

Mechanisms for Going Public in the United States

Registration Statements

Registration statements are of two principal types: (1) offering registrations filed under the Securities Act of 1933, and (2) trading registrations filed under the Securities Exchange Act of 1934.

Offering Registrations

Offering registrations are used to register securities before they are offered to investors. Part I of the registration, a preliminary prospectus or “red herring,” contains preliminary information that will be in the final prospectus. Included in Part I (or incorporated by reference) in many registration statements are:

- Description of securities to be registered
- Use of proceeds
- Risk factors
- Determination of offering price
- Potential dilution
- Selling security holders
- Plan of distribution
- Interests of named experts and counsel
- Information with respect to the registrant (description of business, legal proceedings, market price and dividends on common equity, financial statements, management discussion and analysis, changes in and disagreements with accountants, directors and executive officers, security ownership of certain beneficial owners and management and certain relationships and related transactions)

Part II of the registration contains information not required in the prospectus. This includes:

- Expenses of issuance and distribution
- Indemnification of directors and officers
- Recent sales of unregistered securities, undertakings, exhibits, and financial statement schedules

Types of Offering Registrations

Offering registration statements vary in purpose and content according to the type of organization issuing stock.

- S-1 Companies reporting under the 1934 Act for fewer than three years. Permits no incorporation by reference and requires complete disclosure in the prospectus.
- S-2 Companies reporting under the 1934 Act for three or more years but not meeting the minimum voting stock requirement. Reference to the 1934 Act reports permits incorporation and presentation of financial information in the prospectus or in an annual report to shareholders delivered with the prospectus.
- S-3 Companies reporting under the 1934 Act for three or more years and having at least \$150 million of voting stock held by nonaffiliates, or as an alternative test, \$100 million of voting stock coupled with an annual trading volume of 3 million shares. Allows minimal disclosure in the prospectus and maximum incorporation by reference of 1934 Act reports.
- S-4 Registration used in certain business combinations or reorganizations.

- S-6 Filed by unit investment trusts registered under the Investment Act of 1940 on Form N-8B-2.
- S-8 Registration used to register securities to be offered to employees under stock option and various other employee benefit plans.
- S-11 Filed by real estate companies, primarily limited partnerships, and investment trusts.
- SE Nonelectronically filed exhibits made by registrants filing with the EDGAR Project.
- N-1A Filed by open-end management investment companies.
- N-2 Filed by closed-end management investment companies.
- N-5 Registration of small business investment companies.
- N-14 Registration of the securities of management investment and business development companies to be issued in business combinations under the Investment Act of 1940.
- F-1 Registration of securities by foreign private issuers eligible to use Form 20-F, for which no other form is prescribed.
- F-2 Registration of securities by foreign private issuers meeting certain 1934 Act filing requirements.
- F-3 Registration of securities by foreign private issuers offered pursuant to certain types of transactions, subject to the 1934 Act filing requirements for the preceding three years.
- F-4 Registration of securities issued in business combinations involving foreign private registrants.
- F-6 Registration of depository shares evidenced by the American Depository Receipts (ADRs).
- F-7 Registration of certain Canadian issues offered for cash upon the exercise of rights granted to existing security holders.
- F-8 Registration of certain Canadian issues to be issued in exchange offers or a business combination.
- F-9 Registration of certain investment grade debt or investment grade preferred securities of certain Canadian issues.
- F-10 Registration of certain Canadian issues.
- SB-1 Registration for certain small businesses.
- SB-2 Registration statement for small businesses. No aggregate offering value of securities.

Trading Registrations

Trading registrations are filed to permit trading among investors on a securities exchange or in the over-the-counter market. These registration statements do not include a prospectus. Registration statements that serve to register securities for trading fall into three categories:

1. Form 10 may be used by companies during the first two years they are subject to the 1934 Act filing requirements. It is a combination registration statement and annual report with information content similar to that of SEC required 10-Ks.
2. Form 8-A is used by 1934 Act registrants wishing to register additional securities or classes thereof.
3. Form 8-B is used by “successor issuers” (usually companies that have changed their name or state of incorporation) as notification that previously registered securities are to be traded under a new corporate identification.

Prospectus

When the sale of securities as proposed in an offering registration statement is approved by the SEC, any changes required by the SEC are incorporated into the prospectus. This document must be made available to investors before the sale of the security is initiated. It also contains the actual offering price, which may have been changed after the registration statement was approved.

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