Exchange Act Forms

Last Update: April 6, 2020

These Compliance and Disclosure Interpretations ("C&DIs") comprise the Division's interpretations of Exchange Act forms commonly used by issuers. Some of these C&DIs were first published in prior Division publications and have been revised in some cases. The bracketed date following each C&DI is the latest date of publication or revision.

N.B. C&DIs for Form 8-K and for Section 16 forms have been separately published and can be found at Exchange Act Form 8-K and Exchange Act Section 16 and Related Rules and Forms, respectively.

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Section 101. Form 6-K

None

Section 102. Form 8-A

Question 102.01

Question: May a registrant use a single Form 8-A to register securities on more than one national securities exchange concurrently under Section 12(b)?

Answer: No. It must file a separate registration statement for each exchange. A registrant also cannot amend an already effective Form 8-A to register securities on an additional national securities exchange. It must instead file a new registration statement. [October 1, 2008]

Question 102.02

Question: Does the requirement for identifying the exchange on which the registered security is traded apply to over-the-counter markets?

Answer: No. [September 30, 2008]

Question 102.03

Question: A company was required to file reports pursuant to Section 15(d). After its reporting obligation was suspended, it continued to file voluntarily all reports required by Section 15(d), but it did not file a Form 15. In these circumstances, may the company use Form 8-A to register its securities pursuant to Section 12(g), even though use of Form 8-A is conditioned on the company being "required to file reports pursuant to Section 13 or 15(d)"?

Answer: Yes, because (1) the company was current in all Section 15(d) reports; and (2) no additional information would have been made available to the public by requiring a Form 10 to be filed. However, in general, a company

that is voluntarily filing periodic reports would not be permitted to use Form 8-A to register a class of its securities. [September 30, 2008]

Question 102.04

Question: May a company subject to Section 15(d) delay the due date, or avoid filing a quarterly or annual report, by filing a Form 8-A at or after the end of the fiscal quarter or fiscal year but prior to the due date of the applicable report?

Answer: No. A company subject to Section 15(d) with respect to a fiscal quarter or fiscal year cannot delay the due date or avoid filing the related quarterly or annual report by filing a Form 8-A at or after the end of the fiscal quarter or fiscal year but prior to the due date of the applicable report. Form 8-A explicitly provides that a company subject to Section 15(d) with respect to a fiscal year cannot do so. [September 30, 2008]

Section 103. Form 10

Question 103.01

Question: May a wholly-owned subsidiary that meets the requirements set forth in Instruction I to Form 10-K for omitting certain information from Form 10-K also rely on that instruction to omit the same information from a Form 10?

Answer: Yes. [September 30, 2008]

Question 103.02

Question: Is a company that is eligible to use Form 8-A precluded from using Form 10?

Answer: No. [September 30, 2008]

Section 104. Form 10-K

Question 104.01

Question: In order to incorporate information from the annual report to shareholders into the Form 10-K pursuant to General Instruction G(2), the report must be prepared in time to be submitted with the Form 10-K. If the annual report is available only in printer's proof form when the Form 10-K is due, may it be filed as an exhibit to the Form 10-K and still satisfy this instruction?

Answer: Yes. [September 30, 2008]

Question 104.02

Question: Although General Instruction G(3) indicates that the information regarding executive officers required by Item 401 of Regulation S-K may be included in Part I of Form 10-K, can that information be included in Part III of the Form 10-K?

Answer: Yes. [September 30, 2008]

Question 104.03

Question: How is General Instruction D(2)(a)'s requirement that a Form 10-K be signed by a majority of the board satisfied if there are vacancies on the board?

Answer: This signature requirement is satisfied if a majority of the current directors signs the Form 10-K. For example, a company's by-laws provide for a 15-person board of directors, and at present there are two vacancies. The signature requirement of a majority of the board is satisfied if a majority (*i.e.*, 7 out of 13) of the current directors signs the Form 10-K. [September 30, 2008]

Question 104.04

Question: May directors' signatures be provided pursuant to powers of attorney?

Answer: Yes. [September 30, 2008]

Question 104.05

Question: General Instruction D(2)(a) states that where the registrant is a limited partnership, the Form 10-K must be signed by the majority of the board of directors of any corporate general partner who signs the report. How is this requirement applied if there is more than one general partner? How is it applied if only one general partner manages the registrant and other general partners retain no control?

Answer: If there is more than one general partner, then a majority of the general partners must sign the Form 10-K. Where one general partner is managing and others retain no control, only the managing general partner must sign the Form 10-K. [September 30, 2008]

Question 104.06

Question: General Instruction G(3) to Form 10-K permits an issuer to incorporate Part III information into the Form 10-K from its definitive proxy material, if the definitive proxy material is filed within 120 days after the end of the issuer's fiscal year. Where the 120th day falls on a Saturday, Sunday or holiday, may the definitive proxy material be filed on the first business day following?

