

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 229, 230, 232, 239, 240, 270 and 274

[Release Nos. 33–10997; 34–93285; IC–34396; File No. S7–20–19]

RIN 3235–AL96

Filing Fee Disclosure and Payment Methods Modernization

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments that will modernize filing fee disclosure and payment methods. We are amending most fee-bearing forms, schedules, statements, and related rules to require each filing fee table and

accompanying disclosure to include all required information for fee calculation in a structured format. The amendments will add options for fee payment via Automated Clearing House (“ACH”) and debit and credit cards, and eliminate options for fee payment via paper checks and money orders. The amendments are intended to improve filing fee preparation and payment processing by facilitating both enhanced validation through filing fee structuring and lower-cost, easily routable payments through the ACH and debit and credit card payment options. Finally, the Commission is adopting other amendments to enhance the efficiency of the fee process.

DATES:

Effective dates: The final rules are effective on January 31, 2022, except for amendments to 17 CFR 202.3a, 17 CFR

230.111, 17 CFR 240.0–9, and 17 CFR 270.0–8, which are effective on May 31, 2022.

Compliance dates: See Section II.A.6 for further information on transitioning to the final rules.

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SUPPLEMENTARY INFORMATION: We are adopting amendments to:

Commission reference	CFR citation (17 CFR)
Informal and other Procedures	Rule 3a § 202.3a
Regulation S–K	Item 601 § 229.601
Regulation S–T	Rule 13 § 232.13
	Rule 405 § 232.405
	Rule 408 § 232.408
Securities Act of 1933 ¹ (“Securities Act”)	Rule 111 § 230.111
	Rule 415 § 230.415
	Rule 424 § 230.424
	Rule 456 § 230.456
	Rule 457 § 230.457
	Rule 473 § 230.473
	Form S–1 § 239.11
	Form S–3 § 239.13
	Form S–8 § 239.16b
	Form S–11 § 239.18
	Form N–14 § 239.23
	Form S–4 § 239.25
	Form F–1 § 239.31
	Form F–3 § 239.33
	Form F–4 § 239.34
	Form F–10 § 239.40
	Form SF–1 § 239.44
	Form SF–3 § 239.45
Securities Exchange Act of 1934 ² (“Exchange Act”)	Rule 0–9 § 240.0–9
	Rule 0–11 § 240.0–11
	Rule 13e–1 § 240.13e–1
	Schedule 13E–3 § 240.13e–100
	Schedule 13E–4F § 240.13e–102
	Schedule 14A § 240.14a–101
	Schedule 14C § 240.14c–101
	Schedule TO § 240.14d–100
	Schedule 14D–1F § 240.14d–102
Investment Company Act of 1940 ³ (“Investment Company Act”)	Rule 0–8 § 270.0–8
	Form 24F–2 § 274.24
Securities Act and Investment Company Act	Form N–2 §§ 239.14 and 274.11a–1

¹ 15 U.S.C. 77a *et seq.*
² 15 U.S.C. 78a *et seq.*
³ 15 U.S.C. 80a–1 *et seq.*

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Form SF-1 (§ 239.44 of this chapter), and Item 14.(b) of Form SF-3 (§ 239.45 of this chapter). This exhibit must be submitted as required by § 232.408 of this chapter (Rule 408 of Regulation S-T), provided, however, that if the exhibit is submitted pursuant to Item 14(b) of Form SF-1 (§ 239.44 of this chapter) or Item 14(b) of Form SF-3 (§ 239.45 of this chapter), it is permitted but not required to be submitted as otherwise required by Rule 408.

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

■ 5. The general authority citation for part 230 continues to read 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.

■ 6. Effective May 31, 2022, revise § 230.111 to read as follows:

§ 230.111 Payment of filing fees.

All payments of filing fees for registration statements under the Act shall be made by wire transfer, debit card, or credit card or via the Automated Clearing House Network. There will be no refunds. Payment of filing fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

■ 7. Amend § 230.415 by revising paragraph (a)(6) to read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(6) Prior to the end of the three-year period described in paragraph (a)(5) of this section, an issuer may file a new registration statement covering securities described in such paragraph (a)(5) of this section, which may, if permitted, be an automatic shelf registration statement. The new registration statement and prospectus included therein must include all the information that would be required at that time in a prospectus relating to all offering(s) that it covers. Prior to the effective date of the new registration statement (including at the time of filing in the case of an automatic shelf registration statement), the issuer may include on such new registration statement any unsold securities covered by the earlier registration statement by identifying on the bottom of the facing page of the new registration statement or

latest amendment thereto, unless expressly required in another part of the registration statement, the amount of such unsold securities being included and any filing fee paid in connection with such unsold securities, which will continue to be applied to such unsold securities. The offering of securities on the earlier registration statement will be deemed terminated as of the date of effectiveness of the new registration statement.

