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Title 17: Commodity and Securities Exchanges

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

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§ 240.12g5-1 Definition of securities “held of record”.

(a) For the purpose of determining whether an issuer is subject to the provisions of sections 12(g) and 15(d) of the Act, securities shall be deemed to be “held of record” by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the issuer, subject to the following:

(1) In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.

(2) Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.

(3) Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person.

(4) Securities held by two or more persons as coowners shall be included as held by one person.

(5) Each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the issuer can establish that, if such securities were registered, they would be held of record, under the provisions of this rule, by a lesser number of persons.

(6) Securities registered in substantially similar names where the issuer has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

(b) Notwithstanding paragraph (a) of this section:

(1) Securities held, to the knowledge of the issuer, subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts or similar evidences of interest in such securities: *Provided, however,* That the issuer may rely in good faith on such information as is received in response to its request from a non-affiliated issuer of the certificates or evidences of interest.

(2) Whole or fractional securities issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution for the sole purpose of qualifying a borrower for membership in the issuer, and which are to be redeemed or repurchased by the issuer when the borrower's loan is terminated, shall not be included as held of record by any person.

(3) If the issuer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of section 12(g) or 15(d) of the Act, the beneficial owners of such

securities shall be deemed to be the record owners thereof.

(Sec. 3, 48 Stat. 882, as amended, sec. 3, 78 Stat. 566; 15 U.S.C. 78c, 78 l)

[30 FR 484, Jan. 14, 1965]

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§ 240.12g5-2 Definition of “total assets”.

For the purpose of section 12(g)(1) of the Act, the term *total assets* shall mean the total assets as shown on the issuer's balance sheet or the balance sheet of the issuer and its subsidiaries consolidated, whichever is larger, as required to be filed on the form prescribed for registration under this section and prepared in accordance with the pertinent provisions of Regulation S-X (17 CFR part 210). Where the security is a certificate of deposit, voting trust certificate, or certificate or other evidence of interest in a similar trust or agreement, the “total assets” of the issuer of the security held under the trust or agreement shall be deemed to be the “total assets” of the issuer of such certificate or evidence of interest.

(Sec. 3, 48 Stat. 882, as amended, sec. 3, 78 Stat. 566; 15 U.S.C. 78c, 78 I)

[30 FR 484, Jan. 14, 1965]

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§ 240.12h-1 Exemptions from registration under section 12(g) of the Act.

Issuers shall be exempt from the provisions of section 12(g) of the Act with respect to the following securities:

(a) Any interest or participation in an employee stock bonus, stock purchase, profit sharing, pension, retirement, incentive, thrift, savings or similar plan which is not transferable by the holder except in the event of death or mental incompetency, or any security issued solely to fund such plans;

(b) Any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian. For purposes of this paragraph (b), the term "common trust fund" shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided, That:*

(1) The common trust fund is operated in compliance with the same state and Federal regulatory requirements as would apply if the bank maintaining such fund as any other contributing banks were the same entity; and

(2) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group;

(c) Any class of equity security which would not be outstanding 60 days after a registration statement would be required to be filed with respect thereto;

(d) Any standardized option, as that term is defined in section 240.9b-1(a)(4), that is issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q-1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 780-3(a));

(e) Any security futures product that is traded on a national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 780-3(a)) and cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q-1) or is exempt from registration under section 17A(b)(7) of the Act (15 U.S.C. 78q-1(b)(7)).

(f)(1) Stock options issued under written compensatory stock option plans under the following conditions:

(i) The issuer of the equity security underlying the stock options does not have a class of security registered under section 12 of the Act and is not required to file reports pursuant to section 15(d) of the

Act;

(ii) The stock options have been issued pursuant to one or more written compensatory stock option plans established by the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parents;

Note to paragraph (f)(1)(ii): All stock options issued under all written compensatory stock option plans on the same class of equity security of the issuer will be considered part of the same class of equity security for purposes of the provisions of paragraph (f) of this section.

