

Annex A

Select Proposed Rule Changes under Proposed Filer Status Rule¹

Securities Exchange Act Rules

§ 240.12b-2

Definitions.

Unless the context otherwise requires, the following terms, when used in the rules contained in this regulation or in Regulation 13A or 15D or in the forms for statements and reports filed pursuant to sections 12, 13 or 15(d) of the ~~act~~Act, ~~shall~~ have the respective meanings indicated in this rule:

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Large accelerated filer, non-accelerated filer, and small non-accelerated filer—An issuer must assess its filer status annually, as of the last day of its fiscal year, applying the following terms. This requirement and the definitions in this part do not apply to asset-backed issuers (as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter)).

~~Accelerated filer and large accelerated filer~~—

~~(1) Accelerated filer. The term accelerated filer means an issuer after it first meets the following conditions as of the end of its fiscal year:~~

~~(i) The issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$75 million or more, but less than \$700 million, as of the last business day of the issuer's most recently completed second fiscal quarter;~~

~~(ii) The issuer has been subject to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) for a period of at least twelve calendar months; and~~

~~(iii) The issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act; and~~

~~(iv) The issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, as applicable.~~

~~(2) Large accelerated filer. The term large accelerated filer means an issuer after it first meets the following conditions as of the end of its fiscal year:~~

~~(i) The issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter;~~

~~(i) For an issuer that is not currently a large accelerated filer:~~

~~(ii) The issuer has been subject to the reporting requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) for a period of at least twelve the preceding sixty consecutive calendar months; and~~

~~(iii) The issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act; and~~

~~(iv) The issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the "smaller reporting company" definition in this section, as applicable.~~

~~Smaller reporting company. As used in this part, the term smaller reporting company means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101 of this chapter), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:~~

~~(1) Had a public float of less than \$250 million; or 2 billion or more for the current and immediately prior fiscal years.~~

~~(2) Had annual revenues of less than \$100 million and either:~~

¹ Additional proposed rule changes were included in the release; for additional redlined rule excerpts, please contact a member of your White & Case team.

(i) ~~No public float; or~~

(ii) ~~A~~An issuer that is currently a large accelerated filer will remain a large accelerated filer until its public float ~~of~~is less than ~~\$700 million~~2 billion for each of two consecutive fiscal years.

(iii) Public float for purposes of this section is computed for each fiscal year by multiplying:

~~(3) Whether an issuer is a smaller reporting company is determined on an annual basis.~~

~~(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act:~~

~~(A) Public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter and computed by multiplying the~~ 1) The aggregate worldwide number of shares of ~~its~~the issuer's voting and non-voting common equity held by non-affiliates ~~by the~~as of the last day of the issuer's second fiscal quarter; by

(2) The average price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for ~~the~~such common equity; over the last ten trading days of the issuer's second fiscal quarter.

(2) Non-accelerated filer. The term non-accelerated filer means an issuer that is not a large accelerated filer.

(3) Small non-accelerated filer. The term small non-accelerated filer means an issuer that:

(i) For an issuer that is not currently a small non-accelerated filer:

~~(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and~~

~~(C) An issuer must reflect the determination of whether it came within the definition of smaller reporting company in its quarterly report on Form 10-Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10-Q following the determination, rather than waiting until the first fiscal quarter of the next year.~~

~~(ii) For determinations based on an initial registration statement under the Securities Act or Exchange Act for shares of its common equity:~~

~~(A) Public float is measured as of a date within 30 days of the date of the filing of the registration statement and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of shares of its voting and non-voting common equity included in the registration statement by the estimated public offering price of the shares;~~is a non-accelerated filer; and

~~(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and~~As of the end of each of its two most recent second fiscal quarters had total assets of \$35 million or less.

(ii) An issuer that is currently a small non-accelerated filer will remain a small non-accelerated filer until:

~~(C) The issuer must reflect the determination of whether it came within the definition of smaller reporting company in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether it is a smaller reporting company. The issuer must re-determine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (3)(i)(C) of this definition. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to re-determine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.~~

~~(iii) Once an issuer determines that it does not qualify for smaller reporting company status because it exceeded one or more of the current thresholds, it will remain unqualified unless when making its annual determination either:~~

~~(A) It~~ determines that its public float was less than \$200 millionqualifies as a large accelerated filer; or

~~(B) It determines that its public float and its annual revenues meet the requirements for subsequent qualification included in the following chart:~~Its total assets exceed \$35 million as of the end of each of its two most recent second fiscal quarters.

Regulation S-X

§ 210.2-02

Accountants' reports and attestation reports.

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(f) *Attestation report on internal control over financial reporting.*

(1) Every registered public accounting firm that issues or prepares an accountant's report for a ~~registrant, other than a registrant that is neither an accelerated filer nor a~~ large accelerated filer (as defined in ~~§ 240.12b-2 of this chapter~~), ~~or is an emerging growth company, as defined in Rule 405 of the Securities Act (§ 230.405 of this chapter) or Rule 12b-2 of the Exchange Act (§ 240.12b-2 of this chapter), or an investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8),~~ § 240.12b-2 of this chapter) that is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must include an attestation report on internal control over financial reporting.

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Regulation S-K

§ 229.201

(Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

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(e) *Performance* ~~graph~~Graph.

