

## § 240.12b-13

and type size and font, by presenting all required information in a format readily communicated to investors.

[47 FR 11466, Mar. 16, 1982, as amended at 47 FR 58238, Dec. 30, 1982; 61 FR 24656, May 15, 1996; 67 FR 36704, May 24, 2002]

### § 240.12b-13 Preparation of statement or report.

The statement or report shall contain the numbers and captions of all items of the appropriate form, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto. However, where any item requires information to be given in tabular form, it shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)

[30 FR 2023, Feb. 13, 1965]

### § 240.12b-14 Riders; inserts.

Riders shall not be used. If the statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)

[30 FR 2023, Feb. 13, 1965]

### § 240.12b-15 Amendments.

All amendments must be filed under cover of the form amended, marked with the letter "A" to designate the document as an amendment, *e.g.*, "10-K/A," and in compliance with pertinent requirements applicable to statements and reports. Amendments filed pursuant to this section must set forth the complete text of each item as amended. Amendments must be numbered se-

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quentially and be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective. Amendments must be signed on behalf of the registrant by a duly authorized representative of the registrant. In addition, each principal executive officer and principal financial officer of the registrant must provide a new certification as specified in § 240.13a-14 or § 240.15d-14. The requirements of the form being amended will govern the number of copies to be filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. *See* Rule 309 of Regulation S-T (§ 232.309 of this chapter).

[67 FR 57288, Sept. 9, 2002]

### GENERAL REQUIREMENTS AS TO CONTENTS

### § 240.12b-20 Additional information.

In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)

[30 FR 2023, Feb. 13, 1965]

### § 240.12b-21 Information unknown or not available.

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions.

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable

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effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

### § 240.12b-22 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

### § 240.12b-23 Incorporation by reference.

(a) Except for information filed as an exhibit which is covered by Rule 12b-32 (17 CFR 240.12b-32), information may be incorporated by reference in answer, or partial answer, to any item of a registration statement or report subject to the following provisions:

(1) Financial statements incorporated by reference shall satisfy the requirements of the form or report in which they are incorporated. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is given;

(2) Information in any part of the registration statement or report may be incorporated by reference in answer, or partial answer, to any other item of the registration statement or report; and

(3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statement, shall be filed as an exhibit to the statement or report, except that:

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10-K and Form 10-KSB (§249.310 and §249.310b); and

(ii) A form of prospectus filed pursuant to §230.424(b) incorporated by reference in response to Item 1 of Form 8-A (§249.208a) need not be filed as an exhibit.

(b) Any incorporation by reference of matter pursuant to this section shall be subject to the provisions of §228.10(f) and §229.10(d) of this chapter restricting incorporation by reference of documents which incorporate by reference other information. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. Where only certain pages of a document are incorporated by reference and filed as an exhibit, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear or confusing.

[47 FR 11466, Mar. 16, 1982, as amended at 57 FR 48977, Oct. 29, 1992; 60 FR 32825, June 23, 1995]

### § 240.12b-24 [Reserved]

### § 240.12b-25 Notification of inability to timely file all or any required portion of a Form 10-K, 10-KSB, 20-F, 11-K, N-SAR, N-CSR, 10-Q or 10-QSB.

(a) If all or any required portion of an annual or transition report on Form 10-K, 10-KSB, 20-F or 11-K (17 CFR 249.310, 249.310b, 249.220f or 249.311), or a quarterly or transition report on Form 10-Q or 10-QSB (17 CFR 249.308a or 249.308b) required to be filed pursuant to sections 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and rules thereunder, or if all or any required portion of a semi-annual, annual or transition report on Form N-CSR (17 CFR 249.331; 17 CFR 274.128) or Form N-SAR (17 CFR 249.330; 17 CFR 274.101) required to be filed pursuant to sections 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a-29) and the rules thereunder, is not filed within the time period prescribed for such report, the registrant, no later