

May 18, 2026

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Recommended Changes to Regulation S-K

Dear Ms. Countryman:

We are submitting this letter in response to the request from Chairman Paul Atkins for suggested revisions to Regulation S-K to refocus registrant disclosures on materiality - material information that a reasonable investor would consider important in making an investment or voting decision.¹ Chairman Atkins has identified “re-anchoring disclosure in materiality” as the first pillar in his goal to increase the number of public companies in the United States.

We appreciate the opportunity to provide our input on revisions to Regulation S-K and ways to address disclosure liability concerns with the goal of refocusing company disclosures on materiality. We support the Commission’s broad-based review to meet Chairman Atkins’ objectives to improve disclosure for the benefit of both investors and public companies and to find ways to address important liability concerns. We believe that the Commission’s mandate of investor protection, efficiency, competition, and capital formation supports a refocusing of disclosure on materiality. We also believe that materiality-focused disclosure would lower the costs of being a public company in the United States, thereby encouraging more companies to use the public markets to access capital.

As long-time capital markets advisors, we work regularly with registrants of all sizes and business complexity, often beginning long before initial public offerings and continuing after they have become large accelerated filers. We are often on the front line helping management understand and comply with their disclosure obligations. Based on our experience, we agree that existing disclosure requirements unfortunately often result in long, overly-complex periodic filings with redundant, obsolete or immaterial information that offer little value to investors while depleting time and resources for public companies.

¹ Chairman Paul S. Atkins, *Statement on Reforming Regulation S-K* (Jan. 13, 2026), <https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-11326>. See also, Commissioner Mark T. Uyeda, *Remarks at the 53rd Annual Securities Regulation Institute* (Jan. 6, 2026), <https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-securities-regulation-institute-012626>.

In order to streamline disclosure and enhance investor decision-making, we have always supported continuing to have materiality as the cornerstone of disclosure requirements.

Materiality Should Continue to be the Cornerstone of Disclosure Requirements

The central purpose of corporate disclosure is to provide investors with the information they need to make informed investment decisions and, for proxy information, voting decisions. To this end, the concept of materiality has always been central to registrants' disclosure obligations under the federal securities laws. For information to be material, "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."² In formulating the "total mix" standard, the U.S. Supreme Court refused to find that a fact is material just because a reasonable investor "might" consider it important, explaining that such a low standard of materiality poses the danger of too much disclosure, namely that "management's fear of exposing itself to substantial liability may cause it simply to bury the shareholders in an avalanche of trivial information—a result that is hardly conducive to informed decision making."³ In other words, the concept of materiality serves the dual purposes of highlighting information that a reasonable investor would likely consider important while filtering out relatively unimportant details that could confuse or overwhelm investors. In this regard, we note that a reasonable investor makes investment and voting decisions based upon maximizing financial value.

The goal of corporate disclosure should be to provide, in an efficient manner, the information needed by reasonable investors to make informed investment decisions and, for proxy information, voting decisions. A corollary is that disclosure requirements should not solicit all information that may be desired by all investors or the public. We think it important that the Supreme Court focused on the "reasonable investor." We believe that, to be effective, periodic and current reports should remain focused on the information that is material to an understanding of a registrant's operating results and financial performance. We do not think the Commission should assume that just because some investors request specific information on a variety of non-financial topics, and some companies voluntarily provide it, that this provides a conclusive justification for requiring these disclosures in Commission filings.

We also agree with Chairman Atkins that public company disclosure requirements have been used in recent years to affect matters of corporate governance through "comply or explain" and "regulation by shaming." Corporate governance decisions should be left to shareholders and their company directors. We are mindful that some parties seek information in areas of corporate sustainability, including issues such as conflict minerals, environmental matters and climate change, workforce diversity and labor conditions, among others. Although these matters may be considered by registrants' boards and management as part of broader strategy and business profile reviews, they

² *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

³ *Id.* at 448-49.

are not, in most cases, material to an investor's understanding of a registrant's operating results and financial performance, and, accordingly, are not appropriate topics for disclosure mandates.

We think the Commission should continue to recognize that periodic and current reports are only one form of communication by registrants with investors and the public and that registrants often communicate with investors and the public regarding a number of issues through media outside of their periodic and current reports. These communications should be encouraged and facilitated by relevant stakeholders. There are a variety of avenues appropriately outside the Commission's purview through which companies can, and do, communicate how they are addressing important social and other non-financial issues, including through publication of corporate sustainability reports on company websites.

Benefits of Disclosure Requirements to Investors Should Outweigh the Costs to Registrants

In addition to the central concept of materiality, important policy considerations come into play as to whether informational benefits to investors are appropriately balanced against compliance costs to companies, and the potential impact on efficiency, competition, and capital formation. Disclosure is costly for registrants to prepare and disclosure of sensitive information can result in competitive disadvantages. In particular, compiling underlying facts, assessing materiality, and drafting responsive disclosure is often a complex and time-consuming process. Registrants have varying methods to manage this process, ranging from large and sophisticated registrants employing broad internal teams who oversee substantially all aspects of this process to small emerging registrants who coordinate extensively with outside counsel and advisors. Significant resources, both time and money, are required to support the disclosure process—a process that is necessary even when the required information is of little or no value to investors.

As an example of a disclosure mandate whose benefits we believe are far outweighed by costs to a company, we believe the Commission should reevaluate the mandatory inline XBRL tagging requirements for disclosures and financial statements in registrants' reports and registration statements. Compliance with mandatory XBRL data tagging has increased costs for registrants and it is not clear that, with the growing use and sophistication of artificial intelligence, ongoing benefits to investors from data tagging outweigh the significant costs and burdens to registrants. Data tagging of a registrant's SEC filings is generally done by outside parties over whom the registrant has no control. However, the failure of the third party to properly data tag a registrant's filing can result in filings that are not compliant with form requirements or in some cases in the rejection of the filing. This can result in a registrant not being timely with its reporting obligations, thereby potentially losing the ability to use a short-form registration statement to raise capital. The consequences of such "inadvertent" delays in filing periodic reports has significant negative consequences for companies and their future

capital formation capacity, due to the loss of their eligibility to use short-form registration.

We recognize that the Commission, together with other U.S. financial regulators, is required to adopt data tagging pursuant to the Financial Data Transparency Act Joint Data Standards (“FDTA”).⁴ But we recommend that the Commission amend its rules, including Regulation S-K, to provide that only the financial data required by the FDTA is required to be tagged, amend the filing submission provisions to eliminate rejection of filings due to data tagging issues, and adopt rules allowing for a cure period to file rejected reports and registration statements to enable these data tagged reports and registration statements to be filed within the cure period, thus avoiding the draconian results from tagging “foot faults”.