* * * * *

■ 8. Amend § 230.424 by revising paragraphs (g) and (i)(2) introductory text to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(g) A form of prospectus filed pursuant to this section must include the following information, as applicable, in a single exhibit submitted as required by § 232.408 of this chapter (Rule 408 of Regulation S-T), provided, however, that if the exhibit is submitted in connection with Form SF-1 (§ 239.44 of this chapter) or Form SF-3 (§ 239.45 of this chapter), it is permitted but not required to be submitted as otherwise required by Rule 408.

(1) If the form of prospectus operates to reflect the payment of filing fees for an offering or offerings pursuant to § 230.456(b) or (c) (Rule 456(b) or (c)), the calculation of filing fee table immediately followed by the information required by the form instructions to the registration fee table reflecting the payment of such filing fees for the securities that are the subject of the payment; and

(2) The maximum aggregate amount or maximum aggregate offering price of the securities to which the final prospectus relates and indication that the final prospectus is a final prospectus for the related offering, as applicable, as required by General Instruction II.F of Form S-3 (§ 239.13 of this chapter), General Instruction II.G of Form F-3 (§ 239.33 of this chapter), General Instruction II.D of Form SF-3 (§ 239.45 of this chapter), General Instruction H of Form S-4 (§ 239.25 of this chapter), and General Instruction C.2 of Form N-2 ((§§ 239.14 and 274.11a-1 of this chapter).

* * * * *

(i) * * *

(2) The form of prospectus must include the following information in an exhibit submitted as required by Rule 408 of Regulation S-T:

* * * * *

■ 9. Amend § 230.456 by revising paragraphs (b)(1)(i) and (c)(1)(i) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(b) * * *
(1) * * *

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (b)(1)(i) of this section by updating the “Calculation of Filing Fee Tables” to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings either in a post-effective amendment filed at the time of the fee payment or in the manner specified by § 230.424(g) (Rule 424(g)) in a prospectus filed pursuant to Rule 424(b).

* * * * *

(c) * * *
(1) * * *

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (c)(1)(i) of this section by updating the “Calculation of Registration Fee” table to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings in the manner specified by Rule 424(g) in a prospectus filed pursuant to § 230.424(h) (Rule 424(h)).

* * * * *

■ 10. Amend § 230.457 by revising paragraph (p) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(p) Where all or a portion of the securities offered under a registration statement remain unsold after the offering’s completion or termination, or withdrawal of the registration statement, the aggregate total dollar amount of the filing fee associated with those unsold securities (whether computed under paragraph (a) or (o) of this section) may be offset against the total filing fee due for a subsequent registration statement or registration statements. The subsequent registration statement(s) must be filed within five years of the initial filing date of the earlier registration statement, and must be filed by the same registrant (including a successor within the meaning of § 230.405), a majority-owned subsidiary of that registrant, or a parent that owns more than 50 percent of the registrant’s outstanding voting securities. A note should be added to the “Calculation of

§ 230.414

securities or additional classes of securities may be added to an automatic shelf registration statement already in effect by filing a post-effective amendment to that automatic shelf registration statement:

(1) Securities of a class different than those registered on the effective automatic shelf registration statement identified as provided in Rule 430B(a) (§ 230.430B(a)); or

(2) Securities of a majority-owned subsidiary that are permitted to be included in an automatic shelf registration statement, provided that the subsidiary and the securities are identified as provided in Rule 430B and the subsidiary satisfies the signature requirements of an issuer in the post-effective amendment.

[70 FR 44811, Aug. 3, 2005]

§ 230.414 Registration by certain successor issuers.

