Exchange Act Forms

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Section 110. Form 20-F

Question 110.03

Question: When a foreign private issuer guarantees securities of a subsidiary that is not a foreign private issuer, may the parent company-guarantor and subsidiary-issuer of guaranteed securities use an F- series registration statement to register an offering of the securities under the Securities Act and use Form 20-F with respect to any reporting obligations?

Answer: Yes, if certain requirements are satisfied. Rule 3-10 of Regulation S-X permits modified reporting by subsidiary issuers of guaranteed securities and subsidiary guarantors. Separate financial statements need not be filed for subsidiaries if any of Rules 3-10(b) through 3-10(d) apply and all applicable conditions of the rule relied upon are met in the parent company's filings. If the parent and issuer are eligible to present condensed consolidated financial information in the parent company's filings and the parent qualifies as a foreign private issuer, the parent company and its subsidiaries may use an F-series registration statement to register an offering of guarantees and guaranteed securities that are issued by a domestic or foreign subsidiary that does not qualify as a foreign private issuer and use Form 20-F with respect to any reporting obligations associated with such registration statement. The same would apply if the parent and subsidiaries are eligible to present narrative disclosure in lieu of condensed consolidating financial information under Rule 3-10. [December 8, 2016]

Question 110.04

Question: When a parent foreign private issuer issues securities that are guaranteed or co-issued by one or more subsidiaries that do not themselves qualify as a foreign private issuer, may the parent company-issuer and subsidiary-guarantor(s) or co-issuers use an F-series registration statement to register an offering of the securities under the Securities Act and use Form 20-F with respect to any reporting obligations?

Answer: Yes, if certain requirements are satisfied. In this situation, separate financial statements need not be filed for subsidiaries if either Rule 3-10(e) or 3-10(f) applies and all applicable conditions of the rule relied upon are met in the parent company's filings. As described in the last two sentences of Securities Act Forms CDI 102.03 / Exchange Act Forms CDI 110.03, when a parent foreign private issuer issues securities guaranteed or co-issued by one or more subsidiaries that do not themselves qualify as a foreign private issuer, the parent and subsidiary may use an F- series registration statement when they are eligible to present condensed consolidating financial information or narrative disclosure. [December 8, 2016]

Question 110.05

Question: What is the deadline for filing a Form 20-F annual report when the issuer's fiscal year ends on the last day of a month? What if the fiscal year ends before the last day of a month?

Answer: Form 20-F is due four months after the end of an issuer's fiscal year. See General Instruction A.(b)(2) to Form 20-F. When the last day of the issuer's fiscal year is the last day of a month, the annual report on Form 20-F is due four complete months after that day. For example, a February 28 fiscal year end results in a due date of June 30. When the last day of the issuer's fiscal year is other than the end of a month, the annual report on Form 20-F is due on the same day four months ahead. For example, a February 20 fiscal year end results in a due date of June 20. [December 8, 2016]

Question 110.06

Question: May a wholly-owned subsidiary of a foreign private issuer omit certain information from its Form 20-F annual report in the same manner that a wholly-owned subsidiary required to file a Form 10-K may omit information if it meets the requirements set forth in General Instruction I to that form?

Answer: Yes, so long as the registrant includes a prominent statement on the cover page of the Form 20-F that it meets the conditions set forth in General Instruction I(1)(a) and (b) to Form 10-K and is therefore filing the form with the reduced disclosure format. If so, the registrant may omit comparable information enumerated in General Instruction I(2) that would apply to a foreign private issuer filing on Form 20-F. Specifically, the registrant may omit the following:

- information required by Item 3.A, Selected financial data, and Item 5, Operating and Financial Review and Prospects, subject to the same disclosure requirements in General Instruction I(2)(a) to Form 10-K;
- the list of subsidiaries exhibit required by Item 8 of Instructions as to Exhibits;
- information required by Item 6.A, Directors and Senior Management, Item 6.B, Compensation, 6.D, Employees, Item 6.E, Share Ownership, Item 7, Major Shareholders and Related Party Transactions, Item 16A, Audit Committee Financial Expert, and Item 16B, Code of Ethics; and
- information required by Item 4, Information on the Company, subject to the same disclosure requirements in General Instruction I(2)(d) to Form 10-K.

[December 8, 2016]

Question 110.07

Question: May a foreign private issuer incorporate by reference into a Form 20-F annual report information that has previously been filed with the Commission, for example, on a Form 6-K?

Answer: Yes, Exchange Act Rule 12b-23 permits information to be incorporated by reference in answer, or partial answer, to any item required to be disclosed by Form 20-F, subject to the limitations set forth in that rule. Issuers using incorporation by reference must identify with specificity the information that is being incorporated by reference. [December 8, 2016]

Exchange Act Rules

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Sections 110 to 119. Definitions: Rules 3a11-1 to 3b-19

Question 110.02

Question: In applying the foreign private issuer definition in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), how can an issuer that has multiple classes of voting stock with different voting rights determine whether more than 50 percent of its outstanding voting securities are directly or indirectly owned of record by residents in the United States?

Answer: An issuer may choose one of two methods. The issuer may look to whether more than 50 percent of the voting power of those classes on a combined basis is directly or indirectly owned of record by residents of the United States. Alternatively, an issuer may make the determination based on the number of voting securities. Issuers must apply a determination methodology on a consistent basis. [December 8, 2016]

Question 110.03

Question: In applying the foreign private issuer definition in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), what factors should be applied to determine the status of an individual as a "U.S. resident" for purposes of determining whether 50 percent of the company's outstanding voting securities are held of record by U.S. residents?