Answer: Yes, pursuant to Exchange Act Rule 0-3. [September 30, 2008]

Question 104.07

Question: May an issuer filing a Form 10-K pursuant to Section 15(d) rely on General Instruction G(3) to incorporate by reference into the Form 10-K Part III information presented in a proxy statement that was not subject to the Commission's Section 14(a) requirements at the time it was prepared and delivered?

Answer: No, unless such proxy statement is filed as an exhibit to the Form 10-K, as required by Exchange Act Rule 12b-23(a)(3). [September 30, 2008]

Question 104.08

Question: In General Instruction I(l)(b), which defaults are covered by the language "not cured within thirty days"?

Answer: "Not cured within thirty days" in General Instruction I(l)(b) of Form 10-K relates to defaults in the payment of principal, interest, a sinking or purchase fund installment, as well as any other material defaults. [September 30, 2008]

Question 104.09

Question: A company filed its annual report on Form 10-K, intending to incorporate by reference Part III information from its proxy statement to be filed within 120 days, pursuant to General Instruction G(3) to Form 10-K. If the proxy statement will not be filed within the 120-day period, what must the company do?

Answer: The company must amend the Form 10-K prior to the end of the 120-day period to provide the information that was to have been incorporated by reference. [September 30, 2008]

Question 104.10

Question: A company omits the Part III information in its annual report on Form 10-K because it intends to incorporate this information by reference from its proxy statement to be filed within 120 days, pursuant to General Instruction G(3) to Form 10-K. If the company is acquired between the due date of its Form 10-K and the 120th day after the end of its fiscal year, and will not file a proxy statement after the acquisition closes, must the company still amend its Form 10-K to include the Part III information?

Answer: Yes. [September 30, 2008]

Question 104.11

Question: An issuer with a pending Securities Act registration statement files its Form 10-K and seeks to incorporate by reference into the Form 10-K information from the pending registration statement. Is this permissible?

Answer: Yes, provided that two conditions are met: (1) the portion of the registration statement to be incorporated does not include any incorporation by reference to another document (*see* Item 10(d) of Regulation S-K), and (2) a copy of the incorporated portion of the registration statement is filed as an exhibit to the Form 10-K, as required by Exchange Act Rule 12b-23(a)(3). [September 30, 2008]

Question 104.12

Question: Must the Rule 14a-3(c) annual report to shareholders be filed as an exhibit to the company's Form 10-K?

Answer: The annual report to shareholders must be filed as an exhibit to Form 10-K only if information contained in the annual report is incorporated by reference in the Form 10-K or the registrant specifically requests that it be treated as part of the proxy soliciting material. Only those portions of the annual report incorporated by reference are deemed to be filed as part of the Form 10-K. [September 30, 2008]

Question 104.13

Question: An issuer files its 2019 Form 10-K using the disclosure permitted for smaller reporting companies under Regulation S-K. The cover page of the Form 10-K indicates that the issuer will no longer qualify to use the smaller reporting company disclosure for 2020 because its public float exceeded $250 million at the end of its second fiscal quarter in 2019. The issuer proposes to rely on General Instruction G(3) to incorporate by reference executive compensation and other disclosure required by Part III of Form 10-K into the 2019 Form 10-K from its definitive proxy statement to be filed not later than 120 days after its 2019 fiscal year end. May the issuer use smaller reporting company disclosure in this proxy statement, even though it does not qualify to use smaller reporting company disclosure for 2020?

Answer: Yes, because the issuer could have used the smaller reporting company disclosure for Part III of its 2019 Form 10-K if it had not used General Instruction G(3) to incorporate that information by reference from the definitive proxy statement. [November 7, 2018]

Question 104.14

Question: A filer's annual report on Form 10-K includes the financial statements of the filer, which is a limited partnership, and the financial statements of its corporate general partner, which is not a separate issuer and not required to file a Form 10-K. May the Interactive Data File include the financial statements of the corporate general partner?

Answer: No. Under Rule 405(b) of Regulation S-T, only the filer's financial statements, financial statement footnotes, and financial statement schedules are permitted to be included in the Interactive Data File submitted to the Commission. [May 29, 2009]

Question 104.15

Question: A filer's annual report on Form 10-K includes the consolidated parent company's financial statements as well as financial statements of one of its wholly-owned subsidiaries. The parent company has registered equity, and the subsidiary has registered debt. The single filing on Form 10-K is intended to satisfy the reporting obligation of both issuers. While the face financial statements are presented for each issuer separately, there is one set of combined financial statement footnotes. Should all of these financial statements be included in a single Interactive Data File?

Answer: Yes, if interactive data are being submitted for more than one filer whose financial statements are required to be filed and those financial statements appear in a single filing, such as Form 10-K or 10-Q, they must be included in a single Interactive Data File. See Chapter 6 of Volume II of the EDGAR Filer Manual for detailed instructions on how to prepare the interactive data in this circumstance, including how to format the combined footnotes. Note, however, that the Interactive Data File need only include the financial statements for entities mandated under the phase-in provisions. For example, if only the parent company is required to submit its interactive data in year one of the phase in, then the Interactive Data File in year one need only contain the parent company's complete financial statements. [May 29, 2009]

Question 104.16

Question: An annual report on Form 10-K is intended to satisfy the reporting obligation of two "dual listed" companies by including a single set of financial statements. Each of these companies is a separate legal entity with its own file number and Central Index Key ("CIK"). Which company's CIK should be tagged with the Central Index Key element for this submission?

