 4, 2008, as amended at 76 FR 46620, Aug. 3, 2011]

§ 239.43 Form F-N, appointment of agent for service of process by foreign banks and foreign insurance companies and certain of their holding companies and finance subsidiaries making public offerings of securities in the United States.

Form F-N shall be filed with the Commission in connection with the filing of a registration statement under the Act by those entities specified in rule 489 (17 CFR 230.489).

[56 FR 56299, Nov. 4, 1991]

§ 239.44 Form SF-1, registration statement under the Securities Act of 1933 for offerings of asset-backed securities.

This Form shall be used for registration under the Securities Act of 1933 of all offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

[79 FR 57333, Sept. 24, 2014]

§ 239.45 Form SF-3, for registration under the Securities Act of 1933 for offerings of asset-backed issuers offered pursuant to certain types of transactions.

This Form may be used for registration under the Securities Act of 1933 ("Securities Act") of offerings of asset-backed securities, as defined in 17 CFR 229.1101(c). Any registrant which meets the requirements of paragraph (a) of this section may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act which are offered in any transaction specified in paragraph (b) of this section provided that the requirements applicable to the specified transaction are met. Terms used have

17 CFR Ch. II (4-1-23 Edition)

the same meaning as in Item 1101 of Regulation AB (17 CFR 229.1101).

(a) *Registrant requirements.* Registrants must meet the following conditions in order to use this Form for registration under the Securities Act of asset-backed securities offered in the transactions specified in paragraph (b) of this section:

(1) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in paragraphs (b)(1)(i) through (iv) of this section with respect to a previous offering of asset-backed securities involving the same asset class, the following requirements shall apply:

(i) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by paragraph (b)(1)(i) of this section; and

(ii) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provisions that are required by paragraphs (b)(1)(ii) through (iv) of this section.

(iii) If such depositor or issuing entity fails to meet the requirements of paragraphs (a)(1)(i) and (ii) of this section, such depositor or issuing entity will be deemed to satisfy such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section; provided however that if the information is filed within 90 days of evaluating compliance with this paragraph (a) such depositor and issuing entity will be deemed to have been in compliance with such requirements for purposes of this Form 90 days after the date it files the information required by paragraphs (a)(1)(i) and (ii) of this section.

Instruction to paragraph (a)(1). The registrant must provide disclosure in a prospectus that is part of the registration statement that it has met the registrant requirements of paragraph (a)(1) of this section.

(2) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) is or was at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78l or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8-K (17 CFR 249.308). If § 240.12b-25(b) of this chapter was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by § 240.12b-25(b) of this chapter. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of “affiliate” in § 230.405 of this chapter.

(b) *Transaction Requirements.* If the registrant meets the registrant requirements specified in paragraph (a) of this section, an offering meeting the following conditions may be registered on this Form SF-3:

(1) Asset-backed securities (as defined in § 229.1101(c) of this chapter) to

be offered for cash where the following have been satisfied:

(i) *Certification.* The registrant files a certification in accordance with Item 601(b)(36) of Regulation S-K (§ 229.601(b)(36) of this chapter) signed by the chief executive officer of the depositor with respect to each offering of securities that is registered on this Form.

(ii) *Asset review provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) The selection and appointment of an asset representations reviewer that is not:

(1) Affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates; or

(2) The same party or an affiliate of any party hired by the sponsor or the underwriter to perform pre-closing due diligence work on the pool assets;

(B) The asset representations reviewer shall have authority to access copies of any underlying documents related to performing a review of the pool assets;

(C) The asset representations reviewer shall be responsible for reviewing the underlying assets for compliance with the representations and warranties on the pool assets, and shall not otherwise be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. Reviews shall be required under the transaction documents, at a minimum, when the following conditions are met:

(1) A threshold of delinquent assets, as specified in the transaction agreements, has been reached or exceeded; and

(2) An investor vote to direct a review, pursuant to the processes specified in the transaction agreements, provided that the agreement not require more than:

(i) 5% of the total interest in the pool in order to initiate a vote and

(ii) A simple majority of those interests casting a vote to direct a review by the asset representations reviewer;

(D) The asset representations reviewer shall perform, at a minimum, reviews of all assets 60 days or more delinquent when the conditions specified in paragraph (b)(1)(ii)(C) of this section are met; and

(E) The asset representations reviewer shall provide a report to the trustee of the findings and conclusions of the review of the assets.

Instruction to paragraph (b)(1)(ii). The threshold of delinquent assets shall be calculated as a percentage of the aggregate dollar amount of delinquent assets in a given pool to the aggregate dollar amount of all the assets in that particular pool, measured as of the end of the reporting period. If the transaction has multiple sub-pools, the transaction agreements must provide that:

1. The delinquency threshold shall be calculated with respect to each sub-pool; and
2. The investor vote calculation shall be measured as a percentage of investors' interest in each sub-pool.

(iii) *Dispute resolution provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must provide for the following:

(A) If an asset subject to a repurchase request, pursuant to the terms of the transaction agreements, is not resolved by the end of a 180-day period beginning when notice of the request is received, then the party submitting such repurchase request shall have the right to refer the matter, at its discretion, to either mediation or third-party arbitration, and the party obligated to repurchase must agree to the selected resolution method.

(B) If the party submitting the request elects third-party arbitration, the arbitrator shall determine the allocation of any expenses. If the party submitting the request elects mediation, the parties shall mutually determine the allocation of any expenses.

(iv) *Investor communication provision.* With respect to each offering of securities that is registered on this Form, the pooling and servicing agreement or other transaction agreement, which shall be filed, must contain a provision requiring that the party responsible for making periodic filings on Form 10-D (§249.312 of this chapter) include in the Form 10-D any request received during

the reporting period from an investor to communicate with other investors related to investors exercising their rights under the terms of the transaction agreements. The disclosure regarding the request to communicate is required to include no more than the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10-D has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method other investors may use to contact the requesting investor.

Instruction to paragraph (b)(1)(iv). If an underlying transaction agreement contains procedures in order to verify that an investor is, in fact, a beneficial owner for purposes of invoking the investor communication provision, the verification procedures may require no more than the following:

1. If the investor is a record holder of the securities at the time of a request to communicate, then the investor will not have to provide verification of ownership, and
2. If the investor is not the record holder of the securities, then the person obligated to make the disclosure may require no more than a written certification from the investor that it is a beneficial owner and one other form of documentation such as a trade confirmation, an account statement, a letter from the broker or dealer, or other similar document.

(v) *Delinquent assets.* Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(vi) *Residual value for certain securities.* With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(2) Securities relating to an offering of asset-backed securities registered in accordance with paragraph (b)(1) of

Securities and Exchange Commission

§ 239.92

this section where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of § 230.190(c)(1) through (4) of this chapter.

[79 FR 57337, Sept. 24, 2014]

§§ 239.46–239.62 [Reserved]

§ 239.63 Form ID, uniform application for access codes to file on EDGAR.

Form ID must be filed by registrants, third party filers, or their agents, to request the following access codes to permit filing on EDGAR:

(a) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(b) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(c) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(d) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

[69 FR 22710, Apr. 26, 2004]

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

§ 239.64 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by an electronic filer for the submission of any paper format document relating to an otherwise electronic filing, as provided in Rule 311 of Regulation S-T (§ 232.311 of this chapter).

[58 FR 14682, Mar. 18, 1993]

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

§ 239.65 Form TH—Notification of reliance on temporary hardship exemption.

Form TH shall be filed by any electronic filer who submits to the Commission, pursuant to a temporary hardship exemption, a document in paper format that otherwise would be required to be submitted electronically, as prescribed by Rule 201(a) of Regulation S-T (§ 232.201(a) of this chapter).

[58 FR 14682, Mar. 18, 1993]

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

Subpart B—Forms Pertaining to Exemptions

§ 239.90 Form 1-A, offering statement under Regulation A.

This form shall be used for filing under Regulation A (§§ 230.251–230.263 of this chapter).

[57 FR 36476, Aug. 13, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 1-A, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.91 Form 1-K.

This form shall be used for filing annual reports under Regulation A (§§ 230.251–230.263 of this chapter).

[80 FR 21915, Apr. 20, 2015]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 1-K, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.92 Form 1-SA.

This form shall be used for filing semiannual reports under Regulation A (§§ 230.251–230.263 of this chapter).

[80 FR 21917, Apr. 20, 2015]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 1-SA, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.93

§ 239.93 Form 1-U.

This form shall be used for filing current reports under Regulation A (§§ 230.251–230.263 of this chapter).

[80 FR 21918, Apr. 20, 2015]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 1-U, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.94 Form 1-Z.

This form shall be used to file an exit report under Regulation A (§§ 230.251–230.263 of this chapter).

[80 FR 21922, Apr. 20, 2015]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 1-Z, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§§ 239.95–239.143 [Reserved]

§ 239.144 Form 144, for notice of proposed sale of securities pursuant to § 230.144 of this chapter.