The Commission Should Promote Quality While Reducing the Length of Disclosure

The length of Commission filings such as annual reports and proxy statements has increased dramatically over the past decades, driving up the costs to investors of interpreting disclosure. We believe that the Commission should encourage greater use of cross-references, hyperlinks, and other ways to consolidate disclosures to reduce duplicative and overlapping disclosures in SEC filings. We think that facilitating the use of hyperlinks and cross-referencing can meaningfully improve accessibility to, and navigability of, company information.

The Commission Should Extend Disclosure Safe Harbors

We believe it is important for registrants to be able to rely on safe harbors from liability for information provided through hyperlinks and cross-referencing within a report or registration statement. For example, if a registrant decides to cross reference the notes to the registrant’s financial statements in lieu of replicating disclosures in response to a line-item (including forward-looking information) we believe that the safe harbor under the Private Securities Litigation Reform Act of 1995 (“PSLRA”) should cover the cross-referenced disclosure, even though the disclosure is contained in the registrant’s financial statements.

Recommended Changes to Regulation S-K

The following is a summary of our recommended significant edits to Regulation S-K. We have attached these edits as well as others that we believe are necessary and important to a materiality-centered disclosure regime as Annex A.⁵

⁴ Pub.L. 117-263, title VLIII, 136 Stat. 2395, 3421 (2022). See also Proposed Rule, *Financial Data Transparency Act Joint Data Standards*, 89 F.R. 163 at 67890 (Aug. 22, 2024).

⁵ We recognize that a number of our recommended edits are to amended or recently adopted Regulation S-K items. We are sensitive to the fact that seeking repeal of requirements only a few years after their enactment imposes an additional layer of costs on both registrants and the Commission. We believe, however, that such costs ultimately will be mitigated through the reduced disclosure obligations arising from implementing our recommended changes.

Item 10. General

We recommend that Item 10(e)(1)(i)(B) be revised to eliminate the requirement to reconcile forward-looking information to U.S. GAAP, particularly since it is required only if it is available without unreasonable effort and expense.

To refocus disclosure on materiality as the “north star”, we believe it is important to explicitly provide that materiality is the overriding principle in providing disclosure in response to Regulation S-K items. In this regard, we believe that registrants should not be second-guessed on materiality determinations for which they have a reasonable basis, that are not misleading, and that are not made in bad faith. For a reframing of disclosure obligations focused on materiality to actually be useful and implemented, it is essential that it is clear from the language in Regulation S-K that no item of Regulation S-K “requires” or mandates any particular disclosure (other than Items 402, 404, and 601) and that no item of Regulation S-K creates a duty to disclose any or all the particular provisions of any Regulation S-K item (other than Items 402, 404, and 601). We are excluding Items 402, 404, and 601 as we recognize that investors value this information in making informed investment decisions and, for proxy disclosure, voting decisions.

To incorporate a “global” materiality standard applicable to all Regulation S-K items, we recommend that the Commission amend Item 10 of Regulation S-K to add a new Item 10(g).⁶ Our recommended new Item 10(g) provides that, in response to any particular item requirement, other than Items 402, 404 and 601, a registrant may omit a response, in whole or in part, to the extent that the registrant reasonably determines that information responsive to such disclosure item would not be material, and that the omission of such information would not cause the statements that are made to be misleading in any material respect. Our recommended new Item 10(g) also provides that a registrant’s determination to omit a response will be presumed to be intentional and unless there is clear evidence to the contrary, including bad faith, will not be considered an impermissible omission. Registrants would still be obligated, under Securities Act Rule 408 and Exchange Act Rule 12b-20, to disclose such further material information as may be necessary to make the statements made, in light of the circumstances under which they are made, not misleading.

Finally, we have included a definition of material information in our proposed new Item 10(g) as we believe it is important to have an overriding definition of material information that specifically references the guiding Supreme Court decisions. We recognize that certain Regulation S-K items contain their own characterization of materiality or conclusion that particular disclosure is always material and we believe that these are not appropriate. We believe that an overriding materiality definition routinely used by practitioners and registrants alike in Item 10(g) that is guided by Supreme Court

⁶ We note that others have made similar suggestions. See Catherine T. Dixon, Chair, Federal Regulation of Securities Committee, et al., Business Law Section, American Bar Association, Comment Letter (Mar. 6, 2015), https://www.americanbar.org/content/dam/aba/administrative/business_law/comment-letters/disclosure-effectiveness-201503.pdf; see also A.B.A., Comment Letter on Concept Release on Business and Financial Disclosure Required by Regulation S-K (Dec. 15, 2017), <https://www.sec.gov/comments/S7-06-16/S&0616-2812973-161696.pdf>. We have built on the initial suggestions in the ABA letters.

jurisprudence should be determined to be controlling and we believe the Commission should make that clear.

Item 101. Description of Business

We think that, consistent with a materiality-centered, principles-based disclosure framework, particular disclosure topics should be provided as examples only, thereby allowing registrants to describe their business in the manner that they feel most efficiently and accurately conveys how management views and manages their business. In this regard, we suggest deleting specific thresholds regarding environmental costs and disclosure relating to government regulation. We believe that companies already disclose any related material impacts in their MD&A, financial statements and in any other sections where they discuss their earnings, financial condition and capital expenditures. In addition, many companies also disclose any material risks of increasing costs associated with compliance with governmental regulations in their risk factors.

We also recommend deleting Instruction 3 to Item 101 as this instruction is inconsistent with recommended new Item 10(g). There is no reason that registrants should have to seek Commission “permission” to omit immaterial information.

We also recommend deleting detailed disclosure of human capital resources. To the extent material, this information is already disclosed, frequently in risk factor sections of companies’ annual reports on Form 10-K. For example, companies often include risk factor disclosure regarding challenges of integrating, developing, and motivating a rapidly growing employee base or the need to attract and retain highly qualified personnel. Companies also voluntarily provide detailed disclosures relating to their human capital resources in publicly-available non-SEC reports or other written materials that address their investors’ requests. This investor interest is likely to prompt companies to provide even more information regarding human capital resources, which benefits those investors interested in company-specific aspects of this type of disclosure. These “privately ordered” voluntary disclosures are available to all investors who wish to access them, and mandated disclosure only adds to a registrant’s compliance burden, which is a significant factor in dissuading private companies from going public.

Item 102. Description of Property

Given changes in the economy and the nature of many companies, the specific requirements of Item 102 are obsolete and harken back to a largely industrial and manufacturing economy that has changed significantly. A description of physical properties may be relevant to certain types of registrants. For example, registrants in the hotel and lodging industry tend to disclose the location and number of rooms at each of their properties and registrants with casino operations disclose the number of table games and slot machines at each location. In contrast, registrants that provide services and information technology often have no material physical properties to describe. Nonetheless many of these registrants have non-physical assets that are key to their business. We think that registrants should be able to contextualize their key assets within

the broader narrative description of the business in a manner that enhances disclosure to investors.

