

principles for purposes of the application of the requirements of Regulation G to the disclosure of that measure.

(c) *Registrant*. A registrant subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), excluding any investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

(d) *United States*. United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

§ 244.102 No effect on antifraud liability.

Neither the requirements of this Regulation G (17 CFR 244.100 through 244.102) nor a person's compliance or non-compliance with the requirements of this Regulation shall in itself affect any person's liability under Section 10(b) (15 U.S.C. 78j(b)) of the Securities Exchange Act of 1934 or § 240.10b-5 of this chapter.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 249 continues to read in part as follows:

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

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8. Amend Form 8-K (referenced in § 249.308) by adding General Instruction B.6., revising Item 9 and adding Item 12.

Note—The text of Form 8-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8-K

Current Report

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

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General Instructions

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B. Events To Be Reported and Time of Filing for Reports

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6. A report on this form is required to be furnished upon the occurrence of any

of the events specified in Item 12 of this form. A report of an event specified in Item 12 is to be furnished within 5 business days after the occurrence of the event; if the event occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, the 5 business day period shall begin to run on and include the first business day thereafter. The information in a report furnished pursuant to Item 12 shall not be deemed to be "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, except if the registrant specifically states that the information is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

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Information To Be Included in the Report

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Item 12. Results of Operations and Financial Condition

(a) If a registrant, or any person acting on its behalf, makes any public announcement or release (including any update of an earlier announcement or release) disclosing material non-public information regarding the registrant's results of operations or financial condition for a completed quarterly or annual fiscal period, the registrant shall briefly identify the announcement or release and include the text of that announcement or release as an exhibit;

(b) A Form 8-K is not required to be furnished to the Commission under this Item 12 in the case of disclosure of material non-public information that is disclosed orally, telephonically, by webcast, by broadcast, or by similar means if:

(1) The information is provided as part of a presentation that is complementary to, and initially occurs within 48 hours after, a related, written announcement or release that has been furnished on Form 8-K pursuant to this Item 12 prior to the presentation;

(2) The presentation is broadly accessible to the public by dial-in conference call, by webcast, by broadcast, or by similar means;

(3) The financial and other statistical information contained in the presentation is provided on the

registrant's web site, together with any information that would be required under § 244.100 of Regulation G; and

(4) The presentation was announced by a widely disseminated press release, that included instructions as to when and how to access the presentation and the location on the registrant's web site where the information would be available.

Instructions

1. The requirements of this Item 12 are triggered by the disclosure of material non-public information regarding a completed fiscal year or quarter. Release of additional or updated material non-public information regarding a completed fiscal year or quarter would trigger an additional Item 12 requirement.

2. The requirements of paragraph (e)(1)(i) of Item 10 of Regulation S-K (or paragraph (h)(1)(i) of Item 10 of Regulation S-B in the case of a small business issuer) shall apply to disclosures under this Item 12.

3. Issuers that make earnings announcements or other disclosures of material non-public information regarding a completed fiscal year or quarter in an interim or annual report to shareholders, are permitted to specify which portion of the report contains the information required to be furnished under Item 12.

4. This Item 12 does not apply in the case of a disclosure that is made in a quarterly report filed with the Commission on Form 10-Q (or 10-QSB) or an annual report filed with the Commission on Form 10-K (or 10-KSB).

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9. By amending Form 20-F (referenced in § 249.220) by removing in General Instruction C.(e) the words "performance and the Commission's policy on securities ratings" and adding, in their place, the words "performance, the Commission's policy on securities ratings, and the Commission's policy on use of non-GAAP financial measures in Commission filings".

By the Commission.

Dated: January 22, 2003.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-1977 Filed 1-29-03; 8:45 am]

BILLING CODE 8010-01-P