Answer: The Central Index Key element must tag the CIK of just one of the "dual listed" companies, and the filer may choose which of those CIKs to use. As long as the registrants continue to be dual listed and file joint reports, the same CIK should be used in every filing. [May 29, 2009]

Question 104.17

Question: A company filed its annual report on Form 10-K. As permitted by General Instruction G(3) to Form 10-K, the company intended to incorporate by reference Part III information from its definitive proxy statement to be filed within 120 days after the end of the fiscal year covered by the Form 10-K. The company filed a preliminary proxy statement that contained the Part III information within the 120-day period, but the definitive proxy statement will now be filed after the 120-day period. Must the company amend the Form 10-K prior to the end of the 120-day period to file the Part III information that was to have been incorporated by reference?

Answer: Yes. Pursuant to General Instruction G(3) to Form 10-K, the Part III information may be incorporated by reference only from a company's definitive proxy statement or information statement. Therefore, in this situation, the Part III information must be filed as an amendment to the Form 10-K not later than the end of the 120-day period. [Aug. 11, 2010]

Question 104.18

Question: Form 10-K allows Part III information to be incorporated by reference from a registrant's definitive proxy or information statement, or, under certain circumstances, filed as an amendment to the Form 10-K, not later than 120 days after the end of the related fiscal year. May a registrant that is unable to file the Part III information by the 120-day deadline avail itself of the relief provided by the COVID-19 Order (Release No. 34-88465 (March 25, 2020)) for the filing of the Part III information?

Answer: Yes, as long as the 120-day deadline falls within the relief period specified in the Order and the registrant meets the conditions of the Order.

- A registrant that timely filed its annual report on Form 10-K without relying on the COVID-19 Order should furnish a Form 8-K with the disclosures required in the Order by the 120-day deadline. The registrant would then need to provide the Part III information within 45 days of the 120-day deadline by including it in a Form 10-K/A or definitive proxy or information statement.
- A registrant may invoke the COVID-19 Order with respect to both the Form 10-K and the Part III information by furnishing a single Form 8-K by the original deadline for the Form 10-K that provides the disclosures required by the Order, indicates that the registrant will incorporate the Part III information by reference and provides the estimated date by which the Part III information will be filed. The Part III information must then be filed no later than 45 days following the 120-day deadline.

- A registrant that properly invoked the COVID-19 Order with respect to its Form 10-K by furnishing a Form 8-K but was silent on its ability to timely file Part III information may (1) include the Part III information in its Form 10-K filed within 45 days of the original Form 10-K deadline, or (2) furnish a second Form 8-K with the disclosures required in the Order by the original 120-day deadline and then file the Part III information no later than 45 days following the 120-day deadline by including it in a Form 10-K/A or definitive proxy or information statement. [April 6, 2020]

Section 105. Form 10-Q

Question 105.01

Question: Does Part II, Item 4 of Form 10-Q require disclosure of the results of the vote on all matters voted upon at the annual or special meeting, including shareholder proposals and any matter raised on the floor of the meeting, whether or not included in management's proxy materials?

Answer: Yes. [September 30, 2008]

Question 105.02

Question: A company's initial registration statement under the Securities Act became effective during its quarter ended September 30. Prior to the effective date, but during this quarter, the company submitted matters to a vote of its security holders. Does Part II, Item 4 of Form 10-Q require disclosure of the results of the matters voted on?

Answer: Yes. Because Form 10-Q applies to the entire quarter, disclosure of Part II, Item 4 matters should be provided in the initial Form 10-Q filed pursuant to Section 15(d). [September 30, 2008]

Question 105.03

Question: If a company is current but not timely in its reporting obligations, may it check the "yes" box on the cover page of a Form 10-Q indicating that it has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months?

Answer: Yes. The company may check the "yes" box referred to above even if all required reports were not filed on time, so long as they are filed by the date of the filing of the Form 10-Q. [April 24, 2009]

Question 105.04

Question: If a company is not yet required to submit Interactive Data Files with its Exchange Act reports, should it check the box on the cover pages of the reports relating to compliance with Interactive Data File submission requirements?

Answer: No. A company should not start checking the cover page box relating to Interactive Data File compliance until it is required to submit those files. For example, if a company is first required to include an Interactive Data File with its second quarter Form 10-Q and, as permitted by the grace period rules, includes such file in a Form 10-Q amendment 30 days after the date the report is due and filed, the company should not check the Interactive Data File box on the cover page of its initial Form 10-Q. Rather, it should check the box once the first Interactive Data File is submitted — in this case, with the Form 10-Q amendment. Companies that have been voluntarily submitting Interactive Data Files should not check the box until they are required to submit the files. [April 30, 2009]

Question 105.05

[Withdrawn, Sept. 17, 2010]

Question 105.06

[Withdrawn, Sept. 17, 2010]

Question 105.07

Question: What is the first interactive data submission required of a calendar-year, domestic filer whose initial registration statement on Form S-1 is declared effective on July 2, 2009 and whose first periodic report is a Form 10-Q for the quarter ended June 30, 2009?

