

Securities and Exchange Commission

§ 239.32

Finding Aids section of the printed volume and on GPO Access.

§§ 239.26–239.30 [Reserved]

§ 239.31 Form F-1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.

(a) Form F-1 shall be used for registration under the Securities Act of 1933 (“Securities Act”) of securities of all foreign private issuers, as defined in rule 405 (§230.405 of this chapter) for which no other form is authorized or prescribed.

(b) If a registrant is a majority-owned subsidiary, which does not itself meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest.

[47 FR 54771, Dec. 6, 1982, as amended at 56 FR 30055, 30056, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations Form F-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.32 Form F-2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

Any foreign private issuer, as defined in Rule 405 (§230.405 of this chapter), which meets the following conditions may use this form for the registration of securities under the Securities Act of 1933 (*Securities Act*) which are offered or to be offered in any transaction other than an exchange offer for securities of another person:

(a) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F (§249.220f of this chapter), on Form 10-K and Form 10-KSB (§249.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form 40-F, on

Form 40-F (§249.240f of this chapter) under the Exchange Act.

(b)(1) The Registrant (i) has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the information required to be filed pursuant to Section 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this form; (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the issuer has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§240.12b-25(b) of this chapter) under the Exchange Act with respect to a report or portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule.

(2) The provisions of paragraph (b)(1)(i) of this section do not apply to any registrant if:

(i) The aggregate market value worldwide of the voting and non-voting common equity of the registrant held by non-affiliates is the equivalent of \$75 million or more, or if non-convertible securities that are “investment grade securities,” as defined in Instructions to paragraph (b) of this section, are being registered; and

(ii) The registrant has filed at least one Form 20-F (§249.220f of this chapter), Form 40-F (§249.240f of this chapter) or Form 10-K (§249.310 of this chapter) that is the latest required to have been filed.

Instructions to paragraph (b): 1. The aggregate market value of the registrant’s outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock in the principal market for such stock, as of a date within 60 days prior to the date of filing [See the definition of *affiliate* in Securities Act Rule 405 (§230.405 of this chapter)].

2. A non-convertible security is an *investment grade security* if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in §240.15c3-1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade;

typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

(c) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (1) Failed to pay any dividend or sinking fund installment on preferred stock; or (2) defaulted (A) on any installment or installments on indebtedness for borrowed money, or (B) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(d) The financial statements included in this registration statement comply with Item 18 of Form 20-F (§249.220f of this chapter); *provided, however*, that if the securities being registered are non-convertible securities that are “investment grade securities,” as defined in Instructions to paragraph (b) of this section, such financial statements comply with either Item 17 or Item 18 of Form 20-F (§249.220f of this chapter).

(e) The provisions of paragraphs (b)(1)(i) and (d) of this section do not apply if the Registrant has filed at least one Form 20-F, Form 40-F or Form 10-K and Form 10-KSB that is the latest required to have been filed and if the only securities being registered are to be offered:

(1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing securityholders of the class of securities to which the rights attach;

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

(3) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The exemptions in this paragraph (e) are unavailable if securities are to be offered or sold in a

standby underwriting in the United States or similar arrangement.

(f) If a registrant is a successor registrant it shall be deemed to have met conditions, paragraphs (a), (b), (c), (d) and (e) of this section if: (1) Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state or other jurisdiction of incorporation of the predecessor of forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(g) If a registrant is a majority-owned subsidiary that does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

NOTE: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20-F or Form 40-F after the effective date of the registration statement, then it shall disclose the information specified in Form S-2 (§239.12 of this chapter). Rule 3-10 of Regulation S-X (§210.3-10 of this chapter) specifies the financial statements required.

(h) *Electronic filings.* In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S-T (§232.101 of this chapter) shall have filed with the Commission all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a temporary hardship exemption as provided

in Rule 201 of Regulation S-T (§232.201 of this chapter).

[47 FR 54773, Dec. 6, 1982, as amended at 56 FR 30055, 30056, July 1, 1991; 58 FR 14681, Mar. 18, 1993; 59 FR 21651, Apr. 26, 1994; 62 FR 26388, May 14, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.33 Form F-3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

This instruction sets forth registrant requirements and transaction requirements for the use of Form F-3. Any foreign private issuer, as defined in Rule 405 (§230.405 of this chapter), which meets the requirements of paragraph (a) of this section (*Registrant requirements*) may use this Form for the registration of securities under the Securities Act of 1933 (the *Securities Act*) which are offered in any transaction specified in paragraph (b) of this section (*Transaction requirements*), provided that the requirements applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see Instruction (a)(6) below.

(a) *Registrant requirements.* Except as set forth in this paragraph (a), all registrants must meet the following conditions in order to use this Form F-3 for registration under the Securities Act of securities offered in the transactions specified in paragraph (b) of this section:

(1) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed at least one annual report on Form 20-F (§249.220f of this chapter), on Form 10-K (§249.310 of this chapter) or, in the case of registrants described in General Instruction A(2) of Form 40-F, on Form 40-F (§249.240f of this chapter) under the Exchange Act.

(2) The registrant:

(i) Has been subject to the requirements of section 12 or 15(d) of the Ex-

change Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) of the Exchange Act for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this form; and

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during those twelve calendar months and that portion of a month) §240.12b-25(b) of this chapter with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by §240.12b-25(b) of this Chapter.

(3) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (i) Failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted (A) on any installment or installments on indebtedness for borrowed money, or (B) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(4) If the registrant is a successor registrant, it shall be deemed to have met conditions 1, 2, 3 and 4 above if: (i) Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state or other jurisdiction of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (ii) all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(5) *Majority-Owned Subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this form if: