

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR PARTS 210, 227, 229, 230, 239, 240, and 249**

**[RELEASE NOS. 33-10332; 34-80355; FILE NO. S7-09-16]**

**RIN 3235-AL38**

**INFLATION ADJUSTMENTS AND OTHER TECHNICAL AMENDMENTS UNDER  
TITLES I AND III OF THE JOBS ACT**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendments; interpretation.

**SUMMARY:** We are adopting technical amendments to conform several rules and forms to amendments made to the Securities Act of 1933 (“Securities Act”) and the Securities Exchange Act of 1934 (“Exchange Act”) by Title I of the Jumpstart Our Business Startups (“JOBS”) Act. To effectuate inflation adjustments required under Title I and Title III of the JOBS Act, we are also adopting new rules that include an inflation-adjusted threshold in the definition of the term “emerging growth company” as well as amendments to adjust the dollar amounts in Regulation Crowdfunding.

**DATES:** Effective April 12, 2017.

**FOR FURTHER INFORMATION CONTACT:** With regard to the amendments to Regulation Crowdfunding, Julie Davis at (202) 551-3460, in the Office of Small Business Policy, Division of Corporation Finance, and with regard to the other amendments, N. Sean Harrison at (202) 551-3430, in the Office of Rulemaking, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Rule 405<sup>1</sup> and Forms C,<sup>2</sup> S-1,<sup>3</sup> S-3,<sup>4</sup> S-4,<sup>5</sup> S-8,<sup>6</sup> S-11,<sup>7</sup> F-1,<sup>8</sup> F-3<sup>9</sup> and F-4<sup>10</sup> under the Securities Act;<sup>11</sup> Rule 12b-2,<sup>12</sup> Rule 14a-21<sup>13</sup> and Forms 10,<sup>14</sup> 8-K,<sup>15</sup> 10-Q,<sup>16</sup> 10-K,<sup>17</sup> 20-F<sup>18</sup> and 40-F<sup>19</sup> under the Exchange Act;<sup>20</sup> Rule 2-02<sup>21</sup> and Rule 3-02<sup>22</sup> of Regulation S-X;<sup>23</sup> Rule 100<sup>24</sup> and Rule 201<sup>25</sup> of Regulation Crowdfunding;<sup>26</sup> and Items 301,<sup>27</sup> 303,<sup>28</sup> 308,<sup>29</sup> 402<sup>30</sup> and 1101<sup>31</sup> of Regulation S-K.<sup>32</sup>

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<sup>1</sup> 17 CFR 230.405.

<sup>2</sup> 17 CFR 239.900.

<sup>3</sup> 17 CFR 239.11.

<sup>4</sup> 17 CFR.239.13.

<sup>5</sup> 17 CFR 239.25.

<sup>6</sup> 17 CFR 239.16b.

<sup>7</sup> 17 CFR 239.18.

<sup>8</sup> 17 CFR 239.31.

<sup>9</sup> 17 CFR 239.33.

<sup>10</sup> 17 CFR 239.34.

<sup>11</sup> 15 U.S.C. 77a *et seq.*

<sup>12</sup> 17 CFR 240.12b-2.

<sup>13</sup> 17 CFR 240.14a-21.

<sup>14</sup> 17 CFR 249.210.

<sup>15</sup> 17 CFR 249.308.

<sup>16</sup> 17 CFR 249.308a.

<sup>17</sup> 17 CFR 249.310.

<sup>18</sup> 17 CFR 249.220f.

<sup>19</sup> 17 CFR 249.240f.

<sup>20</sup> 15 U.S.C. 78a *et seq.*

<sup>21</sup> 17 CFR 210.2-02.

<sup>22</sup> 17 CFR 210.3-02.

<sup>23</sup> 17 CFR 210.1-01 *et seq.*

<sup>24</sup> 17 CFR 227.100.

<sup>25</sup> 17 CFR 227.201.

<sup>26</sup> 17 CFR 227.100 *et seq.*

<sup>27</sup> 17 CFR 229.301.

## I. Introduction

We are adopting several technical amendments to conform our rules and forms to certain provisions of Title I of the JOBS Act.<sup>33</sup> Title I amended the Securities Act and the Exchange Act to provide several exemptions from a number of shareholder voting, disclosure and other regulatory requirements for an issuer that qualifies as an “emerging growth company”<sup>34</sup> (“EGC”). Specifically, the regulatory relief provided under Sections 102 and 103 of the JOBS Act.<sup>35</sup>

- permits an EGC to include only two years of audited financial statements in its common equity initial public offering registration statement (“IPO registration statement”);<sup>36</sup>

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<sup>28</sup> 17 CFR 229.303.

<sup>29</sup> 17 CFR 229.308.

<sup>30</sup> 17 CFR 229.402.

<sup>31</sup> 17 CFR 229.1101.

<sup>32</sup> 17 CFR 229.10 *et seq.*

<sup>33</sup> Public Law 112–106, 126 Stat. 306 (2012).

<sup>34</sup> Section 101(a) of the JOBS Act amended Section 2(a) of the Securities Act [15 U.S.C. 77b(a)] and Section 3(a) of the Exchange Act [15 U.S.C. 78c(a)] to define an “emerging growth company” as an issuer with less than \$1 billion in total annual gross revenues during its most recently completed fiscal year. If an issuer qualifies as an EGC on the first day of its fiscal year, it maintains that status until the earliest of (1) the last day of the fiscal year of the issuer during which it has total annual gross revenues of \$1 billion or more; (2) the last day of its fiscal year following the fifth anniversary of the first sale of its common equity securities pursuant to an effective registration statement; (3) the date on which the issuer has, during the previous three-year period, issued more than \$1 billion in non-convertible debt; or (4) the date on which the issuer is deemed to be a “large accelerated filer” (as defined in Exchange Act Rule 12b-2). *See* Section 2(a)(19) of the Securities Act [15 U.S.C. 77b(a)(19)] and Section 3(a)(80) of the Exchange Act [15 U.S.C. 78c(a)(80)]. A “large accelerated filer” is an issuer that, as of the end of its fiscal year, has an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as measured on the last business day of the issuer's most recently completed second fiscal quarter; has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act; and is not eligible to use the scaled disclosure requirements under Regulation S-K for smaller reporting companies for its annual and quarterly reports. *See* Exchange Act Rule 12b-2. In Section IV.A of this release, we explain how we are adjusting for inflation the revenue threshold to qualify as an EGC, as required by the JOBS Act.

<sup>35</sup> Public Law 112–106, 126 Stat. 309 and 310.

<sup>36</sup> Rule 3-02 of Regulation S-X generally requires the filing of audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

- permits an EGC to provide Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) disclosures that correspond to the financial statements included in its IPO registration statement;
- permits an EGC to omit in other Securities Act registration statements filed with the Commission selected financial data<sup>37</sup> for any period prior to the earliest audited period included in its IPO registration statement;
- permits an EGC to omit selected financial data for any period prior to the earliest audited period included in its first registration statement that became effective under the Exchange Act or Securities Act in any Exchange Act registration statement, periodic report or other report filed with the Commission;
- exempts an EGC from the advisory shareholder votes on the compensation of its named executive officers (“say-on-pay”), the frequency of the say-on-pay votes (“say-on-frequency”) and golden parachute compensation arrangements with any named executive officers required by Sections 14A(a)<sup>38</sup> and (b)<sup>39</sup> of the Exchange Act;
- permits an EGC to comply with executive compensation disclosure requirements under Item 402 of Regulation S-K by providing the same executive compensation disclosure as a smaller reporting company;<sup>40</sup>

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<sup>37</sup> See Section II.A for a discussion of the selected financial data requirements.