Item 103. Legal Proceedings

We believe that companies should be permitted to disclose information about material legal proceedings by including hyperlinks or cross-references to disclosure located elsewhere in a disclosure document, such as the risk factor or business sections. We believe that ASC 450 contains the appropriate level of requirements for disclosure of material legal proceedings to inform investment and voting decisions of the reasonable investor and suggest that the Commission consider eliminating Item 103.

We believe that the Commission should eliminate any required disclosures regarding environmental proceedings involving a governmental authority. The entirely quantitative, one-size-fits-all threshold is arbitrary and results in disclosure that may not be material to investors and instead can obscure other, more meaningful information about a company's material legal proceedings. The resulting disclosure also does not assist investors in assessing whether a company has significant environmental compliance problems. Our suggested Item 10(g) materiality provision would address these shortcomings.

We believe that the disclosure required by ASC 450, together with the requirements in Items 303 and 503(c) of Regulation S-K, sufficiently call for information for reasonable investors regarding legal proceedings.

Item 105. Risk Factors

The current risk factor disclosure requirement is principles-based and mandates disclosure of "the most significant factors that make an investment in the registrant or offering risky." We continue to believe that the summary section of risk factors does not enhance the readability of the document and in fact, it could potentially distract investors from reading all risk factors carefully. We also recommend deleting the obligation to include a risk factor summary as we believe it has not had the intended effect of reducing disclosures.

We also believe that current risk factor disclosure has expanded due, in large part, to liability concerns arising not only from forward-looking statements in risk factors, but also from frivolous lawsuits. To address liability issues directly in risk factors, we recommend including safe harbor language similar to that set forth in Item 305. Our suggested language is included in Annex A.

Further, we agree with Chairman Atkins that risk factors include a significant number of generic risks that do not provide meaningful information to investors.⁷ Our clients are, however, reluctant to eliminate generic risk disclosures again due to liability

⁷ See Chairman Paul S. Atkins, Speech, Remarks at the Texas A&M School of Law Corporate Law Symposium (Feb. 17, 2026) <https://www.sec.gov/newsroom/speeches-statements/atkins-02-17-2026-remarks-texas-am-school-law-corporate-law-symposium>.

concerns. We believe that registrants should be permitted to omit generic risks from their risk factor disclosures without fear of liability. In lieu of providing generic risk discussion in periodic reports and Securities Act filings, we believe that registrants should have the ability to omit these discussions and, if they desire, to include a discussion of generic risks on their websites. We believe that the new Item 10(g) we are suggesting should provide registrants greater comfort that they can reduce their risk factor disclosures to include only those risks that are particular and material to their companies, operations and financial condition – in line with the intended objectives of risk disclosure.

In addition, we think that efforts to limit potential litigation contribute to lengthy risk factor disclosure as registrants may at times seek to provide investors with every conceivable factor that could, if realized, adversely affect the registrant. Absent any change in the rules, we think that there is little chance that this over-disclosure decreases. For this reason, we encourage the Commission to address over-disclosure of generic and common risks through the adoption of a safe harbor protecting registrants from liability solely for failing to identify common and generic risks notwithstanding the inclusion of focused and meaningful registrant-specific risk disclosure.

Finally, we are recommending that registrants be permitted to include explanations of how they may currently, or in the future, address the identified risks. Historically, registrants have not been permitted to include a discussion of mitigating factors or a discussion of how they are addressing or may address risks. While MD&A disclosures in Item 303 may address some of these issues, we believe that it is helpful to investors to understand, in the context of the risk disclosure, how a registrant may be addressing the identified risks. We also think that disclosure about a registrant's approach to risk management could enhance investor understanding of the possible impact of a disclosed risk and the registrant's overall risk profile.

Item 106. Cybersecurity

We recommend deleting Item 106 in its entirety because it is unnecessary as any cybersecurity risk is already addressed in risk factor disclosures or in Item 303 MD&A disclosures. We also are concerned that providing disclosure about how a company manages its cyber risk provides a road map for bad actors to attack the company and its systems. We have previously provided comments on our concerns about the Item 106 disclosure provisions.⁸

Item 201. Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

We think that, in light of changes in technology and security ownership, the Commission should delete Item 201(b) and Item 201(e). With respect to Item 201(b), there have been significant changes in the ownership profile and the manner of

⁸ See Davis Polk & Wardwell LLP, Comment Letter on *Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure* (May 6, 2022) <https://www.sec.gov/comments/S7-09-22/s70922-20128282-290896.pdf>.

ownership of registrants' securities, including a significant increase in institutional ownership and the migration toward holding securities in "street name." As a result, disclosure of the number of holders of a registrant's equity no longer represents material information.

With respect to our recommendation to delete the performance graph in Item 201(e), the internet has made vast amounts of information, including information about registrants' securities (e.g., stock price history and performance), readily available to investors. Various organizations publish for free information which can and does educate investors about economic trends, companies and the industries in which they operate. Moreover, some of these organizations provide advanced and customizable security-research techniques and screening allowing for sophisticated comparative analysis by investors.

Item 302. Supplementary Financial Data

We recommend deleting Item 302(a). As this Item applies only to certain registrants (on selected forms) and quarterly reporting obligations on Form 10-Q, the value of the requirement to investors is limited. With the Commission revisiting the requirements for quarterly reporting obligations, we believe deletion of this Item is appropriate at this time. We also note that the requirement for quarterly financial data can be an unwelcome surprise for newly public companies attempting to do a follow-on offering. If the quarterly information was not needed to market the initial public offering, it is unclear why it should be required in a follow-on offering that follows the IPO.

Item 303. Management's Discussion and Analysis of Financial Condition and Results of Operations

We believe it would be helpful to registrants for the Commission to consolidate the various sources of guidance on the MD&A into a single source, as a Commission interpretation. Doing so would enable registrants to approach their MD&A in the context of the revised Regulation S-K provisions. In preparing consolidated MD&A guidance, we recommend the Commission avoid prescriptive quantitative thresholds or specific formatting or presentation styles, including in respect of executive overviews, as each of these approaches would deviate from a materiality-centered, principles-based disclosure framework and potentially increase cost to registrants.

We also have the following recommendations regarding certain provisions of Item 303.

Item 303(b)(3). Critical Accounting Estimates

We recommend deleting Item 303(b)(3). Based on our experience, we do not think critical accounting estimates disclosure results in meaningful additional disclosure to investors, particularly given the disclosure required in the financial statement footnotes. We think that registrants generally repeat some or all of the relevant disclosure from the

financial statements in response to Item 303 resulting in redundant boilerplate disclosure of little or no use to investors.