If any issuer, except a foreign issuer exempted by Rule 3a12-3 (17 CFR 240.3a12-3), incorporated under the laws of any State or foreign government and having securities registered under the Act has been succeeded by an issuer incorporated under the laws of another State or foreign government for the purpose of changing the State or country of incorporation of the enterprises, or if any issuer has been succeeded by an issuer for the purpose of changing its form of organization, the registration statement of the predecessor issuer shall be deemed the registration statement of the successor issuer for the purpose of continuing the offering provided:

(a) Immediately prior to the succession the successor issuer had no assets or liabilities other than nominal assets or liabilities;

(b) The succession was effected by a merger or similar succession pursuant to statutory provisions or the terms of the organic instruments under which the successor issuer acquired all of the assets and assumed all of the liabilities and obligations of the predecessor issuer;

(c) The succession was approved by security holders of the predecessor issuer at a meeting for which proxies were solicited pursuant to section 14(a) of the Securities Exchange Act of 1934

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or section 20(a) of the Investment Company Act of 1940 or information was furnished to security holders pursuant to section 14(c) of the Securities Exchange Act of 1934; and

(d) The successor issuer has filed an amendment to the registration statement of the predecessor issuer expressly adopting such statements as its own registration statement for all purposes of the Act and the Securities Exchange Act of 1934 and setting forth any additional information necessary to reflect any material changes made in connection with or resulting from the succession, or necessary to keep the registration statement from being misleading in any material respect, and such amendment has become effective.

[47 FR 11438, Mar. 16, 1982, as amended at 76 FR 71876, Nov. 21, 2011]

§ 230.415 Delayed or continuous offering and sale of securities.

(a) Securities may be registered for an offering to be made on a continuous or delayed basis in the future, *Provided, That*:

(1) The registration statement pertains only to:

(i) Securities which are to be offered or sold solely by or on behalf of a person or persons other than the registrant, a subsidiary of the registrant or a person of which the registrant is a subsidiary;

(ii) Securities which are to be offered and sold pursuant to a dividend or interest reinvestment plan or an employee benefit plan of the registrant;

(iii) Securities which are to be issued upon the exercise of outstanding options, warrants or rights;

(iv) Securities which are to be issued upon conversion of other outstanding securities;

(v) Securities which are pledged as collateral;

(vi) Securities which are registered on Form F-6 (§ 239.36 of this chapter);

(vii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) registered (or qualified to be registered) on Form SF-3 (§ 239.45 of this chapter) which are to be offered and sold on an immediate or delayed basis by or on behalf of the registrant;

Instruction to paragraph (a)(1)(vii): The requirements of General Instruction I.B.1 of Form SF-3 (§ 239.45 of this chapter) must be met for any offerings of an asset-backed security (as defined in 17 CFR 229.1101(c)) registered in reliance on this paragraph (a)(1)(vii).

(viii) Securities which are to be issued in connection with business combination transactions;

(ix) Securities, other than asset-backed securities (as defined in 17 CFR 229.1101(c)), the offering of which will be commenced promptly, will be made on a continuous basis and may continue for a period in excess of 30 days from the date of initial effectiveness;

(x) Securities registered (or qualified to be registered) on Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), or on Form N-2 (§§ 239.14 and 274.11a-1 of this chapter) pursuant to General Instruction A.2 of that form, which are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of the registrant, a majority-owned subsidiary of the registrant or a person of which the registrant is a majority-owned subsidiary; or

(xi) Shares of common stock which are to be offered and sold on a delayed or continuous basis by or on behalf of a registered closed-end investment company or business development company that makes periodic repurchase offers pursuant to § 270.23c-3 of this chapter.

(xii) Asset-backed securities (as defined in 17 CFR 229.1101(c)) that are to be offered and sold on a continuous basis if the offering is commenced promptly and being conducted on the condition that the consideration paid for such securities will be promptly refunded to the purchaser unless:

(A) All of the securities being offered are sold at a specified price within a specified time; and

(B) The total amount due to the seller is received by him by a specified date.

(xiii) Exchange-traded vehicle securities which are to be offered and sold on a continuous basis by or on behalf of the registrant in accordance with § 230.456(d) (Rule 456(d)).

(2) Securities in paragraphs (a)(1)(viii) and (ix) of this section that are not registered on Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), or on Form N-2 (§§ 239.14 and

274.11a-1 of this chapter) pursuant to General Instruction A.2 of that form, may only be registered in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration.

(3) The registrant furnishes the undertakings required by Item 512(a) of Regulation S-K (§ 229.512(a) of this chapter), except that a registrant that is an investment company filing on Form N-2 must furnish the undertakings required by Item 34.4 of Form N-2 (§ 239.14 and § 274.11a-1 of this chapter).