(iii) The stock options are held only by those persons described in Rule 701(c) under the Securities Act (17 CFR 230.701(c)) or their permitted transferees as provided in paragraph (f)(1)(iv) of this section;

(iv) The stock options and, prior to exercise, the shares to be issued on exercise of the stock options are restricted as to transfer by the optionholder other than to persons who are family members (as defined in Rule 701(c)(3) under the Securities Act (17 CFR 230.701(c)(3)) through gifts or domestic relations orders, or to an executor or guardian of the optionholder upon the death or disability of the optionholder until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act or is no longer relying on the exemption pursuant to this section; provided that the optionholder may transfer the stock options to the issuer, or in connection with a change of control or other acquisition transaction involving the issuer, if after such transaction the stock options no longer will be outstanding and the issuer no longer will be relying on the exemption pursuant to this section;

Note to paragraph (f)(1)(iv): For purposes of this section, optionholders may include any permitted transferee under paragraph (f)(1)(iv) of this section; provided that such permitted transferees may not further transfer the stock options..

(v) The stock options and the shares issuable upon exercise of such stock options are restricted as to any pledge, hypothecation, or other transfer, including any short position, any "put equivalent position" (as defined in §240.16a-1(h) of this chapter), or any "call equivalent position" (as defined in §240.16a-1(b) of this chapter) by the optionholder prior to exercise of an option, except in the circumstances permitted in paragraph (f)(1)(iv) of this section, until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act or is no longer relying on the exemption pursuant paragraph (f)(1) of this section; and

Note to paragraphs (f)(1)(iv) and (f)(1)(v): The transferability restrictions in paragraphs (f)(1)(iv) and (f)(1)(v) of this section must be contained in a written compensatory stock option plan, individual written compensatory stock option agreement, other stock purchase or stockholder agreement to which the issuer and the optionholder are a signatory or party, other enforceable agreement by or against the issuer and the optionholder, or in the issuer's by-laws or certificate or articles of incorporation.

(vi) The issuer has agreed in the written compensatory stock option plan, the individual written compensatory stock option agreement, or another agreement enforceable against the issuer to provide the following information to optionholders once the issuer is relying on the exemption pursuant to paragraph (f)(1) of this section until the issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Act or is no longer relying on the exemption pursuant paragraph (f)(1) of this section:

The information described in Rules 701(e)(3), (4), and (5) under the Securities Act (17 CFR 230.701(e)(3), (4), and (5)), every six months with the financial statements being not more than 180 days old and with such information provided either by physical or electronic delivery to the optionholders or by written notice to the optionholders of the availability of the information on an Internet site that may be password-protected and of any password needed to access the information.

Note to paragraph (f)(1)(vi): The issuer may request that the optionholder agree to keep the information to be provided pursuant to this section confidential. If an optionholder does not agree to keep the information to be provided pursuant to this section confidential, then the issuer is not required to provide the information.

(2) If the exemption provided by paragraph (f)(1) of this section ceases to be available, the issuer of the stock options that is relying on the exemption provided by this section must file a registration statement to register the class of stock options under section 12 of the Act within 120 calendar days after the exemption provided by paragraph (f)(1) of this section ceases to be available; and

(g)(1) Stock options issued under written compensatory stock option plans under the following conditions:

(i) The issuer of the equity security underlying the stock options has registered a class of security under section 12 of the Act or is required to file periodic reports pursuant to section 15(d) of the Act;

(ii) The stock options have been issued pursuant to one or more written compensatory stock option plans established by the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parents;

Note to paragraph (g)(1)(ii): All stock options issued under all of the written compensatory stock option plans on the same class of equity security of the issuer will be considered part of the same class of equity security of the issuer for purposes of the provisions of paragraph (g) of this section.

(iii) The stock options are held only by those persons described in Rule 701(c) under the Securities Act (17 CFR 230.701(c)) or those persons specified in General Instruction A.1(a) of Form S-8 (17 CFR 239.16b); provided that an issuer can still rely on this exemption if there is an insignificant deviation from satisfaction of the condition in this paragraph (g)(1)(iii) and after December 7, 2007 the issuer has made a good faith and reasonable attempt to comply with the conditions of this paragraph (g)(1)(iii). For purposes of this paragraph (g)(1)(iii), an insignificant deviation exists if the number of optionholders that do not meet the condition in this paragraph (g)(1)(iii) are insignificant both as to the aggregate number of optionholders and number of outstanding stock options.