Answer: The filer must assess whether it is a large accelerated filer in order to determine how to apply the phase-in schedule for submitting interactive data. Large accelerated filer status is determined based on the criteria set forth in Exchange Act Rule 12b-2 at the end of a fiscal year. On these facts, the earliest date the filer could qualify as a large accelerated filer is December 31, 2010. If at that date the filer qualifies as a large accelerated filer, interactive data would be required beginning with its Form 10-Q for the quarter ended March 31, 2011. However, if at that date the filer does not qualify as a large accelerated filer, the interactive data would be required to be submitted beginning with the filer's Form 10-Q for the quarter ended June 30, 2011. [May 29, 2009]

Question 105.08

Question: The Document and Company Information Taxonomy includes an "Amendment Flag" element. When should the filer set the Amendment Flag to "True" in preparing its Interactive Data File for submission?

Answer: The Amendment Flag signifies that the Interactive Data File is an amendment to a prior Interactive Data File. It is not intended to signify that a new Interactive Data File is being filed as part of an amendment to a periodic report or registration statement. As a result, a filer should set the Amendment Flag to "True" only when the filer is amending the Interactive Data File itself. For example, if a company is first required to include an Interactive Data File with its second quarter Form 10-Q and, as permitted by the grace period rules, includes such file in a Form 10-Q amendment 30 days after the date the report is due and filed, the company should not set the Amendment Flag to "True" when it prepares its Interactive Data File for submission in the Form 10-Q amendment. [May 29, 2009]

Question 105.09

Question: On August 17, 2018, the SEC adopted amendments to certain disclosure requirements in Securities Act Release No. 33-10532, Disclosure Update and Simplification. The amendments will become effective on November 5, 2018. Among the amendments is the requirement to present the changes in shareholders' equity in the interim financial statements (either in a separate statement or footnote) in quarterly reports on Form 10-Q. Refer to Rules 8-03(a)(5) and 10-01(a)(7) of Regulation S-X. When are filers expected to comply with this new requirement?

Answer: The amendments are effective for all filings made on or after November 5, 2018. In light of the timing of effectiveness of the amendments and proximity of effectiveness to the filing date for most filers' quarterly reports, the staff would not object if the filer's first presentation of the changes in shareholders' equity is included in its Form 10-Q for the quarter that begins after the effective date of the amendments. For example, a December 31 fiscal year-end filer could omit this disclosure from its September 30, 2018 Form 10-Q. Likewise, a June 30 fiscal year-end filer could omit this disclosure from its September 30, 2018 and December 31, 2018 Forms 10-Q; however, the staff would object if it did not provide the disclosures in its March 31, 2019 Form 10-Q. (Sept. 25, 2018 and updated October 4, 2018)

Section 106. Form 11-K

Question 106.01

Question: The general instructions to Form 11-K state that plans subject to ERISA "shall file the plan financial statements within 180 days after the plan's fiscal year." Does this mean that ERISA plans may file the entire Form 11-K (not only the financial statements) within 180 days after the end of the plan fiscal year?

Answer: Yes. As stated in Release No. 33-6867, "plans subject to ERISA will be permitted to file their Forms 11-K within 180 days after the plan's fiscal year end." Note also that the Form 11-K now contains only financial

statements, and Exchange Act Rule 15d-21 has been amended to allow the filing of ERISA plan financial statements as an amendment to the Form 10-K. [September 30, 2008]

Question 106.02

Question: Are reports regarding internal control over financial reporting required to be included in a Form 11-K?

Answer: No. Form 11-K does not require the reports called for by Item 308 of Regulation S-K. [September 30, 2008]

Question 106.03

Question: Footnote 47 of Release No. 33-8124 provides that the certification requirements of Section 302 of the Sarbanes-Oxley Act of 2002 do not apply to annual reports on Form 11-K. Do the certification requirements of Sarbanes-Oxley Act Section 906 apply to annual reports on Form 11-K?

Answer: No. [September 30, 2008]

Question 106.04

Question: An issuer that has maintained a 401(k) employee savings plan for several years has decided to add its common stock as an investment option in the plan. Under the Division's position issued in the *Diasonics* no-action letter (Dec. 29, 1982), both the plan interests and the employer stock will be subject to the Securities Act. Prior to the addition of the employer stock, the plan interests would not be regarded as securities. General Instruction A.2. to Form S-8 will ordinarily require a plan that has been in existence for more than 90 days to file a Form 11-K concurrently with the registration of the offering of plan interests and employer securities. Does General Instruction A.2 require a Form 11-K to be filed concurrently with the Form S-8 in this situation?

