

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), Public Utility Act section 16 (15 U.S.C. 79p), 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, the Public Utility 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]

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.

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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.

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

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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]

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- 239.36 Form F-6, for registration under the Securities Act of 1933 of depository shares evidenced by American Depository 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 Form F-9, for registration under the Securities Act of 1933 of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.
- 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-9, 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-9, 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.
- 239.44-239.62 [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 2-A, report pursuant to Rule 257 of Regulation A.
- 239.92-239.143 [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(6) 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.

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

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 secs. 6, 7, 8, 10 and 19(a) of the Securities Act (15 U.S.C. 77f, 77g, 77h, 77j and 77s(a)); secs. 3(b), 12, 13, 14, 15(d) and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78l, 78m, 78n, 78o(d) and 78w(a)); secs. 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Holding Company Act (15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q and 79t); sec. 319(a) of the Trust Indenture Act (15 U.S.C. 77sss(a)) and secs. 8, 24, 30 and 38 of the Investment Company Act (15 U.S.C. 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 registration under the Securities Act of 1933 of securities of all issuers 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.

[33 FR 18991, Dec. 20, 1968, as amended at 70 FR 44819, Aug. 3, 2005]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

#### § 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) The provisions of paragraphs (a)(2) and (a)(3)(i) of this section do not apply to any registered offerings of securities described in paragraph (b)(5) of this section. However, for such offerings of asset-backed securities, 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 §229.1101 of this chapter) are or were 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, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n 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, 6.03 or 6.05 of Form 8-K (§249.308 of this chapter). 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 that section. 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.

(5) 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.

(6) 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 prin-

cipal 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.

(7) 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.

(8) *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 and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§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 and post 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:

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(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:* 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 investment grade securities.* Non-convertible securities to be offered for cash by or on behalf of a registrant, provided such securities at the time of sale are investment grade securities, as defined below. A non-convertible security is an investment grade security if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (§240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

(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) *Offerings of investment grade asset-backed securities.* (i) Asset-backed securities (as defined in §229.1101 of this chapter) to be offered for cash that meet the conditions in General Instruction I.B.5 of Form S-3; and

(ii) Securities relating to an offering of asset-backed securities registered in accordance with paragraph (b)(5)(i) of

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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.

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

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

(2) The parent of the registrant-subsi-dary 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-subsi-dary 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-subsi-dary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsi-dary 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-subsi-dary meets the Registrant Requirements and the applicable Transaction Requirement, and the securities of the registrant-subsi-dary 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 sec-

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tion, 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 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 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), (a)(3) and (a)(4) 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 States, including those holding under American Depositary 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

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(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]

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.fdsys.gov](http://www.fdsys.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.fdsys.gov](http://www.fdsys.gov).

### § 239.15 Form N-1 for open-end management investment companies registered on Form N-8A.

Form N-1 shall be used for the registration under the Securities Act of 1933 of securities of all open-end management investment companies that are separate accounts of insurance companies as defined by section 2(a)(37) of the Investment Company Act of 1940 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 (§ 274.11 of this chapter). This form is not applicable for small business in-

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vestment companies which register pursuant to § 239.24 and § 274.5 of this chapter.

(Sec. 19, Securities Act of 1933 (15 U.S.C. 77s; secs. 8 and 38, Investment Company Act of 1940 (15 U.S.C. 80a-8 and 80a-37)))

[49 FR 32060, Aug. 10, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### § 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 management 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.fdsys.gov](http://www.fdsys.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.fdsys.gov](http://www.fdsys.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 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 sub-

mitted 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 and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§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 and post 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]

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.fdsys.gov](http://www.fdsys.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.fdsys.gov](http://www.fdsys.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

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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.fdsys.gov](http://www.fdsys.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 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.fdsys.gov](http://www.fdsys.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

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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.fdsys.gov](http://www.fdsys.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 requirements 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.fdsys.gov](http://www.fdsys.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;

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(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.fdsys.gov](http://www.fdsys.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 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 Form N-5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.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.fdsys.gov](http://www.fdsys.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 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.