(2) If the exemption provided by paragraph (g)(1) of this section ceases to be available, the issuer of the stock options that is relying on the exemption provided by this section must file a registration statement to register the class of stock options or a class of security under section 12 of the Act within 60 calendar days after the exemption provided in paragraph (g)(1) of this section ceases to be available.

(h) Any eligible credit default swap, as defined in Rule 239T of the Securities Act of 1933 (17 CFR 239.16b), issued or cleared by a clearing agency registered as a clearing agency under Section 17A of the Act (15 U.S.C. 78q-1) or exempt from registration under Section 17A of the Act pursuant to a rule, regulation, or order of the Commission that will be purchased by or sold to an eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)) as in effect on the date of adoption of this section, other than a person who is an eligible contract participant under Section 1(a)(12)(C) of the Commodity Exchange Act. This temporary rule will expire on April 16, 2012.

(i) Any security-based swap offered and sold in reliance on Rule 240 under the Securities Act of 1933. This rule will expire on the compliance date for final rules that the Commission may adopt further defining both the terms *security-based swap* and *eligible contract participant*. In such event, the Commission will publish a rule removing this paragraph (i) from 17 CFR part 240 or modifying it as appropriate.

[30 FR 6114, Apr. 30, 1965, as amended at 43 FR 2392, Jan. 17, 1978. Redesignated at 47 FR 17052, Apr. 21, 1982; 68 FR 192, Jan. 2, 2003; 72 FR 69566, Dec. 7, 2007; 74 FR 3975, Jan. 22, 2009; 74 FR 47725, Sept. 17, 2009; 75 FR 72664, Nov. 26, 2010; 76 FR 40229, July 8, 2011; 76 FR 40612, July 11, 2011]

Effective Date Note: At 74 FR 3975, Jan. 22, 2009, §240.12h-1 was amended by adding paragraph (h)T, effective January 22, 2009 through September 25, 2009. At 74 FR 47719, Sept. 17, 2009, the effective date was extended to November 30, 2010. At 75 FR 72664, Nov. 26, 2010, the effective date was extended to July 16, 2011. At 76 FR 40229, July 8, 2011, the effective date was extended to April 16, 2012.

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§ 240.12h-3 Suspension of duty to file reports under section 15(d).

(a) Subject to paragraphs (c) and (d) of this section, the duty under section 15(d) to file reports required by section 13(a) of the Act with respect to a class of securities specified in paragraph (b) of this section shall be suspended for such class of securities immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by section 13(a), without regard to Rule 12b-25 (17 CFR 249.322), for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

(b) The classes of securities eligible for the suspension provided in paragraph (a) of this section are:

(1) Any class of securities, other than any class of asset-backed securities, held of record by:

(i) Less than 300 persons; or

(ii) By less than 500 persons, where the total assets of the issuer have not exceeded \$10 million on the last day of each of the issuer's three most recent fiscal years; and

(2) Any class or securities deregistered pursuant to section 12(d) of the Act if such class would not thereupon be deemed registered under section 12(g) of the Act or the rules thereunder.

Note to Paragraph (b): The suspension of classes of asset-backed securities is addressed in §240.15d-22.

(c) This section shall not be available for any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act of 1933, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the case of paragraph (b)(1)(ii), the two succeeding fiscal years; *Provided, however*, That this paragraph shall not apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significant assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, except for changes resulting from the exercise of dissenting shareholder rights under state law.

(d) The suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a class of securities, does not affect any other duties imposed on that class of securities, and shall continue as long as either criteria (i) or (ii) of paragraph (b)(1) is met on the first day of any subsequent fiscal year; *Provided, however*, That such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer with no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.

(e) If the suspension provided by this section is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) of this section on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) of the Act by filing an annual report on Form 10-K for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

[49 FR 12689, Mar. 30, 1984, as amended at 51 FR 25362, July 14, 1986; 61 FR 21356, May 9, 1996; 72 FR 16956, Apr. 5, 2007; 73 FR 975, Jan. 4, 2008; 76 FR 52555, Aug. 23, 2011]

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§ 240.12h-4 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F-7, Form F-8 or Form F-80, provided that the issuer is exempt from the obligations of Section 12(g) of the Act pursuant to Rule 12g3-2(b).

