

Securities and Exchange Commission

§ 249.240f

§ 249.220f Form 20-F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) An annual report on this form shall be filed within six months after the end of the fiscal year covered by such report.

(c) A transition report on this form shall be filed in accordance with the requirements set forth in §240.13a-10 or §240.15d-10 applicable when the issuer changes its fiscal year end.

[47 FR 54781, Dec. 6, 1982, as amended at 54 FR 10319, Mar. 13, 1989; 56 FR 30075, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 20-F, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 249.240f Form 40-F, for registration of securities of certain Canadian issuers pursuant to section 12(b) or (g) and for reports pursuant to section 15(d) and Rule 15d-4 (§ 240.15d-4 of this chapter).

(a) Form 40-F may be used to file reports with the Commission pursuant to section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15d-4 (17 CFR 240.15d-4) thereunder by registrants that are subject to the reporting requirements of that section solely by reason of their having filed a registration statement on Form F-7, F-8, F-9, F-10 or F-80 under the Securities Act of 1933 (the "Securities Act").

NOTE: No reporting obligation arises under section 15(d) of the Securities Act from the registration of securities on Form F-7, F-8 or F-80 if the issuer, at the time of filing such Form, is exempt from the requirements of section 12(g) of the Exchange Act pursuant to Rule 12g3-2(b). See Rule 12h-4 under the Exchange Act.

(b) Form 40-F may be used to register securities with the Commission pursuant to section 12(b) or 12(g) of the Ex-

change Act, to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a-3 (17 CFR 240.13a-3) thereunder, and to file reports with the Commission pursuant to section 15(d) of the Exchange Act if:

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

(2) The registrant is a foreign private issuer or a crown corporation;

(3) The registrant has been subject to the periodic reporting 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; and

(4) The aggregate market value of the public float of the registrant's outstanding equity shares is \$75 million or more; *provided, however*, no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F-9 (§239.39 of this chapter).

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 term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. 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.

4. For the 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.

5. 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.

6. 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 the 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

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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.

(c) 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 (b)(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.

(d) This Form shall not be used if the registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

(e) Registrants registering securities on this Form, and registrants filing annual reports on this Form who have not previously filed a Form F-X (§ 249.250 of this chapter) in connection

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with the class of securities in relation to which the obligation to file this report arises, shall file a Form F-X with the Commission together with this Form.

[56 FR 30075, July 1, 1991, as amended at 58 FR 62031, Nov. 23, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 40-F, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 249.250 Form F-X, for appointment of agent for service of process by issuers registering securities on Form F-8, F-9, F-10 or F-80 (§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F (§ 240.13e-102, 240.14d-102 or 240.14d-103 of this chapter), or by any non-U.S. person acting as trustee with respect to securities registered on Form F-7 (§ 249.37 of this chapter), F-8, F-9, F-10 or F-80.

Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Form F-8, F-9, F-10 or F-80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40-F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40-F, if it has not previously filed a Form F-X in connection with the class of securities in relation to which the obligation to file a report on Form 40-F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F; and

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F-7, F-8, F-9, F-10 or F-80.

[56 FR 30076, July 1, 1991]

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