Answer: No. Because the interests were not securities before adoption of the amendment adding employer securities, a Form 11-K is not required to be filed concurrently with the Form S-8. [September 30, 2008]

Section 107. Form 12b-25

Question 107.01

Question: Is a company required to file a Form 12b-25 even when it anticipates filing a periodic report after the Rule 12b-25 extension period?

Answer: Yes. Under Rule 12b-25(a), a company must file a Form 12b-25 for a periodic report that is filed after the due date regardless of whether it anticipates filing the periodic report within the extension period. *See* Release No. 34-16718. If the company does not anticipate filing the periodic report within the extension period, it should not check the box in Part II of Form 12b-25. [September 30, 2008]

Question 107.02

Question: An issuer files a Form 12b-25 to provide notice that its Form 10-K will be late. The issuer does not check the box in Part II of the Form to indicate that it seeks to use the extension in Rule 12b-25(b) because it anticipates that its Form 10-K will be filed after the 15th calendar day following the initial due date for the Form 10-K, which is outside of the Rule 12b-25(b) extension period. The issuer actually files its Form 10-K before the 15th calendar day. Can the issuer avail itself of the extension in Rule 12b-25(b) and have its Form 10-K be considered timely?

Answer: Yes. A company is required to file a Form 12b-25 to provide notice of a late periodic report filing, regardless of whether it will be able to avail itself of the Rule 12b-25(b) extension period. If an issuer believes that it will not be able to file the periodic report within the extension period, it should not check the box in Part II of Form 12b-25 indicating that it will do so. In the event that the issuer does, in fact, file its periodic report within the Rule 12b-25(b) extension period and the periodic report includes all required disclosures, then the periodic report will be considered timely, even though the issuer did not check the box in Part II of Form 12b-25. [July 8, 2011]

Section 108. Form 15

Question 108.01

Question: Section 15(d) of the Exchange Act provides an automatic suspension of the periodic reporting obligation as to any fiscal year (except for the fiscal year in which the registration statement became effective) if an issuer has fewer than 300 security holders of record *at the beginning* of such fiscal year. In contrast, Rule 12h-3 permits a company to suspend its reporting obligation under Section 15(d) if the requirements of the rule are met *at any time* during the fiscal year. Is a Form 15 required to be filed under Rule 12h-3 as a condition of the suspension?

Answer: Because situations exempted by Rule 12h-3 (*e.g.*, there are fewer than 300 security holders of record in the middle of a fiscal year) do not meet the literal test of Section 15(d), Rule 12h-3 requires the filing of Form 15 as a condition of the suspension. By contrast, under Rule 15d-6, if an issuer has fewer than 300 security holders of record at the beginning of the fiscal year, a Form 15 should be filed to notify the Commission of such suspension, but the suspension is granted by statute and is not contingent on filing the Form 15. [September 30, 2008]

Question 108.02

Question: A company submits a request for a no-action letter, seeking to rely on Rule 12h-3 to suspend its Section 15(d) reporting obligations. No-action relief is needed because the company had a Securities Act registration statement that became effective or was updated pursuant to Securities Act Section 10(a)(3) during the fiscal year, and consequently the company does not satisfy the conditions of Rule 12h-3(c). May the company file a Form 15 to suspend its Section 15(d) reporting obligation before the staff grants the requested no-action letter?

Answer: No. Because no-action relief is prospective, the company may not file a Form 15 checking the Rule 12h-3 box until the staff grants the requested no-action letter. If the company files a Form 15 checking the Rule 12h-3 box before the staff grants the no-action letter, the company should withdraw that Form 15 by filing an amendment indicating in an explanatory note that the Form 15 is withdrawn. [September 30, 2008]

Question 108.03

Question: In 2007, Rule 12g-4 was amended to remove the prior Rule 12g-4(a)(2) and to redesignate Rules 12g-4(a)(1)(i) and 12g-4(a)(1)(ii) as Rules 12g-4(a)(1) and (2), respectively. However, Form 15 was not amended in connection with this amendment to Rule 12g-4, so that the Rule 12g-4 boxes in Form 15 do not correspond with the current Rule 12g-4. If a company files Form 15 under one of the redesignated rules, which box should it check?

Answer: Until Form 15 is amended to reflect the current Rule 12g-4, filers should (1) check the “Rule 12g-4(a)(1)(i)” box if the registrant is terminating its Section 12(g) registration pursuant to the current Rule 12g-4(a)(1), and (2) check the “Rule 12g-4(a)(1)(ii)” box if the registrant is terminating its Section 12(g) registration pursuant to the current Rule 12g-4(a)(2). *See* Exchange Act Rule 0-5. In addition to checking the “Rule 12g-4(a)(1)(i)” or “Rule 12g-4(a)(1)(ii)” box, filers can also include an explanatory note in the Form 15 regarding the change to Rule 12g-4. [September 30, 2008]

Section 109. Form 15F

None

Section 110. Form 20-F

Question 110.01

Question: A foreign private issuer that has prepared its financial statements in a currency other than U.S. currency must provide the current and historical exchange rate information required by Item 3.A.3 of Form 20-F. What source of exchange rate information must be used?