Instructions to Paragraph (b)6.

We recommend adding specific safe harbor language to Instruction 6 similar to that set forth in Item 305. We believe it is important that registrants are able to assert reliance on the safe harbor for all information provided pursuant to Item 303, other than historical information. We also recommend line edits that will replace words such as “must” from Item 303 that may be read to undercut a registrant’s ability to make materiality determinations regarding disclosures that would be permitted under our recommended new Item 10(g).

Item 305. Quantitative and Qualitative Disclosures About Market Risk

We think that the requirements related to quantitative and qualitative aspects of market risks associated with derivatives and other market-sensitive instruments solicit disclosure that is meaningful only for registrants in certain industries, such as banking and financial services. Although such disclosure can be important to understanding a bank’s or financial holding company’s statement of financial position, cash flows and results of operations, we think such disclosure may have significantly less value in other industries. Accordingly, we think the Commission should permit companies to evaluate whether market risk disclosure is material to their business and operations and allow companies to focus on the information and methods that management actually uses internally to evaluate, monitor and manage market risk.

We also recommend deleting the condition to the availability of the safe harbor that registrants must provide the information identified in Item 305. We believe this language is inconsistent with a materiality-based disclosure framework.

Item 401. Directors, Executive Officers, Promoters and Control Persons

Instruction 2 to 401(f)

We recommend eliminating this instruction. We believe that this instruction is inconsistent with a registrant’s materiality determinations and with our recommended new Item 10(g).

Item 403. Security Ownership of Certain Beneficial Owners and Management

We recommend deletion of this item, other than for initial public offerings, as the information is publicly available through required Section 13(d) and Section 16 filings. For public reporting entities, registrants rely on this publicly available information in responding to this item and we do not believe it is necessary to be included in registrants’ disclosures.

Item 404. Transactions with Related Persons, Promoters and Certain Control Persons

Item 404(a) requires that materiality be considered from the viewpoint of the related person. Registrants are not able to evaluate by themselves whether a related person has a material interest in a transaction. We recommend that the Commission amend 404(a) to incorporate a knowledge standard with respect to related persons such that disclosure is required only if a registrant has actual knowledge that a related person would have a material interest in a transaction.

We also recommend narrowing the scope of persons in the definition of related party, as set forth in the edits in Annex A. Registrants incur significant expense and burden attempting to identify whether there is a transaction with a related person, and it is unclear how investors benefit from this information. We also believe that the type of transaction should not include ordinary course business transactions.

We also recommend changing the threshold for transactions to be based on a percentage of annual gross revenues rather than a set dollar threshold. This change will reflect more appropriately the impact of a related transaction on the registrant.

Item 405. Compliance with Section 16(a) of the Exchange Act

We recommend deleting Item 405. The information provided in response to this item is publicly available on EDGAR due to the required electronic submission of Forms 3, 4 and 5. The disclosure requirement provides no further meaningful information to investors and increases the burden and cost to companies for what appears to be “name and shame” disclosure.

Item 406. Code of Ethics

We recommend that the Commission eliminate the requirement that, if a registrant has not adopted a code of ethics, it must explain why.

Item 407. Corporate Governance*Item 407(c). Nominating committee*

We recommend that the Commission eliminate the requirement that registrant disclose or explain why the registrant does not have a nominating committee. We also recommend that the Commission eliminate the requirement that the registrant disclose that it does not have a policy with regard to the consideration of any director candidates recommended by security holders. We believe the “explain” requirements in these requirements is intended to affect corporate governance practice rather than provide disclosure to investors.

Item 407(d). Audit committee disclosure

We continue to have concerns regarding audit committee disclosure. In particular, we remain concerned about disclosures about communications between the audit committee and the company's auditor. As lawyers who regularly advise issuers and others on their reporting and disclosure obligations, it is vanishingly rare, in our experience, that our public company clients or their audit committees receive questions or requests for additional information from investors about the audit committee's oversight of the auditor. We provided detailed comments relating to these concerns in our comment letter on the audit committee rule proposals.⁹ We also believe that much of this disclosure is intended to affect corporate governance practice rather than provide disclosure to investors. We recommend that the Commission delete the audit committee disclosure in its entirety.

Item 407(e). Compensation committee

As with nominating and audit committees, we recommend that the Commission eliminate the requirement that registrant disclose or explain why the registrant does not have a compensation committee. We believe the "explain" requirement is intended to affect corporate governance practice rather than provide disclosure to investors.

Item 407(h). Board leadership structure and role in risk oversight

We recommend that the Commission eliminate the requirement to disclose why the registrant has determined that its leadership structure is appropriate. We also suggest eliminating the requirement to disclose the extent of the board's role in risk oversight of the registrant, including how the board administers its oversight function, and the effect on the board's leadership structure. For most registrants, the board's role in risk oversight is unrelated to its decisions of board leadership structure, leading most registrants to either affirmatively state that there is no effect or to make a boilerplate statement that the board's leadership structure supports or enhances its role in risk oversight, which is of little use to investors.

Item 407(i). Employee, officer and director hedging

We recommend that this Item be limited to executive officers and directors of a registrant. Many companies have policies regarding hedging by executive officers and directors. We believe that this provision as it applies to employees is burdensome and costly to registrants as it requires them to monitor or otherwise determine whether employees engage in hedging activities, which likely does not result in material information for investors.

⁹ See Davis Polk & Wardwell LLP, Comment Letter *Possible Revisions to Audit Committee Disclosures* (Sept. 8, 2015) <https://www.sec.gov/comments/S7-13-15/s71315-64.pdf>.

Item 408. Insider Trading Arrangements and Policies

Insider trading is prohibited by law. Policies on compliance with the federal securities laws, including insider trading, have long been standard practice among public companies. The disclosures do not provide any meaningful information to a reasonable investor. To the extent that executive officers, directors, and beneficial owners of more than 10% of a company's equity securities engage in trading activities, those activities already are subject to reporting under Section 16(a) and subject to the short swing liability provisions of Section 16(b). We recommend deleting this item as it only increases costs and burdens on registrants without providing material information to investors.

Item 506. Dilution

We do not believe that the current dilution disclosure provides meaningful information to investors as to how dilution is calculated or on the impact of a registrant's initial public offering price. Pricing of an initial public offering involves a number of different considerations. To the extent that dilution of net tangible book value per share is material, such information already is included in either risk factors or MD&A. We also note that, for many companies, book value is not a relevant measure. Other disclosures, including in a registrant's balance sheet and capitalization table, enable investors to evaluate potential dilution concerns. We have the same concerns that the current dilution disclosure is not meaningful for those public reporting companies that also are required to include this disclosure. We recommend deleting the separate disclosure in Item 506.

