

## Securities and Exchange Commission

## § 240.10A-1

### REPORTS UNDER SECTION 10A

#### § 240.10A-1 Notice to the Commission Pursuant to Section 10A of the Act.

(a)(1) If any issuer with a reporting obligation under the Act receives a report requiring a notice to the Commission in accordance with section 10A(b)(3) of the Act, 15 U.S.C. 78j-1(b)(3), the issuer shall submit such notice to the Commission's Office of the Chief Accountant within the time period prescribed in that section. The notice may be provided by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the required time period.

(2) The notice specified in paragraph (a)(1) of this section shall be in writing and:

(i) Shall identify the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings by the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office);

(ii) Shall state the date that the issuer received from the independent accountant the report specified in section 10A(b)(2) of the Act, 15 U.S.C. 78j-1(b)(2);

(iii) Shall provide, at the election of the issuer, either:

(A) A summary of the independent accountant's report, including a description of the act that the independent accountant has identified as a likely illegal act and the possible effect of that act on all affected financial statements of the issuer or those related to the most current three-year period, whichever is shorter; or

(B) A copy of the independent accountant's report; and

(iv) May provide additional information regarding the issuer's views of and response to the independent accountant's report.

(3) Reports of the independent accountant submitted by the issuer to the Commission's Office of the Chief Accountant in accordance with paragraph (a)(2)(iii)(B) of this section shall be deemed to have been made pursuant to section 10A(b)(3) or section 10A(b)(4)

of the Act, 15 U.S.C. 78j-1(b)(3) or 78j-1(b)(4), for purposes of the safe harbor provided by section 10A(c) of the Act, 15 U.S.C. 78j-1(c).

(4) Submission of the notice in paragraphs (a)(1) and (a)(2) of this section shall not relieve the issuer from its obligations to comply fully with all other reporting requirements, including, without limitation:

(i) The filing requirements of Form 8-K, § 249.308 of this chapter, and Form N-SAR, § 274.101 of this chapter, regarding a change in the issuer's certifying accountant and

(ii) The disclosure requirements of Item 304 of Regulation S-K, § 229.304 of this chapter.

(b)(1) Any independent accountant furnishing to the Commission a copy of a report (or the documentation of any oral report) in accordance with section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j-1(b)(3) or 78j-1(b)(4), shall submit that report (or documentation) to the Commission's Office of the Chief Accountant within the time period prescribed by the appropriate section of the Act. The report (or documentation) may be submitted to the Commission's Office of the Chief Accountant by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the time period set forth in section 10A(b)(3) or 10A(b)(4) of the Act, 15 U.S.C. 78j-1(b)(3) or 78j-1(b)(4), whichever is applicable in the circumstances.

(2) If the report (or documentation) submitted to the Office of the Chief Accountant in accordance with paragraph (b)(1) of this section does not clearly identify both the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings with the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office), then the independent accountant shall place that information in a prominent attachment to the report (or documentation) and shall submit that attachment to the Office of the Chief Accountant at the same time and in the same manner as the report (or documentation) is submitted to that Office.

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(3) Submission of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (b)(2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under Items 304(a)(2)(D) and 304(a)(3) of Regulation S-K, §§ 229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and shall not limit, reduce, or affect in any way the independent accountant's obligations to comply fully with all other legal and professional responsibilities, including, without limitation, those under generally accepted auditing standards and the rules or interpretations of the Commission that modify or supplement those auditing standards.

(c) A notice or report submitted to the Office of the Chief Accountant in accordance with paragraphs (a) and (b) of this section shall be deemed to be an investigative record and shall be non-public and exempt from disclosure pursuant to the Freedom of Information Act to the same extent and for the same periods of time that the Commission's investigative records are non-public and exempt from disclosure under, among other applicable provisions, 5 U.S.C. 552(b)(7) and § 200.80(b)(7) of this chapter. Nothing in this paragraph, however, shall relieve, limit, delay, or affect in any way, the obligation of any issuer or any independent accountant to make all public disclosures required by law, by any Commission disclosure item, rule, report, or form, or by any applicable accounting, auditing, or professional standard.

**INSTRUCTION TO PARAGRAPH (c):** Issuers and independent accountants may apply for additional bases for confidential treatment for a notice, report, or part thereof, in accordance with § 200.83 of this chapter. That section indicates, in part, that any person who, pursuant to any requirement of law, submits any information or causes or permits any information to be submitted to the Commission, may request that the Commission afford it confidential treatment by reason of personal privacy or business confidentiality, or for any other reason permitted by Federal law.

[62 FR 12749, Mar. 18, 1997, as amended at 73 FR 973, Jan. 4, 2008]

### § 240.10A-2 Auditor independence.

It shall be unlawful for an auditor not to be independent under § 210.2-

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01(c)(2)(iii)(B), (c)(4), (c)(6), (c)(7), and § 210.2-07.

[68 FR 6048, Feb. 5, 2003]

### § 240.10A-3 Listing standards relating to audit committees.

(a) Pursuant to section 10A(m) of the Act (15 U.S.C. 78j-1(m)) and section 3 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7202):

(1) *National securities exchanges.* The rules of each national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) must, in accordance with the provisions of this section, prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(2) *National securities associations.* The rules of each national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o-3) must, in accordance with the provisions of this section, prohibit the initial or continued listing in an automated inter-dealer quotation system of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(3) *Opportunity to cure defects.* The rules required by paragraphs (a)(1) and (a)(2) of this section must provide for appropriate procedures for a listed issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (a) of this section, before the imposition of such prohibition. Such rules also may provide that if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable national securities exchange or national securities association, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

(4) *Notification of noncompliance.* The rules required by paragraphs (a)(1) and (a)(2) of this section must include a requirement that a listed issuer must notify the applicable national securities