<sup>38</sup> 15 U.S.C. 78n-1(a).

<sup>39</sup> 15 U.S.C. 78n-1(b)

<sup>40</sup> A “smaller reporting company” is defined in Rule 405 under the Securities Act [17 CFR 230.405], Rule 12b-2 of the Exchange Act [17 CFR 240.12b-2], and Item 10(f)(1) of Regulation S-K [17 CFR 229.10(f)(1)] to mean an issuer that had a public float of less than \$75 million as of the last business day of its most recently completed second fiscal quarter or had; or, in the case of an initial registration statement, had a public float of less than \$75 million as of a date within 30 days of the date of the filing of the registration statement; or had a public float of zero and annual revenues of less than \$50 million during the most recently completed fiscal year for which audited financial statements are available. 17 CFR 229.10(f)(1). Smaller reporting companies are subject to scaled

- permits an EGC to defer compliance with any new or revised financial accounting standards until the date that companies that are not “issuers” as defined in Section 2(a) of the Sarbanes-Oxley Act<sup>41</sup> are required to comply;<sup>42</sup> and
- exempts an EGC from the Sarbanes-Oxley Act Section 404(b)<sup>43</sup> auditor attestation on management’s assessment of its internal controls.<sup>44</sup>

The amendments to the Securities Act and Exchange Act included in Sections 102 and 103 of the JOBS Act are self-executing and became effective once that Act was signed into law. However, several of our rules and forms for registration under the Securities Act and the Exchange Act, as well as Exchange Act periodic and current reports, Regulation S-K and Regulation S-X, currently do not reflect these JOBS Act provisions.

Title I of the JOBS Act also added new Securities Act Section 2(a)(19) and Exchange Act Section 3(a)(80) to define the term “emerging growth company.” Pursuant to the statutory definition, the Commission is required every five years to index to inflation the annual gross

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executive compensation disclosure requirements. For example, they are not required to include a compensation discussion and analysis under Item 402(b) of Regulation S-K. The Commission recently proposed amendments that would increase the financial thresholds in the smaller reporting company definition. Under the proposed amendments, the \$75 million public float threshold would be increased to \$250 million and the \$50 million revenue threshold would be increased to \$100 million. See *Amendments to Smaller Reporting Company Definition*, Release No. 33-10107 [81 FR 43130] (June 27, 2016).

<sup>41</sup> Section 2(a) of the Sarbanes-Oxley Act [15 U.S.C. 7201(a)] defines the term “issuer” to mean an issuer (as defined in Section 3 of the Exchange Act [15 U.S.C. 78(c)]), the securities of which are registered under Section 12 of the Exchange Act [15 U.S.C. 78l], or that is required to file reports under Section 15(d) of the Exchange Act [15 U.S.C. 78o(d)], or that files or has filed a registration statement that has not yet become effective under the Securities Act, and that it has not withdrawn.

<sup>42</sup> Public Law 112-106, 126 Stat. 313.

<sup>43</sup> 15 U.S.C. 7262(b).

<sup>44</sup> In addition, Section 102 of the JOBS Act exempts EGCs from the “pay versus performance” proxy disclosure requirements of Section 14(i) of the Exchange Act and from the pay ratio disclosure requirements of Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Public Law 111-203, 124 Stat. 1376, 1904 (2010)). These exemptions are addressed in separate rulemakings, one that has been proposed (pay versus performance) and one that has been adopted (pay ratio). See *Pay Versus Performance*, Release No. 34-74835 [80 FR 26330] (May 7, 2015) and *Pay Ratio Disclosure*, Release No. 33-9877 [80 FR 50104] (Aug. 18, 2015).

revenue amount used to determine EGC status to reflect the change in the Consumer Price Index for All Urban Consumers (“CPI-U”) published by the Bureau of Labor Statistics (“BLS”).<sup>45</sup> We are adopting amendments to our rules to define the term “emerging growth company” so as to reflect the inflation adjustment to the annual gross revenue amount.

Title III of the JOBS Act also added new Securities Act Section 4(a)(6),<sup>46</sup> which provides an exemption from the registration requirements of Securities Act Section 5<sup>47</sup> for certain crowdfunding transactions, and the Commission has promulgated Regulation Crowdfunding<sup>48</sup> to implement that exemption. Sections 4(a)(6) and 4A<sup>49</sup> of the Securities Act set forth dollar amounts used in connection with the crowdfunding exemption, and Section 4A(h)(1)<sup>50</sup> states that such dollar amounts shall be adjusted by the Commission not less frequently than once every five years to reflect the change in the CPI-U published by the BLS. Pursuant to this directive, we are amending Regulation Crowdfunding to adjust those dollar amounts for inflation.

These amendments are discussed in more detail below.

## **II. Discussion of the JOBS Act Technical Amendments**

### **A. Scaled Disclosure Requirements for Emerging Growth Companies’ Financial Disclosures**

#### *Securities Act Registration Statements*

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<sup>45</sup> The CPI-U is the statistical metric developed by the BLS to monitor the change in the price of a set list of products. The CPI-U represents changes in prices of all goods and services purchased for consumption by urban households. See “Consumer Price Index” available at <https://www.bls.gov/cpi/home.htm>.

<sup>46</sup> 15 U.S.C. 77d(a)(6).

<sup>47</sup> 15 U.S.C. 77e.

<sup>48</sup> 17 CFR 227.100 *et seq.*

<sup>49</sup> 15 U.S.C. 77d-1.

<sup>50</sup> 15 U.S.C. 77d-1(h)(1).

Section 102(b)(1) of the JOBS Act amended Section 7(a) of the Securities Act to provide that (1) an EGC is permitted to present only two years of audited financial statements in its IPO registration statement, and (2) in any Securities Act registration statement other than its IPO registration statement, an EGC need not present selected financial data<sup>51</sup> under Item 301 of Regulation S-K for any period prior to the earliest audited period presented in its IPO registration statement. Under Rule 3-02 of Regulation S-X, issuers that are not smaller reporting companies are generally required to include three years of audited financial statements in a Securities Act registration statement. We are adopting amendments to Rule 3-02 of Regulation S-X and Form 20-F to conform them to amended Section 7(a) of the Securities Act.

Item 301 of Regulation S-K requires issuers that are not smaller reporting companies to include five years of selected financial data (or such shorter period as the issuer has been in existence) in any filing for which such disclosure is required. The language in amended Section 7(a) of the Securities Act refers to “any other” registration statement and does not expressly address the application of the five years of selected financial data requirement in Item 301 of Regulation S-K to IPO registration statements filed by EGCs.<sup>52</sup> In light of the other relief provided in amended Section 7(a), which permits an EGC to present only two years of audited financial statements in its IPO registration statement and, in subsequent registered offerings, to present selected financial data for no period earlier than that presented in its IPO registration statement, we interpret amended Section 7(a) to mean that an EGC need not present selected financial data for any period prior to the earliest audited period presented in its IPO registration

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<sup>51</sup> This information generally includes net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock.

<sup>52</sup> See 15 U.S.C. 77g(a)(2).

statement.<sup>53</sup> Otherwise, the intended relief of Section 7(a) with respect to selected financial data would not be available in an IPO registration statement, as it is with subsequent registration statements. Accordingly, we are adopting amendments to Item 301 of Regulation S-K to reflect this statutory interpretation.

