

taking place in violation of section 306(a)(1) of the Sarbanes-Oxley Act.

§ 245.104 Notice.

(a) In any case in which a director or executive officer is subject to section 306(a)(1) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7244(a)(1)) in connection with a blackout period (as defined in § 245.100(b)) with respect to any equity security, the issuer of the equity security must timely notify each director or officer and the Commission of the blackout period.

(b) For purposes of this section:

(1) The notice must include:

(i) The reason or reasons for the blackout period;

(ii) A description of the plan transactions to be suspended during, or otherwise affected by, the blackout period;

(iii) A description of the class of equity securities subject to the blackout period;

(iv) The length of the blackout period by reference to:

(A) The actual or expected beginning date and ending date of the blackout period; or

(B) The calendar week during which the blackout period is expected to begin and the calendar week during which the blackout period is expected to end, provided that the notice to directors and executive officers describes how, during such week or weeks, a director or executive officer may obtain, without charge, information as to whether the blackout period has begun or ended; and provided further that the notice to the Commission describes how, during the blackout period and for a period of two years after the ending date of the blackout period, a security holder or other interested person may obtain, without charge, the actual beginning and ending dates of the blackout period.

(C) For purposes of this paragraph (b)(1)(iv), a *calendar week* means a seven-day period beginning on Sunday and ending on Saturday; and

(v) The name, address and telephone number of the person designated by the issuer to respond to inquiries about the blackout period, or, in the absence of such a designation, the issuer's human resources director or person performing equivalent functions.

(2) (i) Notice to an affected director or executive officer will be considered timely if the notice described in paragraph (b)(1) of this section is provided (in graphic form that is reasonably accessible to the recipient):

(A) No later than five business days after the issuer receives the notice required by section 101(i)(2)(E) of the Employment Retirement Income

Security Act of 1974 (29 U.S.C.

1021(i)(2)(E)); or

(B) If no such notice is received by the issuer, a date that is at least 15 calendar days before the actual or expected beginning date of the blackout period.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, the requirement to give advance notice will not apply in any case in which the inability to provide advance notice of the blackout period is due to events that were unforeseeable to, or circumstances that were beyond the reasonable control of, the issuer, and the issuer reasonably so determines in writing. Determinations described in the preceding sentence must be dated and signed by an authorized representative of the issuer. In any case in which this exception to the advance notice requirement applies, the issuer must provide the notice described in paragraph (b)(1) of this section, as well as a copy of the written determination, to all affected directors and executive officers as soon as reasonably practicable.

(iii) If there is a subsequent change in the beginning or ending dates of the blackout period as provided in the notice to directors and executive officers under paragraph (b)(2)(i) of this section, an issuer must provide directors and executive officers with an updated notice explaining the reasons for the change in the date or dates and identifying all material changes in the information contained in the prior notice. The updated notice is required to be provided as soon as reasonably practicable, unless such notice in advance of the termination of a blackout period is impracticable.

(3) Notice to the Commission will be considered timely if:

(i) The issuer, except as provided in paragraph (b)(3)(ii) of this section, files a current report on Form 8-K (§ 249.308 of this chapter) within the time prescribed for filing the report under the instructions for the form; or

(ii) In the case of a foreign private issuer (as defined in § 240.3b-4(c) of this chapter), the issuer includes the information set forth in paragraph (b)(1) of this section in the first annual report on Form 20-F (§ 249.220f of this chapter) or 40-F (§ 249.240f of this chapter) required to be filed after the receipt of the notice of a blackout period required by 29 CFR 2520.101-3(c) within the time prescribed for filing the report under the instructions for the form or in an earlier filed report on Form 6-K (§ 249.306).

(iii) If there is a subsequent change in the beginning or ending dates of the blackout period as provided in the notice to the Commission under

paragraph (b)(3)(i) of this section, an issuer must file a current report on Form 8-K containing the updated beginning or ending dates of the blackout period, explaining the reasons for the change in the date or dates and identifying all material changes in the information contained in the prior report. The updated notice is required to be provided as soon as reasonably practicable.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 is amended by revising the sectional authority for § 249.308 to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

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Section 249.308 is also issued under 15 U.S.C. 80a-29, 80a-37 and secs. 3(a), 302 and 306(a), Pub. L. 107-204, 116 Stat. 745.

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6. Form 20-F (referenced in

§ 249.220f) is amended by:

a. Redesignating paragraph (10) as paragraph (11) under "Instructions as to Exhibits"; and

b. Adding paragraph (10) under "Instructions as to Exhibits."

The addition reads as follows:

Note: The text of Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20-F

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Instructions As To Exhibits

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10. Any notice required by Rule 104 of Regulation BTR (17 CFR 245.104 of this chapter) that you sent during the past fiscal year to directors and executive officers (as defined in 17 CFR 245.100(d) and (h) of this chapter) concerning any equity security subject to a blackout period (as defined in 17 CFR 245.100(c) of this chapter) under Rule 101 of Regulation BTR (17 CFR 245.101 of this chapter). Each notice must have included the information specified in 17 CFR 245.104(b) of this chapter.

Note: The exhibit requirement in paragraph (10) applies only to an annual report, and not to a registration statement, on Form 20-F. The Commission will consider the attachment of any Rule 104 notice as an exhibit to a timely filed Form 20-F annual report to satisfy an issuer's duty to notify the Commission of a blackout period in a timely manner. Although an issuer need not submit a Rule 104 notice under cover of a Form 6-K, if an issuer has already submitted this notice under cover of Form 6-K, it need not