

combined with the reporting history of the successor registrant in each case satisfy such 12-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(g) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(h) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(i) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall each file a Form F-X (§ 239.42 of this chapter) with the Commission at the time of filing this Form.

[56 FR 30063, July 1, 1991, as amended at 58 FR 62030, Nov. 23, 1993; 59 FR 243, Jan. 4, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.40 Form F-10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.

(a) Form F-10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act"), including securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination").

(b) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate

are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction: For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

(c) Form F-10 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer;

(3) Has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 12 calendar months immediately preceding the filing of this Form, and is currently in compliance with such obligations, *provided, however,* that in the case of a business combination, each participating company other than the successor registrant must meet such 12-month reporting obligation, except that any such participating company shall not be required to meet such reporting requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such reporting requirement; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of \$75 million or more; *provided, however,* that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each participating company other than the successor registrant is \$75 million or more, except that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would

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contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and *provided, further*, that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F-8, Form F-9, Form F-10 or Form F-80 (§§ 239.38, 239.39, 239.40 or 239.41) or a tender offer in connection with which Schedule 13E-4F or 14D-1F (§§ 240.13e-102 or 240.14d-102 of this chapter) was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

Instructions: 1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with rule 405 under the Securities Act.

2. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

3. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(d) In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the registrant shall be incorporated or organized under the laws

of Canada or any Canadian province or territory and be a foreign private issuer.

(e) In the case of a business combination, each participating company shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer.

(f) In the case of an exchange offer, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of the subject securities.

(g) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. holders upon terms and conditions not less favorable than those offered to any other holder of the same class of such securities of the participating company.

Instructions: 1. For purposes of exchange offers, the term "U.S. holder" shall mean any person whose address appears on the records of the issuer of the subject securities, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer of the subject securities as being located in the United States.

2. For purposes of business combinations, the term "U.S. holder" shall mean any person whose address appears on the records of a participating company, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of a participating company as being located in the United States.

3. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

(h) With respect to registration of debt securities or preferred securities on this Form, if the registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of paragraphs (c)(3) and (c)(4) of this section if the parent of the registrant-sub-sidiary meets the requirements of paragraph (c) of this section and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares); *provided, however*, that the securities of the subsidiary are only convertible or

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exchangeable, if at all, for the securities of the parent.

(i) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the 12-month reporting requirement of paragraph (c)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however*, that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 12-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(j) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) or prospectus (in all other cases) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(k) This Form shall not be used if the registrant or, in the case of an exchange offer, the issuer of the subject securities is an investment company registered or required to be registered under the Investment Company Act of 1940.

(l) Registrants and any non-U.S. person acting as trustee with respect to the securities being registered shall

each file a Form F-X (§239.42 of this chapter) with the Commission at the time of filing this Form.

[56 FR 30064, July 1, 1991, as amended at 58 FR 62030, Nov. 23, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F-10, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 239.41 Form F-80, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F-80 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

(b) This Form shall not be used for registration of securities if no takeover bid circular or issuer bid circular (in the case of an exchange offer) or information circular (in the case of a business combination) is prepared pursuant to the requirements of any Canadian jurisdiction due to the availability of an exemption from such requirements.

(c) This Form may not be used for registration of derivative securities except:

(1) Warrants, options and rights, provided that such securities and the underlying securities to which they relate are issued by the registrant, its parent or an affiliate of either; and

(2) Convertible securities, provided that such securities are convertible only into securities of the registrant, its parent or an affiliate of either.

Instruction: For purposes of this Form, an "affiliate" of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.