[56 FR 30068, July 1, 1991]

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§ 240.12h-5 Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors.

(a) Any issuer of a guaranteed security, or guarantor of a security, that is permitted to omit financial statements by §210.3–10 of Regulation S-X of this chapter is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(b) Any issuer of a guaranteed security, or guarantor of a security, that would be permitted to omit financial statements by §210.3–10 of Regulation S-X of this chapter, but is required to file financial statements in accordance with the operation of §210.3–10(g) of Regulation S-X of this chapter, is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

[65 FR 51711, Aug. 24, 2000]

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§ 240.12h-6 Certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 13(a) or section 15(d).

(a) A foreign private issuer may terminate the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)), or terminate the obligation under section 15(d) of the Act (15 U.S.C. 78o(d)) to file or furnish reports required by section 13(a) of the Act (15 U.S.C. 78m(a)) with respect to a class of equity securities, or both, after certifying to the Commission on Form 15F (17 CFR 249.324) that:

(1) The foreign private issuer has had reporting obligations under section 13(a) or section 15(d) of the Act at least the 12 months preceding the filing of the Form 15F, has filed or furnished all reports required for this period, and has filed at least one annual report pursuant to section 13(a) of the Act;

(2) The foreign private issuer's securities have not been sold in the United States in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a et seq.) during the 12 months preceding the filing of the Form 15F, other than securities issued:

(i) To the issuer's employees;

(ii) By selling security holders in non-underwritten offerings;

(iii) Upon the exercise of outstanding rights granted by the issuer if the rights are granted pro rata to all existing security holders of the class of the issuer's securities to which the rights attach;

(iv) Pursuant to a dividend or interest reinvestment plan; or

(v) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer;

Note to paragraph (a)(2): The exceptions in paragraphs (a)(2)(iii) through (v) do not apply to securities issued pursuant to a standby underwritten offering or other similar arrangement in the United States.

(3) The foreign private issuer has maintained a listing of the subject class of securities for at least the 12 months preceding the filing of the Form 15F on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities; and

(4)(i) The average daily trading volume of the subject class of securities in the United States for a recent 12-month period has been no greater than 5 percent of the average daily trading volume of that class of securities on a worldwide basis for the same period; or

(ii) On a date within 120 days before the filing date of the Form 15F, a foreign private issuer's subject class of equity securities is either held of record by:

(A) Less than 300 persons on a worldwide basis; or

(B) Less than 300 persons resident in the United States.

Note to paragraph (a)(4): If an issuer's equity securities trade in the form of American Depositary Receipts in the United States, for purposes of paragraph (a)(4)(i), it must calculate the trading volume of its American Depositary Receipts in terms of the number of securities represented by those American Depositary Receipts.

(b) A foreign private issuer must wait at least 12 months before it may file a Form 15F to terminate its section 13(a) or 15(d) reporting obligations in reliance on paragraph (a)(4)(i) of this section if:

(1) The issuer has delisted a class of equity securities from a national securities exchange or inter-dealer quotation system in the United States, and at the time of delisting, the average daily trading volume of that class of securities in the United States exceeded 5 percent of the average daily trading volume of that class of securities on a worldwide basis for the preceding 12 months; or

(2) The issuer has terminated a sponsored American Depositary Receipts facility, and at the time of termination the average daily trading volume in the United States of the American Depositary Receipts exceeded 5 percent of the average daily trading volume of the underlying class of securities on a worldwide basis for the preceding 12 months.

(c) A foreign private issuer may terminate its duty to file or furnish reports pursuant to section 13(a) or section 15(d) of the Act with respect to a class of debt securities after certifying to the Commission on Form 15F that:

(1) The foreign private issuer has filed or furnished all reports required by section 13(a) or section 15(d) of the Act, including at least one annual report pursuant to section 13(a) of the Act; and

(2) On a date within 120 days before the filing date of the Form 15F, the class of debt securities is either held of record by:

(i) Less than 300 persons on a worldwide basis; or

(ii) Less than 300 persons resident in the United States.

(d)(1) Following a merger, consolidation, exchange of securities, acquisition of assets or otherwise, a foreign private issuer that has succeeded to the registration of a class of securities under section 12(g) of the Act of another issuer pursuant to §240.12g-3, or to the reporting obligations of another issuer under section 15(d) of the Act pursuant to §240.15d-5, may file a Form 15F to terminate that registration or those reporting obligations if:

(i) Regarding a class of equity securities, the successor issuer meets the conditions under paragraph (a) of this section; or

(ii) Regarding a class of debt securities, the successor issuer meets the conditions under paragraph (c) of this section.

(2) When determining whether it meets the prior reporting requirement under paragraph (a)(1) or paragraph (c)(1) of this section, a successor issuer may take into account the reporting history of the issuer whose reporting obligations it has assumed pursuant to §240.12g-3 or §240.15d-5.

(e) *Counting method.* When determining under this section the number of United States residents holding a foreign private issuer's equity or debt securities:

(1)(i) Use the method for calculating record ownership §240.12g3-2(a), except that you may limit your inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in:

(A) The United States;

(B) Foreign private issuer's jurisdiction of incorporation, legal organization or establishment; and

(C) The foreign private issuer's primary trading market, if different from the issuer's jurisdiction of incorporation, legal organization or establishment.

(ii) If you aggregate the trading volume of the issuer's securities in two foreign jurisdictions for the purpose of complying with paragraph (a)(3) of this section, you must include both of those foreign jurisdictions when conducting your inquiry under paragraph (e)(1)(i) of this section.

(2) If, after reasonable inquiry, you are unable without unreasonable effort to obtain information about the amount of securities represented by accounts of customers resident in the United States, for purposes of this section, you may assume that the customers are the residents of the jurisdiction in which the nominee has its principal place of business.

(3) You must count securities as owned by United States holders when publicly filed reports of beneficial ownership or other reliable information that is provided to you indicates that the securities are held by United States residents.

(4) When calculating under this section the number of your United States resident security holders, you may rely in good faith on the assistance of an independent information services provider that in the regular course of its business assists issuers in determining the number of, and collecting other information concerning, their security holders.

(f) *Definitions.* For the purpose of this section:

(1) *Debt security* means any security other than an equity security as defined under §240.3a11-1, including:

(i) Participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and

(ii) Notwithstanding §240.3a11-1, any debt security described in paragraph (f)(3)(i) and (ii) of this section;

(2) *Employee* has the same meaning as the definition of employee provided in Form S-8 (§239.16b of this chapter).

(3) *Equity security* means the same as under §240.3a11-1, but, for purposes of paragraphs (a)(3) and (a)(4)(i) of this section, does not include:

(i) Any debt security that is convertible into an equity security, with or without consideration;

(ii) Any debt security that includes a warrant or right to subscribe to or purchase an equity security;

(iii) Any such warrant or right; or

(iv) Any put, call, straddle, or other option or privilege that gives the holder the option of buying or selling a security but does not require the holder to do so.

(4) *Foreign private issuer* has the same meaning as under §240.3b-4.

(5) *Primary trading market* means that:

(i) At least 55 percent of the trading in a foreign private issuer's class of securities that is the subject of Form 15F took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during a recent 12-month period; and

(ii) If a foreign private issuer aggregates the trading of its subject class of securities in two foreign

jurisdictions for the purpose of paragraph (a)(3) of this section, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities.

(6) *Recent 12-month period* means a 12-calendar-month period that ended no more than 60 days before the filing date of the Form 15F.

(g)(1) Suspension of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act shall occur immediately upon filing the Form 15F with the Commission if filing pursuant to paragraph (a), (c) or (d) of this section. If there are no objections from the Commission, 90 days, or such shorter period as the Commission may determine, after the issuer has filed its Form 15F, the effectiveness of any of the following shall occur:

(i) The termination of registration of a class of securities under section 12(g); and

(ii) The termination of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act.

(2) If the Form 15F is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

(h) As a condition to termination of registration or reporting under paragraph (a), (c) or (d) of this section, a foreign private issuer must, either before or on the date that it files its Form 15F, publish a notice in the United States that discloses its intent to terminate its registration of a class of securities under section 12(g) of the Act, or its reporting obligations under section 13(a) or section 15(d) of the Act, or both. The issuer must publish the notice through a means reasonably designed to provide broad dissemination of the information to the public in the United States. The issuer must also submit a copy of the notice to the Commission, either under cover of a Form 6-K (17 CFR 249.306) before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.