(1) ~~Provide~~For a registrant that is a large accelerated filer (as defined in § 230.405 and § 240.12b-2 of this chapter) or an investment company, provide a line graph comparing the yearly percentage change in the registrant's cumulative total shareholder return on a class of common stock registered under section 12 of the Exchange Act (as measured by dividing the sum of the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and the difference between the registrant's share price at the end and the beginning of the measurement period; by the share price at the beginning of the measurement period) with:

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§ 229.305

Quantitative and qualitative disclosures about market risk.

(a) *Quantitative information about market risk.* Registrants that are large accelerated filers (as defined in § 230.405 and § 240.12b-2 of this chapter) must:

(1) ~~Registrants shall provide~~Provide, in their reporting currency, quantitative information about market risk as of the end of the latest fiscal year, in accordance with one of the following three disclosure alternatives. In preparing this quantitative information, registrants ~~shall~~must categorize market risk sensitive instruments into instruments entered into for trading purposes and instruments entered into for purposes other than trading purposes. Within both the trading and other than trading portfolios, separate quantitative information ~~shall~~must be presented, to the extent material, for each market risk exposure category (*i.e.*, interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk). A registrant may use one of the three alternatives set forth in this section for all of the required quantitative disclosures about market risk. A registrant also may choose, from among the three alternatives, one disclosure alternative for market risk sensitive instruments entered into for trading purposes and another disclosure alternative for market risk sensitive instruments entered into for other than trading purposes. Alternatively, a registrant may choose any disclosure alternative, from among the three alternatives, for each risk exposure category within the trading and other than trading portfolios. The three disclosure alternatives are:

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(b) *Qualitative information about market risk.* Registrants that are large accelerated filers (as defined in § 230.405 and § 240.12b-2 of this chapter) must:

(1) To the extent material, describe:

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(2) ~~Qualitative~~ Present qualitative information about market risk ~~shall be presented~~ separately for market risk sensitive instruments entered into for trading purposes and those entered into for purposes other than trading.

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~~(e) **Smaller reporting companies.** A smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by this Item.~~

(e) [Reserved]

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§ 229.308

(Item 308) Internal control over financial reporting.

(a) * * *

(4) If the registrant is ~~an accelerated filer or~~ a large accelerated filer (as defined in § 240.12b-2 of this chapter), or otherwise includes in its annual report a registered public accounting firm's attestation report on internal control over financial reporting, a statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on the registrant's internal control over financial reporting.

(b) *Attestation report of the registered public accounting firm.* If the registrant, ~~other than a registrant that is an emerging growth company, as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter), is an accelerated filer or~~ is a large accelerated filer (as defined in § 240.12b-2 of this chapter), provide the registered public accounting firm's attestation report on the registrant's internal control over financial reporting in the registrant's annual report containing the disclosure required by this Item.

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§ 229.402

(Item 402) Executive compensation.

(a) *General.* * * *

(7) *Treatment of non-accelerated filers.* A non-accelerated filer (as defined in § 230.405 and § 240.12b-2 of this chapter):

(i) May provide the disclosure in paragraphs (m) through (r) in lieu of the disclosure required in paragraphs (a) through (k); and

(ii) Is exempt from providing the disclosure required in paragraphs (s) through (v).

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§ 229.404

(Item 404) Transactions with related persons, promoters and certain control persons.

(b) *Review, approval or ratification of transactions with related persons.* A registrant that is a large accelerated filer (as defined in § 230.405 and § 240.12b-2 of this chapter) must:

(1) Describe the registrant's policies and procedures for the review, approval, or ratification of any transaction required to be reported under paragraph (a) of this Item. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

(i) The types of transactions that are covered by such policies and procedures;

(ii) The standards to be applied pursuant to such policies and procedures;

(iii) The persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and

(iv) A statement of whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

(2) Identify any transaction required to be reported under paragraph (a) of this Item since the beginning of the registrant's last fiscal year where such policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

(c) *Promoters and certain control persons.*

(2) ~~Registrants shall~~ A registrant must provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of a registrant that is a shell company (as defined in § 230.405 and § 240.12b-2 of this chapter), or any person that is part of a group, consisting of two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a registrant, that acquired control of a registrant that is a shell company. ~~For purposes of this Item, shell company has the same meaning as in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2).~~

(d) **Smaller reporting companies.** A registrant that qualifies as a "smaller reporting company," as defined by § 229.10(f)(1), ~~must provide the following information in order to comply with this Item:~~

~~(1) The information required by paragraph (a) of this Item for the period specified there for a transaction in which the amount involved exceeds the lesser of \$120,000 or one percent of the average of the smaller reporting company's total assets at year end for the last two completed fiscal years;~~

~~(2) The information required by paragraph (c) of this Item; and~~

~~(3) A list of all parents of the smaller reporting company showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.~~

~~Instruction to Item 404(d). 1. Include information for any material underwriting discounts and commissions upon the sale of securities by the smaller reporting company where any of the persons specified in paragraph (a) of this Item was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principal underwriter.~~

~~2. For smaller reporting companies information shall be given for the period specified in paragraph (a) of this Item and, in addition, for the fiscal year preceding the small reporting company's last fiscal year.~~

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