Answer: An issuer may use any reliable source for the rates of exchange as long as it identifies the source. One example of a reliable source is the noon buying rate in New York City for cable transfers in foreign currencies as certified for customs purposes by the Federal Reserve Bank of New York. Although the Federal Reserve Bank of New York is no longer publishing these exchange rates on its web site, it is still certifying them for customs purposes. The Board of Governors of the Federal Reserve Bank publishes these exchange rates on a weekly basis on its web site at http://www.federalreserve.gov/releases/h10/Update. [April 24, 2009]

Question 110.02

Question: When the securities being registered on Form 20-F are in the form of ADRs, must a description of the ADRs be included in the response to Item 12.D of Form 20-F? Must the depositary sign the registration statement?

Answer: When the securities being registered on Form 20-F are in the form of ADRs, the issuer must provide the information required by Item 12.D of Form 20-F. However, the depositary is not required to sign the registration statement. [September 30, 2008]

Question 110.03

Question: When a foreign private issuer guarantees securities of a subsidiary that is not a foreign private issuer, may the parent company-guarantor and subsidiary-issuer of guaranteed securities use an F- series registration statement to register an offering of the securities under the Securities Act and use Form 20-F with respect to any reporting obligations?

Answer: Yes, if certain requirements are satisfied. Rule 3-10 of Regulation S-X permits modified reporting by subsidiary issuers of guaranteed securities and subsidiary guarantors. Separate financial statements need not be filed for subsidiaries if any of Rules 3-10(b) through 3-10(d) apply and all applicable conditions of the rule relied upon are met in the parent company's filings. If the parent and issuer are eligible to present condensed consolidated financial information in the parent company's filings and the parent qualifies as a foreign private issuer, the parent company and its subsidiaries may use an F-series registration statement to register an offering of guarantees and guaranteed securities that are issued by a domestic or foreign subsidiary that does not qualify as a foreign private issuer and use Form 20-F with respect to any reporting obligations associated with such registration statement. The same would apply if the parent and subsidiaries are eligible to present narrative disclosure in lieu of condensed consolidating financial information under Rule 3-10. [December 8, 2016]

Question 110.04

Question: When a parent foreign private issuer issues securities that are guaranteed or co-issued by one or more subsidiaries that do not themselves qualify as a foreign private issuer, may the parent company-issuer and subsidiary-guarantor(s) or co-issuers use an F- series registration statement to register an offering of the securities under the Securities Act and use Form 20-F with respect to any reporting obligations?

Answer: Yes, if certain requirements are satisfied. In this situation, separate financial statements need not be filed for subsidiaries if either Rule 3-10(e) or 3-10(f) applies and all applicable conditions of the rule relied upon are met in the parent company's filings. As described in the last two sentences of Securities Act Forms CDI 102.03 / Exchange Act Forms CDI 110.03, when a parent foreign private issuer issues securities guaranteed or co-issued by one or more subsidiaries that do not themselves qualify as a foreign private issuer, the parent and subsidiary may use an F- series registration statement when they are eligible to present condensed consolidating financial information or narrative disclosure. [December 8, 2016]

Question 110.05

Question: What is the deadline for filing a Form 20-F annual report when the issuer's fiscal year ends on the last day of a month? What if the fiscal year ends before the last day of a month?

Answer: Form 20-F is due four months after the end of an issuer's fiscal year. See General Instruction A.(b)(2) to Form 20-F. When the last day of the issuer's fiscal year is the last day of a month, the annual report on Form 20-F

is due four complete months after that day. For example, a February 28 fiscal year end results in a due date of June 30. When the last day of the issuer's fiscal year is other than the end of a month, the annual report on Form 20-F is due on the same day four months ahead. For example, a February 20 fiscal year end results in a due date of June 20. [December 8, 2016]

Question 110.06

Question: May a wholly-owned subsidiary of a foreign private issuer omit certain information from its Form 20-F annual report in the same manner that a wholly-owned subsidiary required to file a Form 10-K may omit information if it meets the requirements set forth in General Instruction I to that form?

Answer: Yes, so long as the registrant includes a prominent statement on the cover page of the Form 20-F that it meets the conditions set forth in General Instruction I(1)(a) and (b) to Form 10-K and is therefore filing the form with the reduced disclosure format. If so, the registrant may omit comparable information enumerated in General Instruction I(2) that would apply to a foreign private issuer filing on Form 20-F. Specifically, the registrant may omit the following:

- information required by Item 3.A, Selected financial data, and Item 5, Operating and Financial Review and Prospects, subject to the same disclosure requirements in General Instruction I(2)(a) to Form 10-K;
- the list of subsidiaries exhibit required by Item 8 of Instructions as to Exhibits;
- information required by Item 6.A, Directors and Senior Management, Item 6.B, Compensation, 6.D, Employees, Item 6.E, Share Ownership, Item 7, Major Shareholders and Related Party Transactions, Item 16A, Audit Committee Financial Expert, and Item 16B, Code of Ethics; and
- information required by Item 4, Information on the Company, subject to the same disclosure requirements in General Instruction I(2)(d) to Form 10-K.