(i)(1) A foreign private issuer that, before the effective date of this section, terminated the registration of a class of securities under section 12(g) of the Act or suspended its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Act may file a Form 15F in order to:

(i) Terminate under this section the registration of a class of equity securities that was the subject of a Form 15 (§249.323 of this chapter) filed by the issuer pursuant to §240.12g-4; or

(ii) Terminate its reporting obligations under section 15(d) of the Act, which had been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to §240.12h-3, regarding a class of equity or debt securities.

(2) In order to be eligible to file a Form 15F under this paragraph:

(i) If a foreign private issuer terminated the registration of a class of securities pursuant to §240.12g-4 or suspended its reporting obligations pursuant to §240.12h-3 or section 15(d) of the Act regarding a class of equity securities, the issuer must meet the requirements under paragraph (a)(3) and paragraph (a)(4)(i) or (a)(4)(ii) of this section; or

(ii) If a foreign private issuer suspended its reporting obligations pursuant to §240.12h-3 or section 15(d) of the Act regarding a class of debt securities, the issuer must meet the requirements under paragraph (c)(2) of this section.

(3)(i) If the Commission does not object, 90 days after the filing of a Form 15F under this paragraph, or such shorter period as the Commission may determine, the effectiveness of any of the following shall occur:

(A) The termination under this section of the registration of a class of equity securities, which was the subject of a Form 15 filed pursuant to §240.12g-4, and the duty to file reports required by section 13(a) of the Act regarding that class of securities; or

(B) The termination of a foreign private issuer's reporting obligations under section 15(d) of the Act, which had previously been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to §240.12h-3, regarding a class of equity or debt securities.

(ii) If the Form 15F is subsequently withdrawn or denied, the foreign private issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

Note to §240.12h-6: The suspension of classes of asset-backed securities is addressed in §240.15d-22.

[72 FR 16956, Apr. 5, 2007, as amended at 76 FR 52555, Aug. 23, 2011]

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§ 240.12g-1 Exemption from section 12(g).

An issuer shall be exempt from the requirement to register any class of equity securities pursuant to section 12(g)(1) if on the last day of its most recent fiscal year the issuer had total assets not exceeding \$10 million and, with respect to a foreign private issuer, such securities were not quoted in an automated inter-dealer quotation system.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 833; secs. 3, 4, 6, 78 Stat. 565–574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78 l, 78m, 78 o (d), 78w(a))

[48 FR 46739, Oct. 14, 1983, as amended at 51 FR 25362, July 14, 1986; 61 FR 21356, May 9, 1996]

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market means that at least 55 percent of the trading in the subject class of securities on a worldwide basis took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year. If a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of this paragraph, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities. When determining an issuer's primary trading market under this paragraph, calculate average daily trading volume in the United States and on a worldwide basis as under Rule 12h-6 under the Act (§240.12h-6).

Note 2 to paragraph (b)(1): Paragraph (b)(1)(iii) of this section does not apply to an issuer when claiming the exemption under paragraph (b) of this section upon the effectiveness of the termination of its registration of a class of securities under section 12(g) of the Act, or the termination of its obligation to file or furnish reports under section 15(d) of the Act.

Note 3 to paragraph (b)(1): Compensatory stock options for which the underlying securities are in a class exempt under paragraph (b) of this section are also exempt under that paragraph.

(2)(i) In order to maintain the exemption under paragraph (b) of this section, a foreign private issuer shall publish, on an ongoing basis and for each subsequent fiscal year, in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, the information specified in paragraph (b)(1)(iii) of this section.

(ii) An issuer must electronically publish the information required by paragraph (b)(2) of this section promptly after the information has been made public.

(3)(i) The information required to be published electronically under paragraph (b) of this section is information that is material to an investment decision regarding the subject securities, such as information concerning:

- (A) Results of operations or financial condition;
- (B) Changes in business;
- (C) Acquisitions or dispositions of assets;
- (D) The issuance, redemption or acquisition of securities;
- (E) Changes in management or control;
- (F) The granting of options or the payment of other remuneration to directors or officers; and
- (G) Transactions with directors, officers or principal security holders.