#### *Exchange Act Registration Statements and Periodic Reports*

Section 102(b)(2) of the JOBS Act amended Section 13(a) of the Exchange Act to provide that an EGC need not present selected financial data in an Exchange Act registration statement or periodic report for any period prior to the earliest audited period presented in the EGC's first effective registration statement under either the Exchange Act or Securities Act. We are adopting amendments to Item 301 of Regulation S-K to conform that provision to amended Section 13(a).

#### *MD&A Disclosure*

Section 102(c) of the JOBS Act provides that an EGC is permitted to comply with the MD&A requirements of Item 303(a) of Regulation S-K by providing disclosure covering only the audited financial statements for each period that Section 7(a) of the Securities Act requires to be presented in its IPO registration statement. Item 303(a) of Regulation S-K generally requires an issuer to discuss, among other things, the company's financial condition, changes in financial condition and results of operations for the previous three fiscal years and any interim periods. To conform the Item to Section 102(c), we are adopting amendments to Instruction 1 to Item 303(a). The amendments specify that if an EGC, pursuant to Section 7(a) of the Securities Act,

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<sup>53</sup> In 2012, the Division of Corporation Finance provided guidance on the JOBS Act, including that the Division would not object if an emerging growth company presenting two years of audited financial statements in its initial public offering registration statement in accordance with Securities Act Section 7(a)(2)(A) were to limit the number of years of selected financial data under Item 301 of Regulation S-K to two years. *See* Frequently Asked Questions of General Applicability on Title I of the JOBS Act (Dec. 21, 2015 revised), Question 11, available at <http://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm>.

provides audited financial statements for two years in a Securities Act registration statement for the initial public offering of its common equity securities, it may provide the discussion required by Item 303(a) for its two most recent fiscal years.

**B. Auditor Attestation of Management’s Report on Internal Control Over Financial Reporting**

Section 103 of the JOBS Act amended Section 404(b) of the Sarbanes-Oxley Act to provide that the auditor of an EGC does not need to attest to, and report on, management’s assessment of the effectiveness of the EGC’s internal control over financial reporting (“ICFR”). An EGC, however, is still required to establish and maintain internal control over financial reporting and, when applicable, to include a management’s report on ICFR in its annual report. To conform our rules and forms to amended Section 404(b), we are adopting amendments to Article 2-02 of Regulation S-X, Item 308 of Regulation S-K, and Forms 20-F and 40-F to specify that the auditor of an EGC does not need to attest to, and report on, management’s report on ICFR and that management does not need to include the auditor’s attestation report on ICFR in an annual report required by Section 13(a) or 15(d) of the Exchange Act.

**C. Executive Compensation Disclosure and Shareholder Advisory Voting**

Section 102(c) of the JOBS Act provides in part that an EGC shall only be required to provide executive compensation disclosure pursuant to Item 402 of Regulation S-K to the same extent as a registrant “with a market value of outstanding voting and nonvoting common equity held by non-affiliates of less than \$75,000,000.” Item 402(l) of Regulation S-K allows an issuer that is a smaller reporting company to provide the scaled executive compensation disclosures set forth in Items 402(m)-(r) of Regulation S-K. To conform this Item to Section 102(c), we are amending Item 402(l) of Regulation S-K to specify that EGCs also are permitted to provide the scaled executive compensation disclosure in Items 402(m)-(r) of Regulation S-K.

Exchange Act Rule 14a-21 requires registrants to conduct shareholder advisory votes on say-on-pay, say-on-frequency and golden parachute compensation arrangements with any “named executive officers.”<sup>54</sup> The rule applies to all registrants making a solicitation in connection with a meeting of shareholders at which directors are to be elected and for which compensation disclosure is required to be provided pursuant to Item 402 of Regulation S-K, or to registrants making a solicitation in connection with a meeting at which shareholders are asked to approve a merger, acquisition or sale of all or substantially all of the assets of an issuer.

Section 102(a) of the JOBS Act amended Section 14A(e) of the Exchange Act to exempt EGCs from say-on-pay, say-on-frequency votes, golden parachute compensation votes and the related disclosure provisions. We are adopting conforming amendments to Exchange Act Rule 14a-21 and Item 402(t) and Instruction 1 to Item 1011(b) of Regulation S-K that specify that an EGC is not required to conduct shareholder advisory votes on say-on-pay, say-on-frequency, and golden parachute compensation, or provide the related disclosures. In addition, Section 102(a) of the JOBS Act amended Section 14A of the Exchange Act to provide for a transition period when an EGC exits EGC status before it has to seek a shareholder advisory vote on say-on-pay. We are adding a new instruction to Rule 14a-21 to reflect the transition period set forth in the JOBS Act.

#### **D. Foreign Private Issuers**

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<sup>54</sup> Item 402(a)(3) of Regulation S-K [17 CFR 229.402(a)(3)] defines named executive officers as 1) all individuals serving as the registrant’s principal executive officer or acting in a similar capacity during the last completed fiscal year (“PEO”), regardless of compensation level, 2) all individuals serving as the registrant’s principal financial officer or acting in a similar capacity during the last completed fiscal year (“PFO”), regardless of compensation level, 3) the registrant’s three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year, and 4) up to two additional individuals for whom Item 402 disclosure would have been provided but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

The definition of “emerging growth company” in Section 101(a) of the JOBS Act applies to any company meeting the criteria specified therein and is not dependent on the jurisdiction of incorporation or organization, the holders of the issuer’s voting securities or that of its executive officers or directors, assets or business operations. Accordingly, a foreign private issuer<sup>55</sup> that qualifies as an EGC may comply with the scaled disclosure provisions available to EGCs to the same extent as a domestic issuer. Sections 102 and 103 of the JOBS Act, however, refer to Regulation S-K provisions that apply to domestic issuers, whereas the corresponding disclosure requirements for foreign private issuers are applied through the disclosure content of Form 20-F or, where applicable, Form 40-F. Under Item 8.A. of Form 20-F, a foreign private issuer is generally required to include three years of audited financial statements. In addition, Item 3.A. generally requires a foreign private issuer to include five years of selected financial data. To conform the disclosure requirements of Form 20-F with the disclosure relief provided under the JOBS Act,<sup>56</sup> we are amending the form to add instructions to Items 8.A.<sup>57</sup> and 3.A. to reflect the availability of the scaled financial disclosure requirements under Sections 102 and 103 of the

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<sup>55</sup> Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)] define the term “foreign private issuer” as any foreign issuer other than a foreign government except for an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter: (1) more than 50 percent of the issuer’s outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) either the majority of the executive officers or directors are United States citizens or residents, more than 50 percent of the assets of the issuer are located in the United States, or the business of the issuer is administered principally in the United States.

<sup>56</sup> Form 20-F does not require the same level of detail about individual executive compensation and compensation philosophy and analysis as required by Item 402 of Regulation S-K applicable to issuers that are not smaller reporting companies or the scaled requirements in Items 402(m)-(r) applicable to smaller reporting companies. Accordingly, no conforming amendments to Form 20-F are needed in regard to Section 102(c)’s scaled executive compensation disclosure requirements. To the extent that a foreign private issuer that is an EGC elects to use forms available to domestic issuers rather than the foreign private issuer forms, it would be able to use the scaled disclosure provisions available to EGCs.

<sup>57</sup> These amendments do not affect the requirement for a foreign private issuer that is either a first-time adopter of International Financial Reporting Standards or is subject to the disclosure requirements of paragraph 10(f) of IAS 1, to provide three statements of financial position in its IPO registration statement. *See* Frequently Asked Questions of General Applicability on Title I of the JOBS Act (Dec. 21, 2015 revised), Question 39, available at <http://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm>.