[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 Form F-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.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 TO PARAGRAPH (a)(5): In the situations described in paragraphs (a)(5)(iii), (a)(5)(iv); and (a)(5)(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 Form 20-F or Form 40-F (§249.220f or §249.240f of this chapter) after the effective date of the registration statement, then it shall disclose the information specified in Form S-3 (§239.13). Rule 3-10 of Regulation S-X specifies the financial statements required.

(6) *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 sub-

mitted 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 and posted on its corporate Web site, if any, all Interactive Data Files required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§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 and post 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 investment grade securities.* Non-convertible securities to be offered for cash if such securities are *investment grade securities*. A non-convertible security is an *investment grade security* if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in §240.15c3-1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may

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be subcategories or gradations indicating relative standing) signify investment grade. 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).

(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 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]

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.fdsys.gov](http://www.fdsys.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.fdsys.gov](http://www.fdsys.gov).

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§ 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 securities 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 the General Instructions to Form F-6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

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**§ 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.fdsys.gov](http://www.fdsys.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-9, 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 depository, 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 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.fdsys.gov](http://www.fdsys.gov).

**§ 239.39 Form F-9, for registration under the Securities Act of 1933 of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.**

(a) Form F-9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade debt or investment grade preferred securities that are:

(1) Offered for cash or in connection with an exchange offer; and

(2) Either non-convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in paragraph (e) of this section, are thereafter only convertible into a security of another class of the issuer.

*Instruction:* Securities shall be “investment grade” if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the “Exchange Act”) (§240.15c3-1(c)(2)(vi)(F) of this chapter) or at least one Approved Rating Organization (as defined in National Policy Statement No. 45 of the Canadian Securities Administrators, as the same may be amended from time to time) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

(b) Form F-9 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 or a crown corporation;

(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; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of \$75 million or more; *provided, however*, that the requirement set forth in this paragraph (b)(4) shall not apply if the securities being registered on this Form are not convertible into another security.

*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 term “crown corporation” shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

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, 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.

5. 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.

6. 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.

(c) 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.

(d) 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 or a crown corporation.

*Instructions:* 1. For purposes of this Form, 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 this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

(e) If the registrant is a majority-owned subsidiary offering debt securities or preferred securities, it shall be

deemed to meet the requirements of paragraphs (b)(3) and (b)(4) of this section if the parent of the registrant-sub-sidiary meets the requirements of paragraph (b) of this section, as applicable, 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 securities); *provided, however*, that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

(f) 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 12-month reporting 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 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.

(g) 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 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.

(h) 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.

(i) 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 30063, July 1, 1991, as amended at 58 FR 62030, Nov. 23, 1993; 59 FR 243, Jan. 4, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

**§ 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 exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person’s

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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 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-9, 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 province 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

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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 depository, 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 depository, 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-sub-sidiary 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:

(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 sepa-

rately 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.

(1) 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.fdsys.gov](http://www.fdsys.gov).

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### § 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 Ex-

change 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 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

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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 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-9, 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.

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(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.fdsys.gov](http://www.fdsys.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-9, 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-9, 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-9, 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;

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(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-9, 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]

**§ 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]

**§§ 239.44-239.62 [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 whom the Commission previously has not assigned a Central Index Key (CIK) code, 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

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CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.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.fdsys.gov](http://www.fdsys.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.fdsys.gov](http://www.fdsys.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.fdsys.gov](http://www.fdsys.gov).

### **§ 239.91 Form 2-A, report pursuant to Rule 257 of Regulation A.**

This form shall be used for reports of sales and use of proceeds pursuant to

Rule 257 of Regulation A (§ 230.257 of this chapter).

[57 FR 36476, Aug. 13, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 2-A, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### **§§ 239.92–239.143 [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, this form shall be filed in triplicate with the Commission at its principal office in Washington, DC, by each person who intends to sell securities in reliance upon § 230.144 of this chapter and shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale of securities or the execution directly with a market maker of a sale of securities.

(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, 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.fdsys.gov](http://www.fdsys.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]

EDITORIAL NOTE: For FEDERAL REGISTER citations Form 1–E, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.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(6) 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, §230.505, or §230.506 of this chapter or section 4(6) 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;

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(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 Com-

mission 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).

(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]

### § 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 securities 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.fdsys.gov](http://www.fdsys.gov).