

## Securities and Exchange Commission

## § 240.12b-2

Quotation System (“NASDAQ”) at the time the option is issued.

(Secs. 3(a)(12); 48 Stat. 882, 84 Stat. 718, 1435, 1499 (15 U.S.C. 78(c)))

[38 FR 11449, May 8, 1973, as amended at 50 FR 20203, May 15, 1985]

### § 240.12a-7 Exemption of stock contained in standardized market baskets from section 12(a) of the Act.

(a) Any component stock of a standardized market basket shall be exempt from the registration requirement of section 12(a) of the Act, solely for the purpose of inclusion in a standardized market basket, provided that all of the following terms and conditions are met:

(1) The standardized market basket has been duly approved by the Commission for listing on a national securities exchange pursuant to the requirements of section 19(b) of the Act; and

(2) The stock is a National Market System security as defined in rule 11Aa2-1 under the Act (17 CFR 240.11Aa2-1) and is either:

(i) Listed and registered for trading on a national securities exchange by the issuer or

(ii) Quoted on the National Association of Securities Dealers Automated Quotation System;

(b) When used in this rule, the term standardized market basket means a group of at least 100 stocks purchased or sold in a single execution and at a single trading location with physical delivery and transfer of ownership of each component stock resulting from such execution.

[56 FR 28322, June 20, 1991]

### § 240.12a-8 Exemption of depository shares.

Depository shares (as that term is defined in §240.12b-2) registered on Form F-6 (§239.36 of this chapter), but not the underlying deposited securities, shall be exempt from the operation of section 12(a) of the Act (15 U.S.C. 78(a)).

[62 FR 39766, July 24, 1997]

### § 240.12a-9 Exemption of standardized options from section 12(a) of the Act.

The provisions of section 12(a) of the Act (15 U.S.C. 78(a)) do not apply in respect of any standardized option, as defined by section 240.9b-1(a)(4), issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q-1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)).

[68 FR 192, Jan. 2, 2003]

## REGULATION 12B: REGISTRATION AND REPORTING

SOURCE: Sections 240.12b-1 to 240.12b-36 appear at 13 FR 9321, Dec. 31, 1948, unless otherwise noted.

### ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

### GENERAL

#### § 240.12b-1 Scope of regulation.

The rules contained in this regulation shall govern all registration statements pursuant to sections 12(b) and 12(g) of the Act and all reports filed pursuant to sections 13 and 15(d) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

[47 FR 11464, Mar. 16, 1982]

#### § 240.12b-2 Definitions.

Unless the context otherwise requires, the following terms, when used in the rules contained in this regulation or in Regulation 13A or 15D or in the forms for statements and reports filed pursuant to sections 12, 13 or 15(d)

of the act, shall have the respective meanings indicated in this rule:

*Accelerated filer.* (1) The term “accelerated filer” means an issuer after it first meets the following conditions as of the end of its fiscal year:

(i) The aggregate market value of the voting and non-voting common equity held by non-affiliates of the issuer is \$75 million or more;

(ii) The issuer has been subject to the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) for a period of at least twelve calendar months;

(iii) The issuer has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Act; and

(iv) The issuer is not eligible to use Forms 10-KSB and 10-QSB (§ 249.310b and § 249.308b) for its annual and quarterly reports.

NOTE TO PARAGRAPH (1): The aggregate market value of the issuer’s outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity, as of the last business day of the issuer’s most recently completed second fiscal quarter.

(2) *Entering and Exiting Accelerated Filer Status.* (i) The determination for whether a non-accelerated filer becomes an accelerated filer as of the end of the issuer’s fiscal year governs the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports to be filed thereafter while the issuer remains an accelerated filer.

(ii) Once an issuer becomes an accelerated filer, it will remain an accelerated filer unless the issuer becomes eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports. In that case, the issuer will not become an accelerated filer again unless it subsequently meets the conditions in paragraph (1) of this definition.

*Affiliate.* An “affiliate” of, or a person “affiliated” with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

*Amount.* The term “amount,” when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

*Associate.* The term “associate” used to indicate a relationship with any person, means (1) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

*Certified.* The term “certified,” when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

*Charter.* The term “charter” includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

*Common equity.* The term “common equity” means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

*Control.* The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

*Depository share.* The term “depository share” means a security, evidenced by an American Depositary Receipt, that represents a foreign security or a multiple of or fraction thereof deposited with a depository.

*Employee.* The term “employee” does not include a director, trustee, or officer.

*Fiscal year.* The term “fiscal year” means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

*Majority-owned subsidiary.* The term “majority-owned subsidiary” means a subsidiary more than 50 percent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary’s parent and/or one or more of the parent’s other majority-owned subsidiaries.

*Managing underwriter.* The term “managing underwriter” includes an underwriter (or underwriters) who, by contract or otherwise, deals with the registrant; organizes the selling effort; receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

*Material.* The term “material,” when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered.