Item 601. Exhibits

We recommend a number of changes to required exhibit filings, including those of internal company policies and those that are not consistent with materiality-focused disclosure. We also recommend deletion of the language in Item 601(b)(10)(iv) that allows the Commission to second guess and essentially overturn the registrant's materiality analysis. We believe this is inconsistent with our recommended new Item 10(g) and with existing disclosure obligations of registrants. We also recommend deletion of Item 601(b)(97) Policy Relating to Recovery of Erroneously Awarded Compensation as we believe that this requirement is intended to affect corporate governance practice rather than provide disclosure to investors.

Item 701. Recent Sales of Unregistered Securities; Use of Proceeds from Registered Securities

We believe that the Commission should eliminate the disclosure requirements of Item 701(a)-(e). To the extent recent sales of securities are material to investors, there are other disclosure requirements that would trigger such disclosure, including Item 303(a)(1) and (2) under which registrants are required to describe their liquidity and capital resources over the periods covered by financial statements included in the registration statement. Registrants do, and we believe would continue to, discuss any meaningful amount of proceeds from the issuance of their securities in their liquidity and capital resources discussion. In addition, the cash flow statements included in the

registration statement contain more detailed information about the proceeds of securities issuances in the applicable periods, as do the statements of stockholders' equity with respect to sales of equity securities. In addition, Item 404 requires disclosure of the terms of any such sales made to related persons. In light of the expense to registrants to compile and document the information required by Item 701(a)-(e) even where immaterial and redundant, we recommend the elimination of these disclosure requirements.

Under Item 504, registrants are required to disclose the principal purposes for which the net proceeds of an offering are intended to be used. We agree that such information is generally useful to investors. However, we do not believe that the continuing requirement to provide information regarding the application of proceeds pursuant to Item 701(f) in subsequent periodic reports following the first periodic report after effectiveness provides meaningful information to investors given that cash is fungible and it is impossible for registrants, and therefore investors, to determine whether cash derives from net proceeds or operations. Moreover, a registrant's cash flow statement will disclose the use of cash in the applicable period covered by the periodic report and discussion of cash flow under Item 303 discusses the material uses of cash.

Form 20-F

We recommend the Commission amend the disclosure provisions of Form 20-F for foreign private issuers to be consistent with the changes to Regulation S-K, including the new Item 10(g).

We appreciate the opportunity to participate in this process, and would be pleased to discuss our comments or any questions the Commission or its staff may have, which may be directed to Joseph A. Hall, Michael Kaplan, John B. Meade, Richard D. Truesdell, Jr., or Maurice Blanco of this firm at 212-450-4000.

Very truly yours,

Davis Polk & Wardwell LLP

ANNEX A

REGULATION S-K

1—GENERAL

Item 10. General.

(e) *Use of Non-GAAP Financial Measures in Commission Filings.* (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(i) The registrant must include the following in the filing:

* * *

(B) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, ~~and quantitative, to the extent available without unreasonable efforts, for forward looking information,~~ of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (e)(1)(i)(A) of this section;

* * *

(g) Commission policy on disclosing material information.

PRELIMINARY NOTE

The Commission's disclosure rules and principles set forth in Regulation S-K are designed with the intent to foster well-informed primary and secondary public trading markets for securities without subjecting registrants to undue competitive, confidentiality or cost burdens. To achieve this balance of investor and registrant interests, these disclosure rules and principles are intended to elicit material information without requiring the disclosure of information that is not material. Because information that would be material will differ from registrant to registrant and from time to time based on facts and circumstances specific to a particular registrant, these disclosure rules and principles will necessarily, at times, be either under or over-inclusive when set against their intended purpose. Where under-inclusive, Rule 408 under the Securities Act and Rule 12b-20 under the Exchange Act require the registrant to disclose such further material information as may be necessary to make the statements made, in the light of the circumstances under which they are made, not misleading. This subsection (g) addresses situations in which these rules and principles are over-inclusive. Registrants are encouraged, but are not required, to review disclosure to eliminate immaterial information.

(1) In determining responses to each disclosure item of Regulation S-K, other than Items 402, 404, and 601, the Commission encourages each registrant to use a materiality-centered approach, based on the registrant's specific facts and circumstances, considering the principles discussed in paragraph (3). Notwithstanding the language contained in any item of Regulation S-K, other than Items 402, 404, and 601, a registrant does not have any requirement, obligation, or duty to make any disclosure in response to any disclosure item in Regulation S-K if this sub-section 10(g) allows it to be omitted.

(2) A registrant may omit a response, in whole or in part, to any disclosure item in Regulation S-K, other than Items 402, 404, or 601, to the extent the registrant reasonably determines that information responsive to such disclosure item would not be material, and that the omission of such information would not cause the statements that are made to be misleading in any material respect. It shall be presumed, in the absence of clear evidence to the contrary, including bad faith, that a registrant's determination to omit a response in accordance with this paragraph (2) was an intentional omission by the registrant in reliance on this subsection (g).

(3) Material information is information to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase or sell, or how to cast a vote in respect of, a registrant's securities that are the subject of a registration statement under the Securities Act or with respect to which ongoing disclosure obligations exist under Sections 12 or 15(d) of the Exchange Act. In evaluating whether information is material, the registrant should consider:

- (i) the Supreme Court's statement that "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available" (*TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)); and
- (ii) the Supreme Court's analysis that traditional concepts of materiality "depend at any given time upon a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity." (*Basic v. Levinson*, 485 U.S. at 238 (citing *SEC v. Texas Gulf Sulphur Co.*, 401 F. 2d 833, 849 (2d Cir. 1968)).

BUSINESS

Item 101. Description of business.

(a) *General development of business.* Describe the general development of the business of the registrant, its subsidiaries, and any predecessor(s).

(2) In describing developments, only information material to an understanding of the general development of the business is required. Registrants may consider disclosure may include, but should not be limited to, covering the following topics, as examples:

* * *

(3) Notwithstanding the provisions of § 230.411(b) or § 240.12b-23(a) of this chapter, as applicable, a registrant may ~~only~~ forgo providing a full discussion of the general development of its business for a filing other than an initial registration statement if it provides an update to the general development of its business, in a subsequent periodic report and provides a hyperlink to the latest registration statement or report disclosing all of the material developments that have occurred since the most recent registration statement or report that includes a full discussion of the general development of its business. In addition, the registrant must incorporate by reference, and include one active hyperlink to one registration statement or report that includes, the full discussion of the general development of the registrant's business.

(c) Description of business.

