

§ 232.102

17 CFR Ch. II (4-1-11 Edition)

(8) Documents and symbols in a foreign language (see Rule 306 of Regulation S-T (§ 232.306));

(9) Exchange Act filings submitted to the Division of Market Regulation other than those that are submitted in electronic format as mandated or permitted electronic submissions under paragraph (a) and (b) of this section or that are submitted electronically in a filing system other than EDGAR.

(10) Documents relating to investigations and litigation submitted pursuant to the Subpart D of Part 201 of this chapter;

(11) [Reserved]

(12) Annual Reports to Security Holders furnished by Public Utility Holding Companies under Exhibit A to Form U5S (§ 259.5s of this chapter) or under rule 29 (§ 250.29 of this chapter);

(13) Reports to State Commissions, if furnished by Public Utility Holding Companies under Exhibit E to Form U5S (§ 259.5s of this chapter);

(14) Maps furnished by Public Utility Holding Companies under Exhibits E to Forms U5B and U-1 (§§ 259.5b and 259.101 of this chapter);

(15) Annual reports filed with the Commission by indenture trustees pursuant to Section 313 of the Trust Indenture Act (15 U.S.C. 77mmm); and

(16) Applications for an exemption from Exchange Act reporting obligations filed pursuant to Section 12(h) of the Exchange Act (15 U.S.C. 78l(h)).

[58 FR 14670, Mar. 18, 1993; 58 FR 26383, May 3, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 232.101 see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 232.102 Exhibits.

(a) Exhibits to an electronic filing that have not previously been filed with the Commission shall be filed in electronic format, absent a hardship exemption. Previously filed exhibits, whether in paper or electronic format, may be incorporated by reference into an electronic filing to the extent permitted by §§ 228.10(f) and 229.10(d) of this chapter, Rule 411 under the Securities Act (§ 230.411 of this chapter), Rule 12b-23 or 12b-32 under the Exchange Act (§ 240.12b-23 or § 240.12b-32 of this

chapter), Rule 22 under the Public Utility Holding Company Act (§ 250.22 of this chapter), Rules 0-4, 8b-23, and 8b-32 under the Investment Company Act (§§ 270.0-4, 270.8b-23 and 270.8b-32 of this chapter) and Rule 303 of Regulation S-T (§ 232.303). An electronic filer may, at its option, restate in electronic format an exhibit incorporated by reference that originally was filed in paper format.

NOTE TO PARAGRAPH (a): Exhibits to a Commission schedule filed pursuant to Section 13 or 14(d) of the Exchange Act may be filed in paper under cover of Form SE where such exhibits previously were filed in paper (prior to a registrant's becoming subject to mandated electronic filing or pursuant to a hardship exemption) and are required to be refiled pursuant to the schedule's general instructions. See Rule 311(b) of Regulation S-T (17 CFR 232.311(b)).

(b) Amendments to all exhibits shall be filed in electronic format, absent a hardship exemption.

(c) Notwithstanding any other provision of this section, an electronic filer shall, upon amendment, restate in electronic format its articles of incorporation, by-laws or investment advisory agreement (in the case of a registered investment company or a business development company).

(d) Each electronic filing requiring exhibits must include an exhibit index which must immediately precede the exhibits filed with the document. The index must list each exhibit filed, whether filed electronically or in paper. Whenever a filer files an exhibit in paper pursuant to a temporary or continuing hardship exemption (§ 232.201 or § 232.202) or pursuant to § 232.311, the filer must place the letter "P" next to the listed exhibit in the exhibit index of the electronic filing to reflect the fact that the filer filed the exhibit in paper. In addition, if the exhibit is filed in paper pursuant to § 232.311, the filer must place the designation "Rule 311" next to the letter "P" in the exhibit index. If the exhibit is filed in paper pursuant to a temporary or continuing hardship exemption, the filer must place the letters "TH" or "CH," respectively, next to the letter "P" in the exhibit index. Whenever an electronic confirming copy of an exhibit is filed pursuant to

a hardship exemption (§ 232.201 or § 232.202(d)), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation “CE” (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format on the EDGAR system, unless the document has been filed in paper under a hardship exemption (§ 232.201 or § 232.202) and any required confirming electronic copy has been submitted.

(f) Persons submitting filings electronically under the Public Utility Act shall not be subject to paragraph (c) of this section.

[58 FR 14670, Mar. 18, 1993, as amended at 59 FR 67762, Dec. 30, 1994; 60 FR 32824, June 23, 1995; 62 FR 36457, July 8, 1997; 64 FR 27894, May 21, 1999; 70 FR 43569, July 27, 2005]

§ 232.103 Liability for transmission errors or omissions in documents filed via EDGAR.

An electronic filer shall not be subject to the liability and anti-fraud provisions of the federal securities laws with respect to an error or omission in an electronic filing resulting solely from electronic transmission errors beyond the control of the filer, where the filer corrects the error or omission by the filing of an amendment in electronic format as soon as reasonably practicable after the electronic filer becomes aware of the error or omission.

[65 FR 24800, Apr. 27, 2000]

§ 232.104 Unofficial PDF copies included in an electronic submission.

(a) An electronic submission, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA-1 (§ 249.100 of this chapter), a Form TA-2 (§ 249.102 of this chapter), a Form TA-W (§ 249.101 of this chapter) or a Form D (§ 239.500 of this chapter), may include one unofficial PDF copy of each elec-

tronic document contained within that submission, tagged in the format required by the EDGAR Filer Manual.

(b) Except as provided in paragraphs (c) and (f) of this section, each unofficial PDF copy must be substantively equivalent to its associated electronic document contained in the electronic submission. An unofficial PDF copy may contain graphic and image material (but not animated graphics, or audio or video material), notwithstanding the fact that its HTML or ASCII document counterpart may not contain such material but instead may contain a fair and accurate narrative description or tabular representation of any omitted graphic or image material.

(c) If a filer omits an unofficial PDF copy from, or submits one or more flawed unofficial PDF copies in, the electronic submission of an official filing, the filer may add or resubmit an unofficial PDF copy by electronically submitting an amendment to the filing to which it relates. The amendment must include an explanatory note that the purpose of the amendment is to add or to correct an unofficial PDF copy.

(1) If such an amendment is filed, the official amendment may consist solely of the cover page (or first page of the document), the explanatory note, and the signature page and exhibit index (where appropriate). The corresponding unofficial copy must include the complete text of the official filing document for which the amendment is being submitted.

(2) If the amendment is being filed to add or resubmit an unofficial PDF copy of one or more exhibits, the submission may consist of the following: the official filing—consisting of the cover page (or first page of the document), the explanatory note, the signature page (where appropriate), the exhibit index, and a separate electronic exhibit document for each exhibit for which an unofficial PDF copy is being submitted—and the corresponding unofficial PDF copy of each exhibit document. However, the text of the official exhibit document need not repeat the text of the exhibit; that document may contain only the following legend:

RESUBMITTED TO ADD/REPLACE UNOFFICIAL PDF COPY OF EXHIBIT.