(4) In the case of a registration statement pertaining to an at the market offering of equity securities by or on behalf of the registrant, the offering must come within paragraph (a)(1)(x) of this section. As used in this paragraph, the term "at the market offering" means an offering of equity securities into an existing trading market for outstanding shares of the same class at other than a fixed price.

(5) Securities registered on an automatic shelf registration statement and securities described in paragraphs (a)(1)(vii), (ix), and (x) of this section may be offered and sold only if not more than three years have elapsed since the initial effective date of the registration statement under which they are being offered and sold, *provided, however*, that if a new registration statement has been filed pursuant to paragraph (a)(6) of this section:

(i) If the new registration statement is an automatic shelf registration statement, it shall be immediately effective pursuant to Rule 462(e) (§ 230.462(e)); or

(ii) If the new registration statement is not an automatic shelf registration statement:

(A) Securities covered by the prior registration statement may continue to be offered and sold until the earlier of the effective date of the new registration statement or 180 days after the third anniversary of the initial effective date of the prior registration statement; and

(B) A continuous offering of securities covered by the prior registration statement that commenced within

three years of the initial effective date may continue until the effective date of the new registration statement if such offering is permitted under the new registration statement.

(6) Prior to the end of the three-year period described in paragraph (a)(5) of this section, an issuer may file a new registration statement covering securities described in such paragraph (a)(5) of this section, which may, if permitted, be an automatic shelf registration statement. The new registration statement and prospectus included therein must include all the information that would be required at that time in a prospectus relating to all offering(s) that it covers. Prior to the effective date of the new registration statement (including at the time of filing in the case of an automatic shelf registration statement), the issuer may include on such new registration statement any unsold securities covered by the earlier registration statement by identifying on the bottom of the facing page of the new registration statement or latest amendment thereto the amount of such unsold securities being included and any filing fee paid in connection with such unsold securities, which will continue to be applied to such unsold securities. The offering of securities on the earlier registration statement will be deemed terminated as of the date of effectiveness of the new registration statement.

(b) This section shall not apply to any registration statement pertaining to securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust under the Investment Company Act of 1940 or any registration statement filed by any foreign government or political subdivision thereof.

[48 FR 52896, Nov. 23, 1983, as amended at 59 FR 43470, Aug. 24, 1994; 70 FR 44812, Aug. 3, 2005; 73 FR 968, Jan. 4, 2008; 79 FR 57329, Sept. 24, 2014; 85 FR 33354, June 1, 2020]

§ 230.416 Securities to be issued as a result of stock splits, stock dividends and anti-dilution provisions and interests to be issued pursuant to certain employee benefit plans.

(a) If a registration statement purports to register securities to be of-

ferred pursuant to terms which provide for a change in the amount of securities being offered or issued to prevent dilution resulting from stock splits, stock dividends, or similar transactions, such registration statement shall, unless otherwise expressly provided, be deemed to cover the additional securities to be offered or issued in connection with any such provision.

(b) If prior to completion of the distribution of the securities covered by a registration statement, additional securities of the same class are issued or issuable as a result of a stock split or stock dividend, the registration statement shall, unless otherwise expressly provided therein, be deemed to cover such additional securities resulting from the split of, or the stock dividend on, the registered securities. If prior to completion of the distribution of the securities covered by a registration statement, all the securities of a class which includes the registered securities are combined by a reverse split into a lesser amount of securities of the same class, the amount of undistributed securities of such class deemed to be covered by the registration statement shall be proportionately reduced. If paragraph (a) of this section is not applicable, the registration statement shall be amended prior to the offering of such additional or lesser amount of securities to reflect the change in the amount of securities registered.

(c) Where a registration statement on Form S-8 relates to securities to be offered pursuant to an employee benefit plan, including interests in such plan that constitute separate securities required to be registered under the Act, such registration statement shall be deemed to register an indeterminate amount of such plan interests.

[30 FR 13824, Oct. 30, 1965, as amended at 55 FR 23923, June 13, 1990]

§ 230.417 Date of financial statements.

Whenever financial statements of any person are required to be furnished as of a date within a specified period prior to the date of filing the registration statement and the last day of such period falls on a Saturday, Sunday, or holiday, such registration statement may be filed on the first business day