(1) (i) Material rRevenue-generating activities, products and/or services, and any material dependence on revenue-generating activities, key products, services, product families or customers, including governmental customers;

* * *

(iii) Resources material to a registrant's business, such as:

(B) The duration and effect of all patents, trademarks, licenses, franchises, and concessions held and material to the operation of the registrants and its subsidiaries business and financial condition;

* * *

(2) Discuss the information specified in paragraphs (c)(2)(i) and (ii) of this section with respect to, and to the extent material to an understanding of, the registrant's business taken as a whole, except that, if the information is material to a particular segment, you should additionally identify that segment. Registrants may provide a cross-reference to information contained in response to other items or in the notes to its financial statements in lieu of providing the information discussed in this paragraph (c)(i).

~~(i) The material effects that compliance with government regulations, including environmental regulations, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries, including the estimated capital expenditures for environmental control facilities for the current fiscal year and any other material subsequent period; and~~

~~(ii) A general description of the registrant's human capital resources, including the number of persons employed by the registrant, and any human capital measures or objectives that the registrant focuses on in managing the business (such as, depending on the nature of the registrant's business and workforce, measures or objectives that address the development, attraction and retention of personnel).~~

* * *

(3) *Foreign Issuers.* Provide the information required by Item 101(g) of Regulation S-K (§229.101(g)).

Instructions to Item 101. 1. In determining what information about the segments is material to an understanding of the registrant's business taken as a whole ~~and therefore required to be disclosed~~, pursuant to paragraph (c) of this item, the registrant should take into account both quantitative and qualitative factors, ~~such as the significance of the matter to the registrant (e.g., whether a matter with a relatively minor impact on the registrant's business is represented by management to be important to its future profitability), the pervasiveness of the matter (e.g., whether it affects or may affect numerous items in the segment information), and the impact of the matter (e.g., whether it distorts the trends reflected in the segment information). Situations may arise when information should be disclosed about a segment, although the information in quantitative terms may not appear significant to the registrant's business taken as a whole.~~

~~3. The Commission, upon written request of the registrant and where consistent with the protection of investors, may permit the omission of any of the information required by this item or the furnishing in substitution thereof of appropriate information of comparable character.~~

Item 102. Description of property.

To the extent material, disclose the location and general character of the registrant's principal-material physical properties. ~~In addition, identify the segment(s), as reported in the financial statements, that use the properties described.~~ If any such property is not held in fee or is held subject to an encumbrance that is material to the registrant, so state and describe briefly how held.

Instruction 1 to Item 102: This item requires information that will reasonably inform investors as to the suitability, adequacy, productive capacity, and extent of utilization of the principal-material physical properties of the registrant and its subsidiaries, to the extent the described properties are material. ~~A registrant should engage in a comprehensive consideration of the materiality of its properties.~~ If appropriate, descriptions may be provided on a collective basis; detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and shall not be given.

~~*Instruction 2 to Item 102:* In determining materiality under this Item, the registrant should take into account both quantitative and qualitative factors. See *Instruction 1 to Item 101* of Regulation S-K (§ 229.101).~~

Item 103. Legal proceedings.

(a) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. ~~Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.~~ Information may be provided by hyperlink or cross-reference to legal proceedings disclosure elsewhere in the document, such as in Management’s Discussion & Analysis (MD&A), Risk Factors and notes to the financial statements.

* * *

(c) Notwithstanding paragraph (b) of this section, registrants may consider ~~disclosure under this section shall include, but shall not be limited to:~~

(1) Any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries; or

(2) Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than five percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries.;

~~(3) Administrative or judicial proceedings (including proceedings which present in large degree the same issues) arising under any Federal, State, or local provisions that have been enacted or adopted regulating the discharge of materials into the environment or primarily for the purpose of protecting the environment. Such proceedings shall not be deemed “ordinary routine litigation incidental to the business” and shall be described if:~~

~~(i) Such proceeding is material to the business or financial condition of the registrant;~~

~~(ii) Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or~~

~~(iii) A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$300,000 or, at the election of the registrant, such other threshold that (A) the registrant determines is reasonably designed to result in disclosure of any such proceeding that is material to the business or financial condition is disclosed, (B) the registrant discloses (including any change thereto) in each annual and quarterly report, and (C) does not exceed the lesser of \$1 million or one percent of the current assets of the registrant and its subsidiaries on a consolidated basis; *provided, however,* that such proceedings that are similar in nature may be grouped and described generically.~~

Item 105. Risk factors.

(a) Where appropriate, provide under the caption “Risk Factors” a discussion of the material factors that make an investment in the registrant or offering speculative or risky. This discussion must-should be organized logically with relevant headings and each risk factor should be set forth under a subcaption that adequately describes the risk. The presentation of risks that could apply generically to any registrant or any offering is discouraged, but to the extent generic risk factors are presented, disclose them at the end of the risk factor section under the caption “General Risk Factors.” A registrant also may put generic risk factor disclosure on their

websites and may cross-reference to such generic risks. Any generic risks will not be deemed filed with the Commission or incorporated by reference into another document filed with the Commission, unless the registrant specifically incorporates such generic risk factors by reference into a filing under the Securities Act or the Exchange Act. If a registrant cross-refers to its website for such generic risk factors, nothing else on the registrant's website will be considered to be filed with, or furnished to, the Commission. Further, a registrant's determination not to include generic risk factors in a disclosure document will be an omission permitted under Item 10(g).

(b) Concisely explain how each material risk affects the registrant or the securities being offered. If the discussion is longer than 15 pages, include in the forepart of the prospectus or annual report, as applicable, a series of concise, bulleted or numbered statements that is no more than two pages summarizing the principal factors that make an investment in the registrant or offering speculative or risky. If the risk factor discussion is included in a registration statement, it must immediately follow the summary section required by § 229.503 (Item 503 of Regulation S-K). If you do not include a summary section, the risk factor section must immediately follow the cover page of the prospectus or the pricing information section that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on Rule 430A (§ 230.430A of this chapter). The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

(c) Registrants are permitted to include disclosures about how they are mitigating, managing or may mitigate or manage any identified risk.

(d) Any forward-looking information supplied either directly or through cross-reference to the notes to the financial statements is expressly covered by the safe harbor rule for projections. See 17 CFR 230.175 [Rule 175 under the Securities Act], 17 CFR 240.3b-6 [Rule 3b-6 under the Exchange Act], and Securities Act Release No. 6084 (June 25, 1979) (44 FR 33810). In addition, the safe harbor provided in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 shall apply, with respect to all types of issuers and transactions, to any information provided pursuant to this Item 105, other than historical facts, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

Item 106. Cybersecurity. [Reserved.]

(b) Definitions. For purposes of this section:

Cybersecurity incident means an unauthorized occurrence, or a series of related unauthorized occurrences, on or conducted through a registrant's information systems that jeopardizes the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.