Answer: A person who has permanent resident status in the U.S. — a so-called Green Card holder — is presumed to be a U.S. resident. Other individuals without permanent resident status may also be residents of the U.S. for purposes of these provisions. In these circumstances, an issuer must decide what criteria it will use to determine residency and apply them consistently without changing them to achieve a desired result. Examples of factors an issuer may apply include tax residency, nationality, mailing address, physical presence, the location of a significant portion of their financial and legal relationships, or immigration status. [December 8, 2016]

Question 110.04

Question: In determining whether a majority of the executive officers or directors are United States citizens or residents under the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), must the calculation be made separately for each group or are executive officers and directors to be treated as a single group when making the assessment?

Answer: The determination must be made separately for each group. In effect, there are four determinations: the citizenship status of executive officers, the residency status of executive officers, the citizenship status of directors, and the residency status of directors. [December 8, 2016]

Question 110.05

Question: In determining whether the majority of the directors are United States citizens or residents under the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), how should the determination be made when the issuer has two boards of directors?

Answer: The issuer must make the determination with respect to the board that performs the functions most closely to those undertaken by a U.S.-style board of directors. If those functions are divided between both boards, the issuer may aggregate the members of both boards for purposes of calculating the majority. [December 8, 2016]

Question 110.06

Question: In determining whether more than 50 percent of the assets of an issuer are located outside the United States under the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), can an issuer use the geographic segment information determined in the preparation of its financial statements?

Answer: Yes. Alternatively, an issuer may apply on a consistent basis any other reasonable methodology in assessing the location and amount of its assets for purposes of this determination. [December 8, 2016]

Question 110.07

Question: For purposes of the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), how does an issuer determine whether its business is administered principally in the United States?

Answer: There is no single factor or group of factors that are determinative under this clause. The issuer must assess on a consolidated basis the location from which its officers, partners, or managers primarily direct, control and coordinate the issuer's activities. [December 8, 2016]

Question 110.08

Question: For purposes of the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), would holding an annual or special meeting of shareholders or occasional meetings of the issuer's board of directors in the United States result in a determination that the issuer's business is administered principally in the United States?

Answer: No. Absent other factors indicating the location from which an issuer's officers, partners, or managers primarily direct, control and coordinate the issuer's activities on a consolidated basis, as described in Securities Act Rules CDI 203.22 / Exchange Act Rules CDI 110.07, there is no single factor or group of factors that is determinative of whether an issuer's business is principally administered in the United States. [December 8, 2016]

Securities Act Rules

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Section 203. Rule 405 - Definition of Terms

Question 203.17

Question: In applying the foreign private issuer definition in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), how can an issuer that has multiple classes of voting stock with different voting rights determine whether more than 50 percent of its outstanding voting securities are directly or indirectly owned of record by residents in the United States?

Answer: An issuer may choose one of two methods. The issuer may look to whether more than 50 percent of the voting power of those classes on a combined basis is directly or indirectly owned of record by residents of the United States. Alternatively, an issuer may make the determination based on the number of voting securities. Issuers must apply a determination methodology on a consistent basis. [December 8, 2016]

Question 203.18

Question: In applying the foreign private issuer definition in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), what factors should be applied to determine the status of an individual as a "U.S. resident" for purposes of determining whether 50 percent of the company's outstanding voting securities are held of record by U.S. residents?

Answer: A person who has permanent resident status in the U.S. — a so-called Green Card holder — is presumed to be a U.S. resident. Other individuals without permanent resident status may also be residents of the U.S. for purposes of these provisions. In these circumstances, an issuer must decide what criteria it will use to determine residency and apply them consistently without changing them to achieve a desired result. Examples of factors an issuer may apply include tax residency, nationality, mailing address, physical presence, the location of a significant portion of their financial and legal relationships, or immigration status. [December 8, 2016]

Question 203.19

Question: In determining whether a majority of the executive officers or directors are United States citizens or residents under the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), must the calculation be made separately for each group or are executive officers and directors to be treated as a single group when making the assessment?

Answer: The determination must be made separately for each group. In effect, there are four determinations: the citizenship status of executive officers, the residency status of executive officers, the citizenship status of directors, and the residency status of directors. [December 8, 2016]

Question 203.20

Question: In determining whether the majority of the directors are United States citizens or residents under the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), how should the determination be made when the issuer has two boards of directors?

Answer: The issuer must make the determination with respect to the board that performs the functions most closely to those undertaken by a U.S.-style board of directors. If those functions are divided between both boards, the issuer may aggregate the members of both boards for purposes of calculating the majority. [December 8, 2016]

Question 203.21

Question: In determining whether more than 50 percent of the assets of an issuer are located outside the United States under the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), can an issuer use the geographic segment information determined in the preparation of its financial statements?

Answer: Yes. Alternatively, an issuer may apply on a consistent basis any other reasonable methodology in assessing the location and amount of its assets for purposes of this determination. [December 8, 2016]

Question 203.22

Question: For purposes of the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), how does an issuer determine whether its business is administered principally in the United States?

Answer: There is no single factor or group of factors that are determinative under this clause. The issuer must assess on a consolidated basis the location from which its officers, partners, or managers primarily direct, control and coordinate the issuer's activities. [December 8, 2016]

Question 203.23

Question: For purposes of the definition of foreign private issuer in Securities Act Rule 405 and Exchange Act Rule 3b-4(c), would holding an annual or special meeting of shareholders or occasional meetings of the issuer's board of directors in the United States result in a determination that the issuer's business is administered principally in the United States?

Answer: No. Absent other factors indicating the location from which an issuer's officers, partners, or managers primarily direct, control and coordinate the issuer's activities on a consolidated basis, as described in Securities Act Rules CDI 203.22 / Exchange Act Rules CDI 110.07, there is no single factor or group of factors that is determinative of whether an issuer's business is principally administered in the United States. [December 8, 2016]