JOBS Act to a foreign private issuer that is an EGC.<sup>58</sup> We are making revisions to Form 40-F to reflect the availability of the scaled financial disclosure requirements under Section 103 of the JOBS Act to a foreign private issuer that is an EGC.

**E. “Check Box” Notice of EGC Status and Compliance with New or Revised Accounting Standards**

Section 102(b) of the JOBS Act amended Section 7(a)(2)(B) of the Securities Act and Section 13(a) of the Exchange Act to state that an EGC “may not be required to comply with any new or revised financial accounting standard” until such standard is applicable to companies that are not “issuers” under Section 2(a) of the Sarbanes-Oxley Act, if such standard applies to companies that are not issuers. These revisions provide EGCs with additional time to apply any updates to the Financial Accounting Standards Board (“FASB”) Accounting Standards codification as compared to non-EGC issuers.<sup>59</sup>

Under Section 107 of the JOBS Act, an EGC may forgo any of the Title I disclosure exemptions and instead comply with the requirements that apply to an issuer that is not an EGC. Section 107(b), however, provides that if an EGC opts out of the extended transition period for complying with new or revised accounting standards, it must do so at the time it is “first required to file a registration statement, periodic report, or other report with the Commission under

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<sup>58</sup> No conforming amendment is needed to Item 5 of Form 20-F (Operating and Financial Review and Prospects), which requires a discussion of a foreign private issuer’s financial statements similar to MD&A, because Instruction 2 to Item 5 requires a discussion of the primary financial statements presented in the document without referring to the required periods.

<sup>59</sup> In July 2009, the Financial Accounting Standards Board issued the FASB Accounting Standards Codification (“ASC”) as the single source of authoritative nongovernmental U.S. generally accepted accounting principles. The ASC was effective for annual periods ending after September 15, 2009. All preexisting accounting standards were superseded.

Section 13 of the Securities Exchange Act of 1934” and notify the Commission of its choice.<sup>60</sup>

Pursuant to Section 107, an EGC that opts out of the extended transition period must comply with all new or revised accounting standards to the same extent that a non-EGC is required to comply with such standards and continue to do so for as long as the issuer remains an EGC.<sup>61</sup>

This election is irrevocable.

To provide a uniform method for an EGC to notify the Commission and the public pursuant to Section 107 of the JOBS Act that it is an EGC and of its decision as to whether or not to opt out of the extended transition period for complying with new or revised accounting standards, we are adopting minor revisions to Securities Act Forms S-1, S-3, S-4, S-8, S-11, F-1, F-3 and F-4 and Exchange Act Forms 10, 8-K, 10-Q, 10-K, 20-F and 40-F. These amendments modify the cover page of those forms to include two check boxes for an issuer to indicate whether, at the time of the filing, the issuer is an EGC and whether it has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act and Section 13(a) of the Exchange Act.

### **III. Discussion of Amendments to Effectuate Inflation Adjustments**

#### **A. Definition of “Emerging Growth Company”**

JOBS Act Section 101 amended Section 2(a)(19) of the Securities Act and Section 3(a)(80) of the Exchange Act to define “emerging growth company” to mean an issuer that had total annual gross revenues of less than \$1 billion, as such amount is indexed for inflation every

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<sup>60</sup> Section 107(b) does not specify where the opt-out notice language should appear in a registration statement or report. EGCs that have opted out of the extended transition period have placed this notice in different parts of our disclosure forms.

<sup>61</sup> Section 107(b)(3) of the JOBS Act (Public Law 112–106, 126 Stat. 313).

five years by the Commission to reflect the change in the CPI-U during its most recently completed fiscal year. By statute, the adjusted threshold must be set to the nearest \$1,000,000. Pursuant to this directive, we are adopting an amendment to Securities Act Rule 405 and to Exchange Act Rule 12b-2 to include a definition for the term “emerging growth company” that indexes the statutory annual gross revenues amount to the CPI-U.

To determine the new EGC gross revenue threshold to be included in the amendments, first we determine the appropriate CPI-U for December of the calendar year preceding the year of adjustment. Because we are making the inflation adjustment for the definition of EGC in 2017, we use the CPI-U for December 2016, which was 241.432 (“2016 CPI-U”).<sup>62</sup> We then determine the CPI-U for December of the calendar year before the EGC definition was established by the JOBS Act, which was 2011. We thus use the CPI-U for December 2011, which was 225.672 (“2011 CPI-U”).

Second, we calculate the cost-of-living adjustment or inflation factor. To do this we divide the 2016 CPI-U by the 2011 CPI-U. The resulting inflation factor is 1.06984.

Third, we calculate the raw inflation adjustment, which is the inflation adjustment before rounding. To do this, we multiply the current EGC gross revenue threshold, \$1,000,000,000, by the inflation factor 1.06984, which equals \$1,069,840,000.

Fourth, we round the raw inflation amounts according to the convention set forth in the statutory definition.<sup>63</sup> Since we round only the increase amount, we calculate the increased

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<sup>62</sup> The JOBS Act was enacted on April 5, 2012. Under the definition of an EGC in Section 2(a)(19) of the Securities Act and Section 3(a)(80) of the Exchange Act the Commission is required to adjust the total gross revenue amount to inflation every five years.

<sup>63</sup> See Section 2(a)(19) of the Securities Act and Section 3(a)(80) of the Exchange Act, which require the amount to be set to the nearest \$1,000,000.

amount by subtracting the current EGC gross revenue threshold from the raw maximum inflation adjustments. Accordingly, the increase in the EGC gross revenue threshold is \$69,840,000 (*i.e.*, \$1,069,840,000 less \$1,000,000,000). Under the statutory rounding convention, the threshold is set to the nearest \$1,000,000. Therefore, the rounded increase in the EGC gross revenue threshold is \$70,000,000.

Fifth, we add the rounded increase to the current EGC revenue threshold (*i.e.*, \$1,000,000,000). The inflation-adjusted EGC gross revenue threshold is \$1,000,000,000 plus \$70,000,000, which yields a maximum inflation-adjusted EGC revenue threshold of \$1,070,000,000. The “emerging growth company” definitions being adopted in Securities Act Rule 405 and Exchange Act Rule 12b-2 reflect this adjusted threshold, and will henceforth be amended every five years to account for future inflation adjustments.

## **B. Regulation Crowdfunding Amendments**

Title III of the JOBS Act amended the Securities Act to add Section 4(a)(6), which provides an exemption from the registration requirements of Section 5 of the Securities Act for certain crowdfunding transactions. The Commission has adopted Regulation Crowdfunding to implement that exemption.<sup>64</sup> Sections 4(a)(6) and 4A of the Securities Act set forth dollar amounts used in connection with the crowdfunding exemption,<sup>65</sup> and Section 4A(h)(1)<sup>66</sup> states that those dollar amounts shall be adjusted by the Commission not less frequently than once

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<sup>64</sup> *Crowdfunding*, Release No. 33-9974 (Oct. 30, 2015) [80 FR 71388].

<sup>65</sup> Section 4(a)(6)(A) sets forth the maximum amount an issuer may sell in reliance on the crowdfunding exemption in a 12-month period, and Section 4(a)(6)(B) sets limits on the dollar amount that may be sold to any investor by an issuer in reliance on the crowdfunding exemption. These amounts are reflected in Rule 100 of Regulation Crowdfunding (17 CFR 227.100). Section 4A(b)(1)(D) sets forth thresholds for determining the level of financial statements required, and those thresholds are reflected in Rule 201(t) of Regulation Crowdfunding (17 CFR 227.201(t)).

