

that is contained in a registration statement at the time of effectiveness or as subsequently revised.

(h) For purposes of this section, *structured securities* shall mean securities whose cash flow characteristics depend upon one or more indices or that have embedded forwards or options or securities where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.

(i) For purposes of this section, *investment grade securities* shall mean investment grade securities as defined in General Instruction I.B.2. of Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter).

(j) For the purposes of this section, a firm commitment underwritten offering shall include a firm commitment underwritten offering of securities by a closed-end company or by a unit investment trust registered under the Investment Company Act of 1940.

[60 FR 26616, May 17, 1995, as amended at 64 FR 53909, Oct. 5, 1999]

WRITTEN CONSENTS

§ 230.436 Consents required in special cases.

(a) If any portion of the report or opinion of an expert or counsel is quoted or summarized as such in the registration statement or in a prospectus, the written consent of the expert or counsel shall be filed as an exhibit to the registration statement and shall expressly state that the expert or counsel consents to such quotation or summarization.

(b) If it is stated that any information contained in the registration statement has been reviewed or passed upon by any persons and that such information is set forth in the registration statement upon the authority of or in reliance upon such persons as experts, the written consents of such persons shall be filed as exhibits to the registration statement.

(c) Notwithstanding the provisions of paragraph (b) of this section, a report on unaudited interim financial information (as defined in paragraph (d) of this section) by an independent ac-

countant who has conducted a review of such interim financial information shall not be considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Act.

(d) The term *report on unaudited interim financial information* shall mean a report which consists of the following:

(1) A statement that the review of interim financial information was made in accordance with established professional standards for such reviews;

(2) An identification of the interim financial information reviewed;

(3) A description of the procedures for a review of interim financial information;

(4) A statement that a review of interim financial information is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is an expression of opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and

(5) A statement about whether the accountant is aware of any material modifications that should be made to the accompanying financial information so that it conforms with generally accepted accounting principles.

(e) Where a counsel is named as having acted for the underwriters or selling security holders, no consent will be required by reason of his being named as having acted in such capacity.

(f) Where the opinion of one counsel relies upon the opinion of another counsel, the consent of the counsel whose prepared opinion is relied upon need not be furnished.

(g)(1) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the security rating assigned to a class of debt securities, a class of convertible debt securities, or a class of preferred stock by a nationally recognized statistical rating organization, or with respect to registration statements on Form F-9 (§ 239.39 of this chapter) by any other rating organization specified in the Instruction to paragraph (a)(2) of General Instruction I of Form F-9, shall not be considered a part of the

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registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Act.

(2) For the purpose of paragraph (g)(1) of this section, the term *nationally recognized statistical rating organization* shall have the same meaning as used in Rule 15c3-1(c)(2)(vi)(F) (17 CFR 240.15c3-1 (c)(2)(vi)(F)).

(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. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37)

[47 FR 11441, Mar. 16, 1982, as amended at 58 FR 62030, Nov. 23, 1993]

§ 230.437 Application to dispense with consent.

An application to the Commission to dispense with any written consent of an expert pursuant to section 7 of the act shall be made by the registrant and shall be supported by an affidavit or affidavits establishing that the obtaining of such consent is impracticable or involves undue hardship on the registrant. Such application shall be filed and the consent of the Commission shall be obtained prior to the effective date of the registration statement.

[Reg. C, 12 FR 4074, June 24, 1947]

§ 230.438 Consents of persons about to become directors.

If any person who has not signed the registration statement is named therein as about to become a director, the written consent of such person shall be filed with the registration statement. Any such consent, however, may be omitted if there is filed with the registration statement a statement by the registrant, supported by an affidavit or affidavits, setting forth the reasons for such omission and establishing that the obtaining of such consent is im-

practicable or involves undue hardship on the registrant.

[Reg. C, 12 FR 4074, June 24, 1947]

§ 230.439 Consent to use of material incorporated by reference.

(a) If the Act or the rules and regulations of the Commission require the filing of a written consent to the use of any material in connection with the registration statement, such consent shall be filed as an exhibit to the registration statement even though the material is incorporated therein by reference. Where the filing of a written consent is required with respect to material incorporated in the registration statement by reference, which is to be filed subsequent to the effective date of the registration statement, such consent shall be filed as an amendment to the registration statement no later than the date on which such material is filed with the Commission, unless express consent to incorporation by reference is contained in the material to be incorporated by reference.

(b) Notwithstanding paragraph (a) of this section, any required consent may be incorporated by reference into a registration statement filed pursuant to Rule 462(b) under the Act (§ 230.462(b)) from a previously filed registration statement relating to that offering, provided that, the consent contained in the previously filed registration statement expressly provides for such incorporation.

[47 FR 11441, Mar. 16, 1982, as amended at 60 FR 26615, 26617, May 17, 1995]

§ § 230.445-230.447 [Reserved]

FILINGS; FEES; EFFECTIVE DATE

§ 230.455 Place of filing.

All registration statements and other papers filed with the Commission shall be filed at its principal office, except for statements of Form SB-1 (§ 239.9 of this chapter) and Form SB-2 (§ 239.10 of this chapter). Registration statements on Form SB-1 or SB-2 may be filed with the Commission either at its principal office or at the Commission's regional or district offices as specified in General Instruction A to each of those forms, except that registration statements and post-effective amendments