[December 8, 2016]

Question 110.07

Question: May a foreign private issuer incorporate by reference into a Form 20-F annual report information that has previously been filed with the Commission, for example, on a Form 6-K?

Answer: Yes, Exchange Act Rule 12b-23 permits information to be incorporated by reference in answer, or partial answer, to any item required to be disclosed by Form 20-F, subject to the limitations set forth in that rule. Issuers using incorporation by reference must identify with specificity the information that is being incorporated by reference. [December 8, 2016]

Section 111. Form 25

Question 111.01

Question: For securities that are being delisted from an exchange, may the Form 15 be filed prior to the effective date of the Form 25?

Answer: No. The effective date of a Form 25 for the delisting of an issuer’s securities may not be earlier than 10 days following the date on which such form is filed with the Commission. A Form 15 with respect to securities being delisted may not be filed prior to the effective date of the Form 25 for the delisting since Sections 12(g) and 15(d) are suspended during the period in which Section 12(b) applies. [September 30, 2008]

Section 112. Form 40-F

Question 112.01

Question: May eligible Canadian issuers rely on Securities Act Rule 402(e) or Exchange Act Rule 12b-11(d) to use typed, duplicated or facsimile versions of manual signatures in connection with Form 40-F?

Answer: Yes, provided that the issuer complies with the requirements of those rules regarding retention of manual signatures and provision of copies thereof to the Commission or its staff upon request. *See Cleary, Gottlieb, Steen & Hamilton* no-action letter (Aug. 13, 1996). [September 30, 2008]

Question 112.02

Question: An MJDS filer is required to file its Form 40-F on the same day the information included therein is due to be filed with any securities commission or equivalent regulatory authority in Canada. If an MJDS filer properly relies on any applicable Canadian COVID-19-related relief for extension of its filing deadline with the securities commission or equivalent regulatory authority, does the MJDS filer need to comply with the conditions for exemptive relief in the SEC's COVID-19 Order (Release No. 34-88465 (March 25, 2020)) on the date the Form 40-F would have been due in the United States?

Answer: No. Under these facts, compliance with the conditions of the SEC's COVID-19 Order on the original due date of the Form 40-F is not required. MJDS filers should also consider promptly disclosing their reliance on the Canadian COVID-19-related relief. [Apr. 6, 2020]

INTERPRETIVE RESPONSES REGARDING PARTICULAR SITUATIONS

Section 201. Form 6-F

None

Section 202. Form 8-A

202.01 A Canadian company filed a Securities Act registration statement in connection with a proposed merger. The registration statement became effective but was not used. The company desired to register under the Exchange Act and wanted to use Form 8-A. The company was subject to Section 15(d) of the Exchange Act because of the effective registration statement, but it had not made any of the periodic filings required by Section 13(a). Form 8-A is available to register the securities of any issuer that is required to file reports pursuant to Section 15(d). Counsel was informed that the Division staff would not object to the use of the Form 8-A as long as the company first filed all of the delinquent Exchange Act reports. [September 30, 2008]

202.02 A company has over 500 shareholders and $10 million in assets on December 31, the last day of its fiscal year, and is thus required to file an Exchange Act registration statement within 120 days of December 31. On March 1 of the next year, the company's first Securities Act registration statement becomes effective, and the company becomes subject to Section 15(d) of the Exchange Act. The company may file its Exchange Act registration statement on Form 8-A because at the time that filing is required, the company will be subject to Section 15(d). [September 30, 2008]

202.03 A company issued units of common stock and warrants, and more than a year has passed since the effectiveness of the Securities Act registration statement. The warrants are now exercisable and the company wants the common stock to be listed on NASDAQ. As to warrant exercises, post-effective amendments would be required to keep the prospectus current for Section 10(a)(3) purposes. If the company is still subject to Section 15(d), the company may use a Form 8-A to register under the Exchange Act. [September 30, 2008]

202.04 A publicly-held company registered under the Exchange Act and emerging from bankruptcy proposes to issue, pursuant to the bankruptcy plan, a new class of common stock with a different par value from its other common stock. Since the prior class of common stock was cancelled as part of the bankruptcy proceedings, the company will be permitted to amend its current Form 8-A Exchange Act registration statement to effect registration of the new class of common stock. [September 30, 2008]

202.05 No objection would be raised to the filing of a Form 8-A prior to the effective date of a Securities Act registration for the same shares, where the purpose was to facilitate listing on an exchange as soon as the Securities Act registration became effective. [September 30, 2008]