<sup>66</sup> 15 U.S.C. 77d-1(h)(1).

every five years to reflect any changes in the CPI-U. Pursuant to this directive, we are amending Rules 100 and 201(t) of Regulation Crowdfunding and Securities Act Form C to adjust the dollar amounts set forth in these rules to inflation.

To determine the adjusted dollar amounts, we use the same process as described above in connection with the EGC adjustment to determine the raw inflation amounts.<sup>67</sup> Then we round up the raw inflation amounts to the nearest \$100 for amounts under \$100,000 and to the nearest \$1,000 for amounts that equal or exceed \$100,000. Tables 1 and 2 show the inflation-adjusted amounts for Rules 100 and 201(t).<sup>68</sup>

**Table 1: Inflation-Adjusted Amounts in Rule 100 of Regulation Crowdfunding (Offering Maximum and Investment Limits)**

<b>Regulation Crowdfunding Rule</b>	<b>Original Amount</b>	<b>Rounded Inflation-Adjusted Amount</b>
Maximum aggregate amount an issuer can sell under Regulation Crowdfunding in a 12-month period (Rule 100(a)(1))	\$1,000,000	\$1,070,000
Threshold for assessing investor’s annual income or net worth to determine investment limits (Rule 100(a)(2)(i) and (ii))	\$100,000	\$107,000
Lower threshold of Regulation Crowdfunding securities permitted to be sold to an investor if annual income or net worth is less than \$107,000 (Rule 100(a)(2)(i))	\$2,000	\$2,200
Maximum amount that can be sold to an investor under Regulation Crowdfunding in a 12-month period (Rule 100(a)(2)(ii))	\$100,000	\$107,000

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<sup>67</sup> The 2016 CPI-U is divided by the 2011 CPI-U to derive the inflation factor of 1.06984. Each dollar amount is then multiplied by the inflation factor to determine the raw inflation adjusted amount.

<sup>68</sup> We have reflected the adjusted amounts for the financial statement thresholds where those are referenced in Question 29 of the “Optional Question & Answer Format” portion of Form C.

**Table 2: Inflation-Adjusted Amounts in Rule 201(t) of Regulation Crowdfunding  
(Financial Statement Requirements)**

<b>Regulation Crowdfunding Rule</b>	<b>Original Offering Threshold Amount</b>	<b>Rounded Inflation-Adjusted Amount</b>
Rule 201(t)(1)	\$100,000	\$107,000
Rule 201(t)(2)	\$500,000	\$535,000
Rule 201(t)(3)	\$1,000,000	\$1,070,000

#### **IV. Procedural and Other Matters**

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a rulemaking in the Federal Register and provide an opportunity for public comment. This requirement does not apply, however, if the agency “for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”<sup>69</sup>

The technical amendments and the implementation of statutory inflation adjustments pursuant to Title I and Title III of the JOBS Act do not impose any new substantive regulatory requirements on any person. The technical amendments merely conform our rules and forms to the provisions of the JOBS Act, or reflect reasonable interpretations thereof, and involve the exercise of minimal discretion. Similarly, the amendments to implement the statutory inflation adjustments will effectuate the adjusted dollar amount thresholds mandated by the JOBS Act and involve minimal discretion. For these reasons, for good cause, we find that it is unnecessary to publish notice of these amendments in the Federal Register and solicit public comment thereon.<sup>70</sup>

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<sup>69</sup> 5 U.S.C. 553(b)(3)(B).

<sup>70</sup> This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendments to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The amendments also do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment)

For similar reasons, although the APA generally requires publication of a rule at least 30 days before its effective date, we find there is good cause for the amendments to take effect on [insert date of publication in the Federal Register].<sup>71</sup>

If any of the provisions of these amendments, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

## **V. Economic Analysis**

We are mindful of the costs imposed by, and the benefits to be obtained from, our rules. Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.<sup>72</sup> In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.<sup>73</sup> Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>74</sup> Below we address the costs and benefits, as well as the potential effects on efficiency, competition and capital formation, of the various amendments being adopted in this release. Because the amendments merely make conforming changes to our rules and forms to

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<sup>71</sup> See 5 U.S.C. 553(d)(3).

<sup>72</sup> See 15 U.S.C. 77b(b) and 15 U.S.C. 78c(f).

<sup>73</sup> See 15 U.S.C. 78w(a)(2).

<sup>74</sup> *Id.*

reflect certain provisions of the JOBS Act and implement the statutory inflation adjustments mandated by the JOBS Act, we do not believe there are reasonable alternatives to the amendments.

#### **A. Discussion of the Technical Amendments**

We are adopting technical amendments to conform several of our rules and forms to amendments made to the Securities Act and the Exchange Act by Title I of the JOBS Act. For the purposes of analyzing the economic effects of these amendments, we use as a baseline the scaled disclosure requirements and other accommodations applicable to EGCs discussed in Section II. These amendments merely make conforming changes to our rules and forms to reflect certain provisions of the JOBS Act. As a result, these amendments will not substantially alter the costs and benefits, relative to the baseline, associated with complying with these rules and forms, and do not impose any substantive regulatory obligations on any person or otherwise. To the extent they have an economic effect, we expect the amendments will help to minimize potential confusion concerning any inconsistencies between the statutory provisions of the JOBS Act and our rules and forms and could result in some marginal cost savings to the extent that filers have fewer questions to research when completing the form. Similarly, we do not anticipate any competitive advantages or disadvantages will be created as a result of the amendments.

#### **B. Discussion of the Amendments to Effectuate Inflation Adjustments**

To comply with the inflation adjustments required under the JOBS Act, we are also adopting new rules that include an inflation-adjusted threshold in the definition of the term “emerging growth company.” These amendments adjust the total annual gross revenue threshold for EGCs in accordance with inflation as required by the JOBS Act and have no impact on

disclosure or compliance costs per filer. As the number of eligible filers that may qualify for scaled disclosure increases, it may reduce disclosure costs in the aggregate,<sup>75</sup> to the extent that eligible filers take advantage of the EGC accommodations, relative to a baseline without this inflation adjustment.

We note that this inflation adjustment affects both domestic issuers and foreign private issuers. We estimate that there are approximately 7,200 issuers that file on domestic forms and 800 foreign private issuers that file on F-forms, of which 13.2% of issuers that file on domestic forms and 15.1% of foreign private issuers that file on Forms 20-F and 40-F also identified themselves as EGCs in filings made in 2016. Not all EGCs self-identify as such every year, so annual filings-based counts likely underestimate the EGC population.

The inflation adjustment to the total annual gross revenue threshold for EGCs is designed to maintain the scope of registrants that may qualify as an EGC, preserving the economic effects associated with the option to claim EGC status. It does so by not allowing the level of revenue, in real terms, that determines the eligibility for EGC status to be diminished by inflation. The inflation adjustment amendment may marginally expand the number of firms that may claim EGC status, thus extending the economic effects, including impacts on efficiency, competition, and capital formation, associated with the option to claim this status to firms that fall between the \$1,000,000,000 gross revenue threshold that previously determined EGC eligibility and the \$1,070,000,000 gross revenue threshold that will define EGC eligibility under the amendment. Assuming that the number of domestic and foreign private issuers in calendar years subsequent to adoption of the amendments is similar to that obtained in calendar year 2016, the inflation adjustment of the EGC revenue threshold would increase the percentage of domestic issuers that

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<sup>75</sup> See Section II.A for a summary of scaled disclosure requirements for EGCs.

qualify as EGCs from 13.2% to approximately 13.8% and foreign private issuers that qualify as EGCs from 15.1% to approximately 16.3% on the basis of the distribution of revenues of filers in calendar year 2016, where data is available.<sup>76</sup>

For the purposes of analyzing the economic effects of the amendments to Regulation Crowdfunding, we use as our baseline the regulatory framework established by Regulation Crowdfunding as adopted in 2015.<sup>77</sup> The amendments to Regulation Crowdfunding adjust the thresholds in Rules 100 and 201(t) of Regulation Crowdfunding (§227.100 and §227.201(t)) in accordance with inflation as required by Section 4A(h) of the Securities Act and are not expected to increase disclosure or compliance costs incurred by an issuer, to the extent that the issuer remains subject to the same financial statement requirements. The adjustment may cause some issuers to become subject to less extensive financial statement requirements, and may lower disclosure or compliance costs for these issuers.<sup>78</sup>

The inflation adjustment to the thresholds in Rules 100 and 201(t) is intended to allow these thresholds to keep pace with inflation, preserving the economic effects of Regulation Crowdfunding in real terms.<sup>79</sup> For example, the inflation adjustments to the financial statement thresholds ensure that issuers can take advantage of the inflation-adjusted offering amounts without incurring a fixed cost of complying with additional financial statement requirements.