(ii) At a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be published under paragraph (b) of this section if in a foreign language:

- (A) Its annual report, including or accompanied by annual financial statements;
- (B) Interim reports that include financial statements;
- (C) Press releases; and
- (D) All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

(c) The exemption under paragraph (b) of this section shall remain in effect until:

- (1) The issuer no longer satisfies the electronic publication condition of paragraph (b)(2) of this section;

(2) The issuer no longer maintains a listing of the subject class of securities on one or more exchanges in a primary trading market, as defined under paragraph (b)(1) of this section; or

(3) The issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act.

(d) Depositary shares registered on Form F-6 (§239.36 of this chapter), but not the underlying deposited securities, are exempt from section 12(g) of the Act under this paragraph.

[48 FR 46739, Oct. 14, 1983, as amended at 49 FR 12689, Mar. 30, 1984; 56 FR 30068, July 1, 1991; 65 FR 37676, June 15, 2000; 72 FR 16955, Apr. 5, 2007; 73 FR 52768, Sept. 10, 2008]

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§ 240.12g-2 Securities deemed to be registered pursuant to section 12(g)(1) upon termination of exemption pursuant to section 12(g)(2) (A) or (B).

Any class of securities which would have been required to be registered pursuant to section 12(g)(1) of the Act except for the fact that it was exempt from such registration by section 12(g)(2)(A) because it was listed and registered on a national securities exchange, or by section 12(g)(2)(B) because it was issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940, shall upon the termination of the listing and registration of such class or the termination of the registration of such company and without the filing of an additional registration statement be deemed to be registered pursuant to said section 12(g)(1) if at the time of such termination (a) the issuer of such securities has elected to be regulated as a business development company pursuant to sections 55 through 65 of the Investment Company Act of 1940 and such election has not been withdrawn, or (b) securities of the class are not exempt from such registration pursuant to section 12 or rules thereunder delete "or" and all securities of such class are held of record by 300 or more persons:

[47 FR 17052, Apr. 21, 1982]

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§ 240.12g-3 Registration of securities of successor issuers under section 12(b) or 12(g).

(a) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to section 12 of the Act (15 U.S.C. 78 l) are issued to the holders of any class of securities of another issuer that is registered pursuant to either section 12 (b) or (g) of the Act (15 U.S.C. 78 l (b) or (g)), the class of securities so issued shall be deemed to be registered under the same paragraph of section 12 of the Act unless upon consummation of the succession:

(1) Such class is exempt from such registration other than by §240.12g3-2;

(2) All securities of such class are held of record by less than 300 persons; or

(3) The securities issued in connection with the succession were registered on Form F-8 or Form F-80 (§239.38 or §239.41 of this chapter) and following succession the successor would not be required to register such class of securities under section 12 of the Act (15 U.S.C. 78 l) but for this section.

(b) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to section 12 of the Act (15 U.S.C. 78 l) are issued to the holders of any class of securities of another issuer that is required to file a registration statement pursuant to either section 12(b) or (g) of the Act (15 U.S.C. 78 l (b) or (g)) but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued. The successor issuer shall file a registration statement pursuant to the same paragraph of section 12 of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement unless upon consummation of the succession:

(1) Such class is exempt from such registration other than by §240.12g3-2;

(2) All securities of such class are held of record by less than 300 persons; or

(3) The securities issued in connection with the succession were registered on Form F-8 or Form F-80 (§239.38 or §239.41 of this chapter) and following the succession the successor would not be required to register such class of securities under section 12 of the Act (15 U.S.C. 78 l) but for this section.

(c) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to section 12 of the Act (15 U.S.C. 78 l) are issued to the holders of classes of securities of two or more other issuers that are each registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession:

(1) Such class is exempt from such registration other than by §240.12g3-2;

(2) All securities of such class are held of record by less than 300 persons; or

(3) The securities issued in connection with the succession were registered on Form F-8 or Form F-80 (§239.38 or §239.41 of this chapter) and following succession the successor would not be required to register such class of securities under section 12 of the Act (15 U.S.C. 78 I) but for this section.