Section 203. Form 10

203.01 A publicly-held company registered under the Exchange Act and emerging from bankruptcy proposes to issue, pursuant to the bankruptcy plan, a new class of common stock with a different par value from its other common stock. Since the prior class of common stock was cancelled as part of the bankruptcy proceedings, the company will be permitted to amend its current Form 10 Exchange Act registration statement to effect registration of the new class of common stock. [September 30, 2008]

Section 204. Form 10-K

204.01 General Instruction I to Form 10-K permits the filing of an abbreviated Form 10-K by certain wholly-owned subsidiaries of a reporting company. One of the conditions for the use of the abbreviated form is that all of the registrant's equity securities must be held by a single person. A request to use the abbreviated form was received from a company that had a series of non-voting preferred stock held by 135 persons. All of the common stock was held by a single person. The company was permitted to use the abbreviated Form 10-K on the condition that the number of holders of the non-voting preferred remained below 500 and therefore did not necessitate registration of that class pursuant to Section 12(g) of the Exchange Act. [September 30, 2008]

204.02 For purposes of Form 10-K, Item 601(b)(10)(iii) of Regulation S-K requiring disclosure of remunerative contracts would apply to a deferred compensation plan entered into during the fiscal year, even though the officer/director retired during that fiscal year and no longer was an officer/director. [September 30, 2008]

204.03 A limited partnership, which offers securities on Form S-11 that goes effective on December 15th, does not commence selling efforts nor does it acquire properties or admit limited partners until after December 31st, the end of its fiscal year. Escrow is not broken until June 30th of its next fiscal year. Regardless of the fact that selling efforts began in the next fiscal year, the partnership should file a Form 10-K for the fiscal year in which the Form S-11 went effective. [September 30, 2008]

204.04 A calendar year Exchange Act company proposes to file a Form N-8A and become a registered management investment company prior to March 31, the due date for its Form 10-K. Its first N-CSR, which would satisfy both Investment Company Act and Exchange Act reporting obligations, will not be due until after the period ending June 30. The Division staff advised that the company should file the Form 10-K due March 31, even though the company will be an investment company as of that date, and a Form 10-Q for the period from January 1 through the date the Form N-8A is filed. [September 30, 2008]

204.05 A voluntary filer, which must indicate its voluntary status by checking the appropriate box on the Form 10-K cover page, seeks to indicate that it is "current" in its Exchange Act reporting. In doing so, it should *not* check the box on the cover page representing that it has filed all reports required by Section 13(a) or 15(d) required during the preceding 12 months and has been subject to such filing requirements for the past 90 days, as this would create confusion since the company has indicated that it is a voluntary filer. However, because this information can assist sellers in determining whether the company satisfies the current public information requirements of Rule 144(c), the company should add an explanatory note indicating, if correct, that it had filed all Exchange Act reports for the preceding 12 months. [September 30, 2008]

204.06 A publicly-traded REIT has a commonly used structure (called an UPREIT) in which the publicly traded corporation acts as general partner of a majority-owned limited partnership that holds and operates all of the properties. The executive officers of the corporation are also executive officers of the operating partnership. The compensation paid to those executives is for services provided to both entities (*i.e.*, they are not separately compensated for their services to the operating partnership). Both entities report pursuant to Exchange Act obligations. Pursuant to General Instruction G(3), the corporation's Form 10-K will forward incorporate its Regulation S-K Item 402 disclosure from its definitive proxy statement. The operating partnership does not file a proxy statement. Because the corporation's and the operating partnership's compensation are integrally related, the operating partnership may incorporate Part III information into its Form 10-K from the corporation's definitive proxy statement. [September 30, 2008]

204.07. An amendment solely to correct the signature page of a Form 10-K by providing the previously omitted signatures of both the principal financial officer and the principal accounting officer does not require new signatures by the directors. [September 30, 2008]

Section 205. Form 10-Q

None

Section 206. Form 11-K

206.01 A company filed a Form S-8 registration statement to register participations in a profit sharing plan. It has been determined that the participations would, in fact, be exempt from registration under Section 3(a)(2) of the Securities Act. The remaining participations are being deregistered. The company was informed that under the circumstances the Division staff would not require the continued filing of Form 11-K annual reports for the profit sharing plan. [September 30, 2008]

206.02 A company planned to file a Form 11-K for a 6-month year period for an ERISA plan. Form 11-K provides that the due date for an ERISA plan Form 11-K is 180 days after the fiscal year end. However, Rule 15d-10 provides that for short years of 6 months or more, an annual report would be due 90 days after the fiscal year end. The Division staff took the position that the short-year Form 11-K could be filed 180 days after the fiscal year end. [September 30, 2008]

Section 207. Form 12b-25

207.01 A Form 12b-25 submitted in connection with a late Form 11-K to be filed in paper pursuant to Item 101(b) of Regulation S-T may also be filed in paper. [September 30, 2008]

Section 208. Form 15

None.

Section 209. Form 15F

None

Section 210. Form 20-F

None.

Section 211. Form 25

None.

Section 212. Form 40-F

None.

Modified: Nov. 7, 2018