*Parent.* A “parent” of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

*Predecessor.* The term “predecessor” means a person the major portion of the business and assets of which another person acquired in a single succession or in a series of related successions in each of which the acquiring person acquired the major portion of

the business and assets of the acquired person.

*Previously filed or reported.* The terms “previously filed” and “previously reported” mean previously filed with, or reported in, a statement under section 12, a report under section 13 or 15(d), a definitive proxy statement or information statement under section 14 of the act, or a registration statement under the Securities Act of 1933: *Provided*, That information contained in any such document shall be deemed to have been previously filed with, or reported to, an exchange only if such document is filed with such exchange.

*Principal underwriter.* The term “principal underwriter” means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

*Promoter.* (1) The term “promoter” includes:

(i) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or

(ii) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(2) All persons coming within the definition of “promoter” in paragraph (1) of this definition may be referred to as “founders” or “organizers” or by another term provided that such term is reasonably descriptive of those persons’ activities with respect to the issuer.

*Prospectus.* Unless otherwise specified or the context otherwise requires, the term “prospectus” means a prospectus meeting the requirements of section

10(a) of the Securities Act of 1933 as amended.

*Registrant.* The term “registrant” means an issuer of securities with respect to which a registration statement or report is to be filed.

*Registration statement.* The term “registration statement” or “statement”, when used with reference to registration pursuant to section 12 of the act, includes both an application for registration of securities on a national securities exchange pursuant to section 12(b) of the act and a registration statement filed pursuant to section 12(g) of the act.

*Share.* The term “share” means a share of stock in a corporation or unit of interest in an unincorporated person.

*Significant subsidiary.* The term “significant subsidiary” means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The registrant’s and its other subsidiaries’ investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant’s and its other subsidiaries’ proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant’s and its other subsidiaries’ equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

COMPUTATIONAL NOTE: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

*Small Business Issuer.* The term “small business issuer” means an entity that meets the following criteria:

(1) Has revenues of less than \$25,000,000;

(2) Is a U.S. or Canadian issuer;

(3) Is not an investment company; and

(4) If a majority owned subsidiary, the parent corporation is also a small business issuer.

*Provided however,* that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer’s outstanding voting and non-voting common equity held by non-affiliates) of \$25,000,000 or more.

NOTE: The public float of a reporting company 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, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

*Subsidiary.* A “subsidiary” of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries. (See also “majority-owned subsidiary,” “significant subsidiary,” and “totally-held subsidiary.”)

*Succession.* The term “succession” means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The

term does not include the acquisition of control of a business unless followed by the direct acquisition of its assets. The terms “succeed” and “successor” have meanings correlative to the foregoing.

*Totally held subsidiary.* The term “totally held subsidiary” means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent’s other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent’s other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

*Voting securities.* The term “voting securities” means securities the holders of which are presently entitled to vote for the election of directors.

*Wholly-owned subsidiary.* The term “wholly-owned subsidiary” means a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent’s other wholly-owned subsidiaries.

[13 FR 9321, Dec. 31, 1948, as amended at 19 FR 6730, Oct. 30, 1954; 20 FR 8285, Nov. 4, 1955; 30 FR 2022, Feb. 13, 1965; 47 FR 11464, Mar. 16, 1982; 47 FR 29841, July 9, 1982; 47 FR 54780, Dec. 6, 1982; 48 FR 12350, Mar. 24, 1983; 50 FR 25216, June 18, 1985; 57 FR 36494, Aug. 13, 1992; 62 FR 26389, May 14, 1997; 67 FR 58505, Sept. 16, 2002]

#### § 240.12b-3 Title of securities.

Wherever the title of securities is required to be stated there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as “maturing serially from 1950 to 1960”; if the payment of principal or in-

terest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

#### § 240.12b-4 Supplemental information.

The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall be returned to the registrant upon request, provided that:

(a) Such request is made at the time such information is furnished to the staff;

(b) The return of such information is consistent with the protection of investors; and

(c) The return of such information is consistent with the provisions of the Freedom of Information Act (5 U.S.C. 552).

[47 FR 11465, Mar. 16, 1982]

#### § 240.12b-5 Determination of affiliates of banks.

In determining whether a person is an “affiliate” or “parent” of a bank or whether a bank is a “subsidiary” or “majority-owner subsidiary” of a person within the meaning of those terms as defined in § 240.12b-2, voting securities of the bank held by a corporation all of the stock of which is directly owned by the United States Government shall not be taken into consideration.

#### § 240.12b-6 When securities are deemed to be registered.

A class of securities with respect to which a registration statement has been filed pursuant to section 12 of the act shall be deemed to be registered for the purposes of sections 13, 14, 15(d) and 16 of the act and the rules and regulations thereunder only when such statement has become effective as provided in section 12, and securities of said class shall not be subject to sections 13,