

§ 240.12b-30

17 CFR Ch. II (4-1-03 Edition)

than one business day after the due date for such report, shall file a Form 12b-25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) With respect to any report or portion of any report described in paragraph (a) of this section which is not timely filed because the registrant is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on the prescribed due date for such report if:

(1) The registrant files the Form 12b-25 in compliance with paragraph (a) of this section and, when applicable, furnishes the exhibit required by paragraph (c) of this section;

(2) The registrant represents in the Form 12b-25 that:

(i) The reason(s) causing the inability to file timely could not be eliminated by the registrant without unreasonable effort or expense; and

(ii) The subject annual report, semi-annual report or transition report on Form 10-K, 10-KSB, 20-F, 11-K, N-SAR, or N-CSR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10-Q or 10-QSB, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

(3) The report/portion thereof is actually filed within the period specified by paragraph (b)(2)(ii) of this section.

(c) If paragraph (b) of this section is applicable and the reason the subject report/portion thereof cannot be filed timely without unreasonable effort or expense relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification, the Form 12b-25 shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

(d) Notwithstanding paragraph (b) of this section, a registrant will not be eligible to use any registration statement form under the Securities Act of 1933 the use of which is predicated on

timely filed reports until the subject report is actually filed pursuant to paragraph (b)(3) of this section.

(e) If a Form 12b-25 filed pursuant to paragraph (a) of this section relates only to a portion of a subject report, the registrant shall:

(1) File the balance of such report and indicate on the cover page thereof which disclosure items are omitted; and

(2) Include, on the upper right corner of the amendment to the report which includes the previously omitted information, the following statement:

The following items were the subject of a Form 12b-25 and are included herein: (*List Item Numbers*)

(f) The provisions of this section shall not apply to financial statements to be filed by amendment to a form 10-K as provided for by paragraph (a) of §210.3-09 or schedules to be filed by amendment in accordance with General Instruction A to form 10-K.

(g) *Electronic filings.* The provisions of this section shall not apply to reports required to be filed in electronic format if the sole reason the report is not filed within the time period prescribed is that the filer is unable to file the report in electronic format. Filers unable to submit a report in electronic format within the time period prescribed solely due to difficulties with electronic filing should comply with either Rule 201 or 202 of Regulation S-T (§232.201 and §232.202 of this chapter), or apply for an adjustment of filing date pursuant to Rule 13(b) of Regulation S-T (§232.13(c) of this chapter).

[45 FR 23652, Apr. 8, 1980, as amended at 50 FR 1449, Jan. 11, 1985; 50 FR 2957, Jan. 23, 1985; 54 FR 10316, Mar. 13, 1989; 58 FR 14683, Mar. 18, 1993; 58 FR 21349, Apr. 21, 1993; 59 FR 67764, Dec. 30, 1994; 68 FR 5364, Feb. 3, 2003]

EXHIBITS

§ 240.12b-30 Additional exhibits.

The registrant may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.