

Securities and Exchange Commission

§ 240.12b-25

thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions.

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

§ 240.12b-22 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

§ 240.12b-23 Incorporation by reference.

(a) Except for information filed as an exhibit which is covered by Rule 12b-32 (17 CFR 240.12b-32), information may be incorporated by reference in answer, or partial answer, to any item of a registration statement or report subject to the following provisions:

(1) Financial statements incorporated by reference shall satisfy the requirements of the form or report in which they are incorporated. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is given;

(2) Information in any part of the registration statement or report may be incorporated by reference in answer, or partial answer, to any other item of the registration statement or report; and

(3) Copies of any information or financial statement incorporated into a

registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statement, shall be filed as an exhibit to the statement or report, except that:

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10-K (17 CFR 249.310);

(ii) A form of prospectus filed pursuant to 17 CFR 230.424(b) incorporated by reference in response to Item 1 of Form 8-A (17 CFR 249.208a); and

(iii) Information filed on Form 8-K (17 CFR 249.308) need not be filed as an exhibit.

(b) Any incorporation by reference of matter pursuant to this section shall be subject to the provisions of § 229.10(d) of this chapter restricting incorporation by reference of documents that incorporate by reference other information. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, and caption or otherwise. Where only certain pages of a document are incorporated by reference and filed as an exhibit, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear or confusing.

[47 FR 11466, Mar. 16, 1982, as amended at 57 FR 48977, Oct. 29, 1992; 60 FR 32825, June 23, 1995; 69 FR 15618, Mar. 25, 2004; 73 FR 974, Jan. 4, 2008]

§ 240.12b-24 [Reserved]

§ 240.12b-25 Notification of inability to timely file all or any required portion of a Form 10-K, 20-F, 11-K, N-SAR, N-CSR, 10-Q, or 10-D.

(a) If all or any required portion of an annual or transition report on Form 10-K, 20-F or 11-K (17 CFR 249.310, 249.220f or 249.311), a quarterly or transition report on Form 10-Q (17 CFR 249.308a), or a distribution report on Form 10-D (17 CFR 249.312) required to be filed pursuant to Section 13 or 15(d)