(d) If the classes of securities issued by two or more predecessor issuers (as described in paragraph (c) of this section) are registered under the same paragraph of section 12 of the Act (15 U.S.C. 78 I), the class of securities issued by the successor issuer shall be deemed registered under the same paragraph of section 12 of the Act. If the classes of securities issued by the predecessor issuers are not registered under the same paragraph of section 12 of the Act, the class of securities issued by the successor issuer shall be deemed registered under section 12(g) of the Act (15 U.S.C. 78 I(g)).

(e) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78 I) according to paragraph (a), (b), (c) or (d) of this section shall file reports on the same forms and such class of securities shall be subject to the provisions of sections 14 and 16 of the Act (15 U.S.C. 78n and 78p) to the same extent as the predecessor issuers, except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20-F (§249.220f of this chapter) or to use the exemption in §240.3a12-3.

(2) A foreign private issuer shall be eligible to file on Form 20-F (§249.220f of this chapter) and to use the exemption in §240.3a12-3.

(f) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78 I) according to paragraphs (a), (b), (c) or (d) of this section shall indicate in the Form 8-K (§249.308 of this chapter) report filed with the Commission in connection with the succession, pursuant to the requirements of Form 8-K, the paragraph of section 12 of the Act under which the class of securities issued by the successor issuer is deemed registered by operation of paragraphs (a), (b), (c) or (d) of this section. If a successor issuer that is deemed registered under section 12(g) of the Act (15 U.S.C. 78 I(g)) by paragraph (d) of this section intends to list a class of securities on a national securities exchange, it must file a registration statement pursuant to section 12(b) of the Act (15 U.S.C. 78 I(b)) with respect to that class of securities.

(g) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78 I) according to paragraph (a), (b), (c) or (d) of this section shall file an annual report for each fiscal year beginning on or after the date as of which the succession occurred. Annual reports shall be filed within the period specified in the appropriate form. Each such issuer shall file an annual report for each of its predecessors that had securities registered pursuant to section 12 of the Act (15 U.S.C. 78 I) covering the last full fiscal year of the predecessor before the registrant's succession, unless such report has been filed by the predecessor. Such annual report shall contain information that would be required if filed by the predecessor.

[62 FR 39767, July 24, 1997]

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§ 240.12g3-2 Exemptions for American depository receipts and certain foreign securities.

(a) Securities of any class issued by any foreign private issuer shall be exempt from section 12(g) (15 U.S.C. 78 l (g)) of the Act if the class has fewer than 300 holders resident in the United States. This exemption shall continue until the next fiscal year end at which the issuer has a class of equity securities held by 300 or more persons resident in the United States. For the purpose of determining whether a security is exempt pursuant to this paragraph:

(1) Securities held of record by persons resident in the United States shall be determined as provided in § 240.12g5-1 except that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers resident in the United States shall be counted as held in the United States by the number of separate accounts for which the securities are held. The issuer may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are brokers, dealers, or banks or a nominee for any of them.

(2) Persons in the United States who hold the security only through a Canadian Retirement Account (as that term is defined in rule 237(a)(2) under the Securities Act of 1933 (§230.237(a)(2) of this chapter)), shall not be counted as holders resident in the United States.

(b)(1) A foreign private issuer shall be exempt from the requirement to register a class of equity securities under section 12(g) of the Act (15 U.S.C. 78 l (g)) if:

(i) The issuer is not required to file or furnish reports under section 13(a) of the Act (15 U.S.C. 78m(a)) or section 15(d) of the Act (15 U.S.C. 78o(d));

(ii) The issuer currently maintains a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities; and

(iii) The issuer has published in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, information that, since the first day of its most recently completed fiscal year, it:

(A) Has made public or been required to make public pursuant to the laws of the country of its incorporation, organization or domicile;

(B) Has filed or been required to file with the principal stock exchange in its primary trading market on which its securities are traded and which has been made public by that exchange; and

(C) Has distributed or been required to distribute to its security holders.

Note 1 to paragraph (b)(1): For the purpose of paragraph (b) of this section, *primary trading*