

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 de-

faults 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 principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (a)(3) of this section.

(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:

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

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

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

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

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

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

(iv) Is a majority-owned operating partnership of a real estate investment trust that qualifies as a well-known

seasoned issuer (as defined in 17 CFR 230.405); or

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

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

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

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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) The securities are investment grade securities. An asset-backed 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 17 CFR 240.15c3-1(c)(2)(vi)(F)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating cat-

egories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

(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- diary itself meets the Registrant Requirements and the applicable Transaction Requirement;

(2) The parent of the registrant-sub- si- diary meets the Registrant Require- ments and the conditions of Trans- action Requirement in paragraph (b)(2) of this section (Primary offerings of non-convertible investment grade secu- rities) are met;

(3) The parent of the registrant-sub- si- diary meets the Registrant Require- ments 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 obliga- tions on the securities being registered, and the securities being registered are non-convertible securities, other than common equity;

(4) The parent of the registrant-sub- si- diary meets the Registrant Require- ments and the applicable Transaction Requirement, and the securities of the registrant-subsi- diary 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 reg- istered; or

(5) The parent of the registrant-sub- si- diary meets the Registrant Require- ments and the applicable Transaction Requirement, and the securities of the registrant-subsi- diary being registered are guarantees of the payment obliga- tions on the non-convertible securities, other than common equity, being reg- istered by another majority-owned sub- si- diary of the parent, where the parent provides a full and unconditional guar- antee, as defined in Rule 3-10 of Regu- lation S-X, of such non-convertible se- curities.

NOTE TO PARAGRAPH (c): With regard to paragraphs (c)(3), (c)(4), and (c)(5) of this section, the guarantor is the issuer of a separate security consisting of the guarantee, which

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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);

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(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

(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 investment companies which register