Cybersecurity threat means any potential unauthorized occurrence on or conducted through a registrant's information systems that may result in adverse effects on the confidentiality, integrity, or availability of a registrant's information systems or any information residing therein.

Information systems means electronic information resources, owned or used by the registrant, including physical or virtual infrastructure controlled by such information resources, or components thereof, organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of the registrant's information to maintain or support the registrant's operations.

(c) Risk Management and Strategy.

~~(2) Describe the registrant's processes, if any, for assessing, identifying, and managing material risks from cybersecurity threats in sufficient detail for a reasonable investor to understand those processes. In providing such disclosure, a registrant should address, as applicable, the following non-exclusive list of disclosure items:~~

~~(i) Whether and how any such processes have been integrated into the registrant's overall risk management system or processes;~~

~~(ii) Whether the registrant engages assessors, consultants, auditors, or other third parties in connection with any such processes; and~~

~~(iii) Whether the registrant has processes to oversee and identify such risks from cybersecurity threats associated with its use of any third party service provider.~~

~~(3) Describe whether any risks from cybersecurity threats, including as a result of any previous cybersecurity incidents, have materially affected or are reasonably likely to materially affect the registrant, including its business strategy, results of operations, or financial condition and if so, how.~~

~~(4) Governance.~~

~~(2) Describe the board of directors' oversight of risks from cybersecurity threats. If applicable, identify any board committee or subcommittee responsible for the oversight of risks from cybersecurity threats and describe the processes by which the board or such committee is informed about such risks.~~

~~(3) Describe management's role in assessing and managing the registrant's material risks from cybersecurity threats. In providing such disclosure, a registrant should address, as applicable, the following non-exclusive list of disclosure items:~~

~~(i) Whether and which management positions or committees are responsible for assessing and managing such risks, and the relevant expertise of such persons or members in such detail as necessary to fully describe the nature of the expertise;~~

~~(ii) The processes by which such persons or committees are informed about and monitor the prevention, detection, mitigation, and remediation of cybersecurity incidents; and~~

~~(iii) Whether such persons or committees report information about such risks to the board of directors or a committee or subcommittee of the board of directors.~~

Instruction 1 to Item 106(c): In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (c) of this section, the term "board of directors" means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A-3(c)(3) of this chapter, for purposes of paragraph (c) of this Item, the term "board of directors" means the issuer's board of auditors (or similar body) or statutory auditors, as applicable.

Instruction 2 to Item 106(c): Relevant expertise of management in Item 106(c)(2)(i) may include, for example: Prior work experience in cybersecurity; any relevant degrees or certifications; any knowledge, skills, or other background in cybersecurity.

~~(e) *Structured Data Requirement.* Provide the information required by this Item in an Interactive Data File in accordance with Rule 405 of Regulation S-T and the EDGAR Filer Manual.~~

Item 201. Market price of and dividends on the registrant's common equity and related stockholder matters.

~~(b) *[Reserved.Holders.* Set forth the approximate number of holders of each class of common equity of the registrant as of the latest practicable date.~~

(c) Dividends.

~~* * *~~

~~(2) *[Reserved.]* Where registrants have a record of paying no cash dividends although earnings indicate an ability to do so, they are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists, to make a statement of that fact in the filing. Registrants which have a history of paying cash dividends also are encouraged to indicate whether they currently expect that comparable cash dividends will continue to be paid in the future and, if not, the nature of the change in the amount or rate of cash dividend payments~~

~~(d) *Securities Authorized for Issuance Under Equity Compensation Plans.* If material, provide the following, or provide a cross-reference to the relevant notes to the registrant's financial statements for the information. Information included through a cross reference does not need to be provided in tabular format: (1) In the following tabular format, ~~provide~~ the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to compensation plans (including individual compensation arrangements) under which equity securities of the registrant are authorized for issuance, aggregated as follows:~~

~~* * *~~

~~(e) *[Reserved.] Performance Graph.* Provide a line graph comparing the yearly percentage change in the registrant's cumulative total shareholder return on a class of common stock registered under section 12 of the Exchange Act (as measured by dividing the sum of the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and the difference between the registrant's share price at the end and the beginning of the measurement period; by the share price at the beginning of the measurement period) with:~~

~~(i) The cumulative total return of a broad equity market index assuming reinvestment of dividends, that includes companies whose equity securities are traded on the same exchange or are of comparable market capitalization; *provided, however,* that if the registrant is a company within the Standard & Poor's 500 Stock Index, the registrant must use that index; and~~

~~(ii) The cumulative total return, assuming reinvestment of dividends, of:~~

~~(A) A published industry or line of business index;~~

~~(B) Peer issuer(s) selected in good faith. If the registrant does not select its peer issuer(s) on an industry or line of business basis, the registrant shall disclose the basis for its selection; or~~

~~(C) Issuer(s) with similar market capitalization(s), but only if the registrant does not use a published industry or line of business index and does not believe it can reasonably identify a peer group. If the registrant uses this alternative, the graph shall be accompanied by a statement of the reasons for this selection.~~

~~(3) For purposes of paragraph (e)(1) of this Item, the term "measurement period" shall be the period beginning at the "measurement point" established by the market close on the last trading day before the beginning of the registrant's fifth preceding fiscal year, through and including the end of the registrant's last completed fiscal year. If the class of securities has been registered under section 12 of the Exchange Act (15 U.S.C. 781) for a shorter period of time, the period covered by the comparison may correspond to that time period.~~

~~(4) For purposes of paragraph (e)(1)(ii)(A) of this Item, the term “published industry or line of business index” means any index that is prepared by a party other than the registrant or an affiliate and is accessible to the registrant’s security holders; provided, however, that registrants may use an index prepared by the registrant or affiliate if such index is widely recognized and used.~~

~~(5) If the registrant selects a different index from an index used for the immediately preceding fiscal year, explain the reason(s) for this change and also compare the registrant’s total return with that of both the newly selected index and the index used in the immediately preceding fiscal year.~~

Instructions to Item 201(e):

~~1. In preparing the required graphic comparisons, the registrant should:~~

~~a. Use, to the extent feasible, comparable methods of presentation and assumptions for the total return calculations required by paragraph (e)(1) of this Item; provided, however, that if the registrant constructs its own peer group index under paragraph (e)(1)(ii)(B), the same methodology must be used in calculating both the registrant’s total return and that on the peer group index; and~~

~~b. Assume the reinvestment of dividends into additional shares of the same class of equity securities at the frequency with which dividends are paid on such securities during the applicable fiscal year.~~

~~2. In constructing the graph:~~

~~a. The closing price at the measurement point must be converted into a fixed investment, stated in dollars, in the registrant’s stock (or in the stocks represented by a given index) with cumulative returns for each subsequent fiscal year measured as a change from that investment; and~~