(a) Except as indicated in paragraph (b) of this section, each person who intends to sell securities in reliance upon § 230.144 of this chapter, where the issuer of the securities:

(1) Is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively), shall file this form in electronic format by means of the Commission's Electronic Data, Gathering, Analysis, and Retrieval system (EDGAR) in accordance with the EDGAR rules set forth in part 232 of this chapter (Regulation S–T).

(2) Is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively), shall file three copies of this form in paper format.

(b) This form need not be filed if the amount of securities to be sold during any period of three months does not exceed 5,000 shares or other units and the aggregate sale price does not exceed \$50,000.

(c) Under sections 2(11), 4(1), 4(2), 4(4) and 19(a) of the Securities Act of 1933 (17 CFR 230) and Rule 144 thereunder,

17 CFR Ch. II (4–1–23 Edition)

the Commission is authorized to solicit the information required to be supplied by this form by persons desiring to sell unregistered securities. Disclosure of the information specified in this form is mandatory before processing notices of proposed sale of securities under § 230.144 of this chapter. The information will be used for the primary purpose of disclosing the proposed sale of unregistered securities by persons deemed not to be engaged in the distribution of securities. This notice will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public. Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Failure to disclose the information requested by Form 144 would make an exception under § 230.144 of this chapter unavailable and may result in civil or criminal action for violations of the Federal securities laws.

[37 FR 4329, Mar. 2, 1972, as amended at 40 FR 55319, Nov. 28, 1975; 43 FR 5423, Nov. 21, 1978; 62 FR 35340, July 1, 1997; 68 FR 25799, May 13, 2003; 72 FR 71571, Dec. 17, 2007]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 144, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§§ 239.145–239.199 [Reserved]

§ 239.200 Form 1-E, notification under Regulation E.

This form shall be used for notification pursuant to Rule 604 (§ 230.604 of this chapter) of Regulation E (§§ 230.601–230.610a of this chapter) by a small business investment company or business development company described in Rule 602 (§ 230.602 of this chapter).

(Secs 3(b) and 3(c), Securities Act of 1933 (15 U.S.C. 77c (b) and (c); sec. 38, Investment Company Act of 1940 (15 U.S.C. 80a–37))

[49 FR 35347, Sept. 7, 1984]

Securities and Exchange Commission

§ 239.500

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 1-E, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 239.201 Form 2-E, report of sales pursuant to Rule 609 of Regulation E.

This form shall be used for report of sales of securities under Regulation E (§§ 230.601–230.610a of this chapter) by a small business investment company described in Rule 602 (§230.602 of this chapter) as required by Rule 609 of Regulation E (§230.609 of this chapter).

§§ 239.202–239.300 [Reserved]

§ 239.500 Form D, notice of sales of securities under Regulation D and section 4(a)(5) of the Securities Act of 1933.

(a) *When notice of sales on Form D must be filed.* (1) An issuer offering or selling securities in reliance on §230.504 or §230.506 of this chapter or section 4(a)(5) of the Securities Act of 1933 must file with the Commission a notice of sales containing the information required by this form for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(i) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(ii) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(A) The address or relationship to the issuer of a related person identified in

response to Item 3 of the notice of sales on Form D;

(B) An issuer's revenues or aggregate net asset value;

(C) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than 10%;

(D) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(E) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%;

(F) The amount of securities sold in the offering or the amount remaining to be sold;

(G) The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35;

(H) The total number of investors who have invested in the offering;

(I) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%; and

(iii) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(b) *How notice of sales on Form D must be filed and signed.* (1) A notice of sales on Form D must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232).

§ 239.701

(2) Every notice of sales on Form D must be signed by a person duly authorized by the issuer.

[73 FR 10626, Feb. 27, 2008, as amended at 76 FR 81806, Dec. 29, 2011; 81 FR 83553, Nov. 21, 2016]

§ 239.701 [Reserved]

§ 239.800 Form CB, report of sales of securities in connection with an exchange offer or a rights offering.

This Form is used to report sales of securities in connection with a rights offering in reliance upon § 230.801 of this chapter and to report sales of secu-

17 CFR Ch. II (4–1–23 Edition)

rities in connection with an exchange offer or business combination in reliance upon § 230.802 of this chapter.

[64 FR 61403, Nov. 10, 1999]

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

§ 239.900 Form C.

This form shall be used for filings under Regulation Crowdfunding (part 227 of this chapter).

[80 FR 71550, Nov. 16, 2015]