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<sup>76</sup> The number of domestic filers and foreign private issuers affected by the inflation adjustment of total annual gross revenues is estimated as the number of unique companies, identified by Central IndexKey (CIK), that filed Form 10-K, Form 20-F, or Form 40-F with the Commission during the calendar year 2016. The number of filers that identify themselves as EGCs is estimated by analyzing several types of filings filed with the Commission during calendar year 2016.

<sup>77</sup> See *Crowdfunding* supra note 64.

<sup>78</sup> *Id* at 71497.

<sup>79</sup> *Id* at 71482.

Substantively, the inflation adjustments to Rule 100 and Rule 201(t) marginally affect the amount of capital that issuers may raise in reliance on Regulation Crowdfunding, the number of investors who may participate in crowdfunding offerings, and the amounts that investors may invest in crowdfunding offerings.

### **C. Efficiency, Competition, and Capital Formation**

Because we believe the substantive impact of these amendments to our rules and forms is likely to be marginal, we do not believe they will substantially impact efficiency, competition, and capital formation.

### **VI. Paperwork Reduction Act**

The amendments, including those to effect the statutory inflation adjustments, do not make any substantive modifications to any existing collection of information requirements or impose any new substantive recordkeeping or information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>80</sup> Accordingly, we are not revising any burden and cost estimates in connection with these amendments.

### **VII. Statutory Authority**

The amendments contained in this release are being adopted under the authority set forth in Sections 2, 4(a)(6), 4A, 5, 6, 7, 10, and 19 of the Securities Act; Sections 3, 12, 13, 14, 15(d), and 23(a) of the Exchange Act; and Sections 102, 103 and 107 of the JOBS Act.

### **List of Subjects**

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<sup>80</sup> 44 U.S.C. 3501 *et seq.* The new check boxes that will appear on the cover page of affected Exchange Act forms and Securities Act registration statements will result in an incremental paperwork burden for EGCs; however, we believe that the incremental burden associated with checking one or both of the new boxes will be so minimal that it will not affect the overall burden estimates associated with these forms. Similarly, the amendments to reflect the statutory inflation adjustments to certain dollar amount thresholds in Titles I and III of the JOBS Act will have only marginal effects on the application of these thresholds for eligibility and reporting purposes and therefore are not expected to affect the overall burden estimates for affected forms. *See* Section VI.C above.

**17 CFR Part 210**

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

**17 CFR Parts 227, 229, 230, 239, 240 and 249**

Reporting and recordkeeping requirements, Securities.

**TEXT OF THE FINAL AMENDMENTS**

For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

**PART 210 - FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975**

- 1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, and Sections 102 and 103 Pub. L. 112–106, 126 Stat. 309 and 310, unless otherwise noted.

- 2. Amend §210.2-02 by revising paragraph (f)(1) to read as follows:

**§210.2-02 Accountants’ reports and attestation reports.**

\* \* \* \* \*

(f) *Attestation report on internal control over financial reporting.* (1) Every registered public accounting firm that issues or prepares an accountant’s report for a registrant, other than a registrant that is neither an accelerated filer nor a large accelerated filer (as defined in §240.12b-2 of this chapter), or is an emerging growth company, as defined in Rule 405 of the Securities Act (§230.405 of this chapter) or Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), or

an investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), that is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must include an attestation report on internal control over financial reporting.

\* \* \* \* \*

3. Amend §210.3-02 paragraph (a) to read as follows:

**§210.3-02 Consolidated statements of income and changes in financial positions.**

(a) There shall be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed or such shorter period as the registrant (including predecessors) has been in existence. A registrant that is an emerging growth company, as defined in Rule 405 of the Securities Act (§230.405 of this chapter) or Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), may, in a Securities Act registration statement for the initial public offering of the emerging growth company's equity securities, provide audited statements of income and cash flows for each of the two fiscal years preceding the date of the most recent audited balance sheet (or such shorter period as the registrant has been in existence).

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**PART 227—REGULATION CROWDFUNDING, GENERAL RULES AND REGULATIONS**

4. The authority citation for Part 227 continues to read as follows:

Authority: 15 U.S.C. 77d, 77d-1, 77s, 78c, 78o, 78q, 78w, 78mm, and Pub. L. No. 112-106, secs. 301-305, 126 Stat. 306 (2012).

5. Amend §227.100 by:
  - a. In paragraph (a)(1), removing reference to “\$1,000,000” and adding in its place “\$1,070,000”;
  - b. In paragraph (a)(2)(i), removing reference to “\$2,000” and adding in its place “\$2,200”; and removing “\$100,000” and adding in its place “\$107,000”;
  - c. In paragraph (a)(2)(ii), removing the two references to “\$100,000” and adding in their place “\$107,000.”
6. Amend §227.201(t) by:
  - a. In paragraph (t)(1), removing reference to “\$100,000” and adding in its place “\$107,000”;
  - b. In paragraph (t)(2), removing reference to “\$100,000” and adding in its place “\$107,000”; and removing reference to “\$500,000” and adding in its place “\$535,000”;
  - c. In paragraph (t)(3), removing the two references to “\$500,000” and adding in their place “\$535,000”; and removing reference to “\$1,000,000” and adding in its place “\$1,070,000.”

\* \* \* \* \*

**PART 229 - STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 - REGULATION S-K**

7. The general authority citation for part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j-3, 78l, 78m, 78n, 78n-1, 78o, 78u-5, 78w, 78ll, 78 mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11 and 7201 *et seq.*; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat.

1904; Sec. 102(a)(3) Pub. L. 112-106, 126 Stat. 309; and Sec. 102 and 103 Pub. L. 112-106, 126 Stat. 309 and 310.

8. Amend §229.301 by adding new paragraph (d) before the Instructions to Item 301 to read as follows:

**§229.301 (Item 301) Selected financial data.**

\* \* \* \* \*

(d) *Emerging Growth Company.* An emerging growth company, as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter), that is providing the information called for by this Item in: (1) a Securities Act registration statement, need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with the registrant's initial public offering of its common equity securities; or (2) a registration statement, periodic report, or other report filed under the Exchange Act, need not present selected financial data for any period prior to the earliest audited financial statements presented in connection with its first registration statement that became effective under the Exchange Act or the Securities Act.

