

Expiration of Shelf Registration Statements to Commence December 1, 2008

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The Securities Offering Reform rules, which became effective December 1, 2005, contain a “sunset” provision under which several common types of shelf registration statements expire three years after their initial effective date under the Securities Act of 1933, as amended. For certain registration statements that were already effective as of December 1, 2005, the sunset provision began to run on that date.

Therefore, beginning December 1, 2008, many shelf registration statements filed prior to or shortly after December 1, 2005 will begin to expire. Companies need to determine now which of their currently effective shelf registration statements must be replaced, prior to the time those statements expire.

Applicability of the Sunset Provision

The three-year sunset provision applies only to certain categories of registration statements. These include:

1. **Any** automatic shelf registration statement (ASR) filed by a well-known seasoned issuer (WKSI), for **any** type of offering, whether a primary offering by the registrant or a secondary offering by selling securityholders.
2. Registration statements registering any delayed or continuous shelf offering by a registrant under Rule 415(a)(1)(ix) or (x) (i.e., universal, equity and debt shelves).
3. Registration statements covering continuous offerings such as combined dividend reinvestment/direct stock purchase plans (DRSPPs) that are open to new investors.

Several other common types of registration statements are **not** subject to the three-year sunset provision. Types of registration statements to which the rule does not apply include:

1. Resale registration statements, **other than ASRs**, covering offerings by selling securityholders.

2. Registration statements, **other than ASRs**, relating to pure dividend reinvestment plans (DRIPs) that are not open to new investors.
3. Registration statements, **other than ASRs**, covering the issuance of securities upon the exercise or conversion of outstanding securities.
4. Registration statements on Form S-8.

Impact of Three-Year Sunset Provision on Shelf Registration Statements for Primary (Issuer) Offerings

Any registration statement registering any delayed or continuous shelf offering by a registrant under Rule 415(a)(1)(ix) or (x) (i.e., universal, equity and debt shelves) that became effective under the Securities Act **before** December 1, 2005 must be replaced by December 1, 2008.

Any such registration statement that became effective under the Securities Act **after** December 1, 2005, as well as any ASR, must be replaced by the third anniversary of its initial effective date.

Impact of Three-Year Sunset Provision on Shelf Registration Statements for Secondary (Selling Securityholder) Offerings

Selling securityholder registration statements that **are not** ASRs are not subject to the three-year sunset provision and do not need to be replaced, regardless of when they were filed.

Selling securityholder registration statements that **are** ASRs must be replaced prior to the expiration of the three-year period if the registrant wishes to allow the offerings registered thereon to continue. Registrants should, however, consider whether it is necessary to continue registration of these offerings, particularly in light of the February 2008 amendments to Rule 144. Under the amended Rule 144, shares held by nonaffiliates for more than one year may be publicly sold with no restrictions.

To the extent that shares and securityholders covered by a resale registration statement are eligible for unrestricted sale under Rule 144, there may be no need to file a new registration statement to continue the offering, though registrants should also consider the requirements of any registration rights agreements to which they are party.

Other Considerations

There are certain circumstances under which expiring registration statements can continue to be used for a limited period of time after expiration, as long as the registrant has filed a new registration statement prior to the expiration.

This communication does not consider registration statements covering mortgage-related securities, those filed by investment companies, and certain other specialized registration statements.

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