\* \* \* \* \*

9. Amend §229.303 by revising "Instruction 1" to paragraph 303(a) to read as follows:

**§229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.**

\* \* \* \* \*

*Instructions to paragraph 303(a).* 1. The registrant's discussion and analysis shall be of the financial statements and other statistical data that the registrant believes will enhance a

reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion shall cover the three-year period covered by the financial statements and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing pursuant to Item 301 of Regulation S-K (§229.301) may be necessary. A smaller reporting company's discussion shall cover the two-year period required in Article 8 of Regulation S-X and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's understanding. An emerging growth company, as defined in Rule 405 of the Securities Act (§230.405 of this chapter) or Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), may provide the discussion required in paragraph (a) of this Item for its two most recent fiscal years if, pursuant to Section 7(a) of the Securities Act of 1933 (15 U.S.C 77g(a)), it provides audited financial statements for two years in a Securities Act registration statement for the initial public offering of the emerging growth company's common equity securities.

\* \* \* \* \*

10. Amend §229.308 to read as follows:

**§229.308 (Item 308) Internal control over financial reporting.**

\* \* \* \* \*

(b) *Attestation report of the registered public accounting firm.* If the registrant, other than a registrant that is an emerging growth company, as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter), is an accelerated filer or a large accelerated filer (as defined in §240.12b-2 of this chapter), provide the registered public accounting firm's attestation report on

the registrant's internal control over financial reporting in the registrant's annual report containing the disclosure required by this Item.

\* \* \* \* \*

11. Amend §229.402 by revising paragraph (l) and the introductory text to paragraph (t)(1) to read as follows:

**§229.402 (Item 402) Executive compensation.**

\* \* \* \* \*

(l) Smaller reporting companies and emerging growth companies. A registrant that qualifies as a “smaller reporting company,” as defined by Item 10(f) (§229.10(f)(1)), or is an “emerging growth company,” as defined in Rule 405 of the Securities Act (§230.405 of this chapter) or Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), may provide the scaled disclosure in paragraphs (m) through (r) instead of paragraphs (a) through (k), (s), and (u) of this Item.

\* \* \* \* \*

(t) Golden parachute compensation. (1) In connection with any proxy or consent solicitation material providing the disclosure required by section 14A(b)(1) of the Exchange Act (15 U.S.C. 78n-1(b)(1)) or any proxy or consent solicitation that includes disclosure under Item 14 of Schedule 14A (§240.14a-101) pursuant to Note A of Schedule 14A (excluding any proxy or consent solicitation of an “emerging growth company,” as defined in Rule 405 of the Securities Act (§230.405 of this chapter) or Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter)), with respect to each named executive officer of the acquiring company and the target company, provide the information specified in paragraphs (t)(2) and (3) of this section regarding any agreement or understanding, whether written or unwritten, between such named executive

officer and the acquiring company or target company, concerning any type of compensation, whether present, deferred or contingent, that is based on or otherwise relates to an acquisition, merger, consolidation, sale or other disposition of all or substantially all assets of the issuer, as follows: \* \* \*

\* \* \* \* \*

12. Amend §229.1011 by revising “Instruction 1” to Item 1011(b) to read as follows:

**§229.1011 (Item 1011) Additional information.**

\* \* \* \* \*

*Instructions to Item 1011(b).*

1. The obligation to provide the information in paragraph (b) of this section shall not apply where the issuer whose securities are the subject of the Rule 13e-3 transaction or tender offer is a foreign private issuer, as defined in §240.3b-4 of this chapter, or an emerging growth company, as defined in Rule 405 of the Securities Act (§230.405 of this chapter) or Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter).

\* \* \* \* \*

**PART 230 — GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

13. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78o-7 note, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, and Pub. L. 112-106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

Section 230.151 is also issued under 15 U.S.C. 77s(a).

Section 230.160 is also issued under Section 104(d) of the Electronic Signatures Act.

Section 230.193 is also issued under sec. 943, Pub. L. 111-203, 124 Stat. 1376.

Sections 230.400 to 230.499 issued under 15 U.S.C. 77f, 77h, 77j, 77s, unless otherwise noted.

Section 230.502 is also issued under 15 U.S.C. 80a-8, 80a-29, 80a-30.

14. Amend §230.405 by adding the definition “Emerging Growth Company” after the definition of the term “Electronic Filing” and before the definition of the term “Employee” to read as follows:

**§230.405 Definitions of terms.**

\* \* \* \* \*

Emerging Growth Company. (1) The term *emerging growth company* means an issuer that had total annual gross revenues of less than \$1,070,000,000 during its most recently completed fiscal year.

(2) An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of:

(i) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,070,000,000 or more;

(ii) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(iii) the date on which such issuer has, during the previous three year period, issued more than \$1,000,000,000 in non-convertible debt; or

(iv) the date on which such issuer is deemed to be a large accelerated filer, as defined in Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), or any successor thereto.

\* \* \* \* \*

**PART 239 — FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

15. The authority citation for Part 239 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78 l, 78m,78n, 78 o (d), 78o-7 note, 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37; and Sec. 107 Pub. L. 112-106, 126 Stat. 313, unless otherwise noted.

16. Amend Form C (referenced in §239.900) by revising the dollar amounts in Question 29 of the “OPTIONAL QUESTION & ANSWER FORMAT FOR AN OFFERING STATEMENT” as follows:

- a. Removing all references to “\$100,000” and adding in their place “\$107,000”;
- b. Removing all references to “\$500,000” and adding in their place “\$535,000”; and
- c. Removing reference to “\$1,000,000” and adding in its place “\$1,070,000.”

\* \* \* \* \*

17. Amend Form S-1 (referenced in §239.11) by revising the text and check boxes on the cover page immediately before the “Calculation of Registration Fee” table to read as follows:

**Note: The text of Form S-1 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-1**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

\* \* \* \* \*

18. Amend Form S-3 (referenced in §239.13) by revising the text and check boxes on the cover page immediately before the “Calculation of Registration Fee” table to read as follows:

**Note: The text of Form S-3 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-3**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	(Do not check if a smaller reporting company)	
		Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

\* \* \* \* \*

19. Amend Form S-4 (referenced in §239.25) by revising the text and check boxes on the cover page immediately before the “Calculation of Registration Fee” table to read as follows:

**Note: The text of Form S-4 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-4**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	(Do not check if a smaller reporting company)	
		Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

\* \* \* \* \*

20. Amend Form S-8 (referenced in §239.16b) by revising the text and check boxes on the cover page immediately before the “Calculation of Registration Fee” table to read as follows:

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

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	(Do not check if a smaller reporting company)	
		Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

\* \* \* \* \*

21. Amend Form S-11 (referenced in §239.18) by revising the text and check boxes on the cover page immediately before the “Calculation of Registration Fee” table to read as follows:

**Note: The text of Form S-11 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM S-11**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	(Do not check if a smaller reporting company)	
		Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

\* \* \* \* \*

22. Amend Form F-1 (referenced in §239.31) by adding text and two check boxes to the cover page immediately before the “Calculation of Registration Fee” table to read as follows:

**Note: The text of Form F-1 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM F-1**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933.

Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards<sup>†</sup> provided pursuant to Section 7(a)(2)(B) of the Securities Act.

<sup>†</sup> The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

\* \* \* \* \*

23. Amend Form F-3 (referenced in §239.33) by adding text and two check boxes to the cover page immediately before the “Calculation of Registration Fee” table to read as follows:

**Note: The text of Form F-3 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM F-3**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933.

Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended

transition period for complying with any new or revised financial accounting standards<sup>†</sup> provided pursuant to Section 7(a)(2)(B) of the Securities Act .

<sup>†</sup> The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

\* \* \* \* \*

24. Amend Form F-4 (referenced in §239.34) by adding text and two check boxes to the cover page immediately before the “Calculation of Registration Fee:” table to read as follows:

**Note: The text of Form F-4 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM F-4**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

\* \* \* \* \*

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933.

Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards<sup>†</sup> provided pursuant to Section 7(a)(2)(B) of the Securities Act .

† The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

\* \* \* \* \*

**PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

25. The general authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*; and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376, (2010), unless otherwise noted.

26. Amend §240.12b-2 by adding the definition “Emerging Growth Company” after the definition of the term “Depository Share” and before the definition of the term “Employee” to read as follows:

**§240.12b-2 Definitions of terms.**

\* \* \* \* \*

Emerging Growth Company. (1) The term *emerging growth company* means an issuer that had total annual gross revenues of less than \$1,070,000,000 during its most recently completed fiscal year.

(2) An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of:

(i) the last day of the fiscal year of the issuer during which it had total annual gross revenues of \$1,070,000,000 or more;

(ii) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(iii) the date on which such issuer has, during the previous three year period, issued more than \$1,000,000,000 in non-convertible debt; or

(iv) the date on which such issuer is deemed to be a large accelerated filer, as defined in Rule 12b-2 (§240.12b-2 of this chapter), or any successor thereto.

\* \* \* \* \*

27. Amend §240.14a-21 by:

(a) Revising paragraphs (a), (b) and (c); and

(b) Adding new Instruction (4) following “Instruction (3).”

The revisions and additions read as follows:

**§240.14a-21 Shareholder approval of executive compensation, frequency of votes for approval of executive compensation and shareholder approval of golden parachute compensation.**

(a) If a solicitation is made by a registrant, other than an emerging growth company as defined in Rule 12b-2 (§240.12b-2 of this chapter), \* \* \*

\* \* \* \* \*

(b) If a solicitation is made by a registrant, other than an emerging growth company as defined in Rule 12b-2 (§240.12b-2 of this chapter), \* \* \*

(c) If a solicitation is made by a registrant, other than an emerging growth company as defined in Rule 12b-2 (§240.12b-2 of this chapter), \* \* \*

\* \* \* \* \*

4. A registrant that has ceased being an emerging growth company shall include the first separate resolution described under §240.14a-21(a) not later than the end of (i) in the case of a registrant that was an emerging growth company for less than two years after the date of first sale of common equity securities of the registrant pursuant to an effective registration statement under the Securities Act of 1933 (15 U.S.C 77a *et seq.*), the three-year period beginning on such date; and (ii) in the case of any other registrant, the one-year period beginning on the date the registrant is no longer an emerging growth company.

#### **PART 249 — FORMS, SECURITIES EXCHANGE ACT OF 1934**

28. The authority citation for Part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112-106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001 Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

29. Amend Form 10 (referenced in §249.210) by revising the text and check boxes on the cover page immediately before the text “Information Required in the Registration Statement” to read as follows:

**Note: The text of Form 10 does not, and this amendment will not, appear in the Code of Federal Regulations.**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 10**

**GENERAL FORM FOR REGISTRATION OF SECURITIES**

**Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	(Do not check if a smaller reporting company)	
		Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

\* \* \* \* \*

30. Amend Form 8-K (referenced in §249.308) by adding text and two check boxes to the cover page immediately before the General Instructions to read as follows:

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

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

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

\* \* \* \* \*

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

\* \* \* \* \*

31. Amend Form 10-Q (referenced in §249.308a) by revising the text and check boxes on the cover page immediately before the text “Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).” to read as follows:

**Note: The text of Form 10-Q does not, and this amendment will not, appear in the Code of Federal Regulations.**

## UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

### FORM 10-Q

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

\* \* \* \* \*

32. Amend Form 10-K (referenced in §249.310) by revising the text and check boxes on the cover page immediately before the text “Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).” The revisions read as follows:

**Note: The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.**

## UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

### FORM 10-K

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

\* \* \* \* \*

33. Amend Form 20-F (referenced in §249.220f) by:

a. Revising the text and check boxes on the cover page immediately before the text “Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing”;

b. Adding new Instruction 3 to “Item 3.A”;

c. Adding new Instruction 4 to “Item 8.A.2”; and

d. Revising paragraph (b)(4) and (c) to Item 15 of Part II.

The additions and revisions read 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**

\* \* \* \* \*

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer

Non-accelerated filer  Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards<sup>†</sup> provided pursuant to Section 13(a) of the Exchange Act.

<sup>†</sup> The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

\* \* \* \* \*

**Item 3. Key Information**

\* \* \* \* \*

*Instructions to Item 3A:*

\* \* \* \* \*

3. If you are an emerging growth company, as defined in Rule 12b-2 of the Exchange Act (§240.12b-2 of this chapter), that is providing the information called for by Item 3.A.1 in: (1) a Securities Act registration statement, you do not need to present selected financial data for any period prior to the earliest audited financial statements presented in connection with the initial public offering of your common equity securities; or (2) a registration statement, periodic report, or other report filed under the Exchange Act, you do not need to present selected financial data in accordance with this Item for any period prior to the earliest audited financial statements presented in connection with your first registration statement that became effective under the Exchange Act or the Securities Act.

\* \* \* \* \*

**Item 8. Financial Information**

\* \* \* \* \*

***Instructions to Item 8.A.2:***

\* \* \* \* \*

4. If you are an emerging growth company, as defined in Rule 12b-2 (§240.12b-2 of this chapter), you do not need to present more than two years of audited financial statements in your registration statement for an initial public offering of your common equity securities.

\* \* \* \* \*

**Item 15. Controls and Procedures.**

\* \* \* \* \*

(4) If an issuer is an accelerated filer or a large accelerated filer (as defined in § 240.12b-2 of this chapter), other than an emerging growth company (as defined in § 240.12b-2 of this chapter), or otherwise includes in its annual report a registered public accounting firm's attestation report on internal control over financial reporting, a statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the issuer's internal control over financial reporting.

(c) Attestation report of the registered public accounting firm. If an issuer is an accelerated filer or a large accelerated filer (as defined in §240.12b-2 of this chapter), other than an emerging growth company (as defined in §240.12b-2 of this chapter), and where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the registered public accounting firm's attestation report on management's assessment of the issuer's internal control over financial reporting in the issuer's annual report containing the disclosure required by this Item.

\* \* \* \* \*

34. Amend Form 40-F (referenced in §249.240f) by:

a. Adding text and two check boxes to the cover page immediately before the

General Instructions;

b. Revising paragraph (6)(c)(4) and (d) to General Instruction B

The additions and revisions read as follows.

**Note: The text of Form 40-F does not, and this amendment will not, appear in the Code of Federal Regulations.**

### FORM 40-F

\* \* \* \* \*

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 12b-2 of the Exchange Act.

Emerging growth company

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards<sup>†</sup> provided pursuant to Section 13(a) of the Exchange Act.

<sup>†</sup> The term “new or revised financial accounting standard” refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

\* \* \* \* \*

### **B. Information To Be Filed on this Form**

\* \* \* \* \*

(6) \* \* \*

(c) Management's annual report on internal control over financial reporting. \* \* \*

(4) If an issuer, other than an emerging growth company, as defined in Rule 12b-2 of the Exchange Act, a statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the issuer's internal control over financial reporting.

(d) Attestation report of the registered public accounting firm. Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, the issuer, other than an emerging growth company, as defined in Rule 12b-2 of the Exchange Act, must provide the registered public accounting firm's attestation report on management's assessment of internal control over financial reporting in the annual report containing the disclosure required by this Item.

\* \* \* \* \*

By the Commission.

March 31, 2017

Brent J. Fields  
Secretary