~~b. Each fiscal year should be plotted with points showing the cumulative total return as of that point. The value of the investment as of each point plotted on a given return line is the number of shares held at that point multiplied by the then prevailing share price.~~

~~3. The registrant is required to present information for the registrant’s last five fiscal years, and may choose to graph a longer period; but the measurement point, however, shall remain the same.~~

~~4. Registrants may include comparisons using performance measures in addition to total return, such as return on average common shareholders’ equity.~~

~~5. If the registrant uses a peer issuer(s) comparison or comparison with issuer(s) with similar market capitalizations, the identity of those issuers must be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer’s stock market capitalization at the beginning of each period for which a return is indicated.~~

~~6. *Smaller Reporting Companies.* A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by paragraph (e) of this Item.~~

Item 302. Supplementary financial information. *[Reserved.]*

~~(g) *Disclosure of Material Quarterly Changes.* When there are one or more retrospective changes to the statements of comprehensive income for any of the quarters within the two most *recent* fiscal years or any subsequent interim period for which financial statements are included or are required to be included by §§ 210.3-01 through 210.3-20 of this chapter (Article 3 of Regulation S-X) that individually or in the aggregate are material, provide an explanation of the reasons for such material changes and disclose, for each affected quarterly period~~

~~and the fourth quarter in the affected year, summarized financial information related to the statements of comprehensive income as specified in § 210.1-02(bb)(1)(ii) of this chapter (Rule 1-02(bb)(1)(ii) of Regulation S-X) and earnings per share reflecting such changes.~~

~~(2) If the financial statements to which this information relates have been reported on by an accountant, appropriate professional standards and procedures, as enumerated in the Auditing Standards issued by the Public Company Accounting Oversight Board (“PCAOB”), shall be followed by the reporting accountant with regard to the disclosure required by this paragraph (a).~~

~~(3) This paragraph (a) applies to any registrant, except a foreign private issuer, that has securities registered pursuant to sections 12(b) (15 U.S.C. § 78l(b)) (other than mutual life insurance companies) or 12(g) of the Exchange Act (15 U.S.C. § 78l(g)) after the registrant’s initial registration of securities under these sections.~~

~~(4) A registrant that qualifies as a smaller reporting company, as defined by § 229.10(f)(1), is not required to provide the information required by this section.~~

Item 303. Management’s discussion and analysis of financial condition and results of operations.

(a) *Objective.* The objective of the discussion and analysis is to provide material information relevant to an assessment of the financial condition and results of operations of the registrant including an evaluation of the amounts and certainty of cash flows from operations and from outside sources. The discussion and analysis ~~must~~ should focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that have had a material impact on reported operations, as well as matters that are reasonably likely based on management’s assessment to have a material impact on future operations. The discussion and analysis ~~must~~ should be of the financial statements and other statistical data that the registrant believes will enhance a reader’s understanding of the registrant’s financial condition, cash flows and other changes in financial condition and results of operations. A discussion and analysis that meets these requirements of this paragraph (a) is expected to better allow investors to view the registrant from management’s perspective.

(b) *Full Fiscal Years.* The discussion of financial condition, changes in financial condition and results of operations ~~must~~ should provide information as specified in paragraphs (b)(1) through (3) of this section and such other material information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Where the financial statements reflect material changes from period-to-period in one or more line items, including where material changes within a line item offset one another, describe the underlying reasons for these material changes in quantitative and qualitative terms. Where in the registrant’s judgment a discussion of segment information and/or of other subdivisions (e.g., geographic areas, product lines) of the registrant’s business would be necessary to an understanding of such business, the discussion ~~must~~ should focus on each relevant reportable segment and/or other subdivision of the business and on the registrant as a whole.

(1) *Liquidity and Capital Resources.* Analyze the registrant’s ability to generate and obtain adequate amounts of cash to meet its requirements and its plans for cash in the short-term (i.e., the next 12 months from the most recent fiscal period end required to be presented) and separately in the long-term (i.e., beyond the next 12 months). The discussion should analyze material cash requirements from known contractual and other obligations. Such disclosures ~~must~~ should specify the type of obligation and the relevant time period for the related cash requirements. As part of this analysis, provide the information in paragraphs (b)(1)(i) and (ii) of this section.

* * *

(ii) *Capital Resources.*

(B) Describe any known material trends, favorable or unfavorable, in the registrant's capital resources. Indicate any reasonably likely material changes in the mix and relative cost of such resources. The discussion ~~must~~should consider changes among equity, debt and any off-balance sheet financing arrangements.

(2) *Results of Operations.*

* * *

(ii) Describe any known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that are reasonably likely to cause a material change in the relationship between costs and revenues (such as known or reasonably likely future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship ~~must~~should be disclosed.

* * *

(3) *Critical Accounting Estimates.* Critical accounting estimates are those estimates made in accordance with generally accepted accounting principles that involve a significant level of estimation uncertainty and have had or are reasonably likely to have a material impact on the financial condition or results of operations of the registrant. ~~A registrant may satisfy this sub-paragraph (b)(3) by providing a cross reference to any discussion of critical accounting estimates in the notes to the financial statements. Qualitative and quantitative information necessary to understand the estimation uncertainty and the impact the critical accounting estimate has had or is reasonably likely to have on financial condition or results of operations to the extent the information is material and reasonably available. This information should include why each critical accounting estimate is subject to uncertainty and, to the extent the information is material and reasonably available, how much each estimate and/or assumption has changed over a relevant period, and the sensitivity of the reported amount to the methods, assumptions and estimates underlying its calculation.~~

Instructions to Paragraph (b).

* * *

3. Provide the analysis in a format that facilitates easy understanding and that supplements, and does not duplicate, disclosure already provided in the filing. ~~For critical accounting estimates, this disclosure must supplement, but not duplicate, the description of accounting policies or other disclosures in the notes to the financial statements.~~

4. For the liquidity and capital resources disclosure, discussion of material cash requirements from known contractual obligations may include, for example, lease obligations, purchase obligations, or other liabilities reflected on the registrant's balance sheet. Except where it is otherwise clear from the discussion, the registrant ~~must~~should discuss those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition.

5. Where financial statements presented or incorporated by reference in the registration statement are required by § 210.4-08(e)(3) of this chapter (Rule 4-08(e)(3) of Regulation S-X) to include disclosure of restrictions on the ability of both consolidated and unconsolidated subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances, the discussion of liquidity ~~must~~should include a discussion of the nature and extent of such restrictions and the impact such restrictions have had or are reasonably likely to have on the ability of the parent company to meet its cash obligations.

6. Any forward-looking information supplied ~~either directly or through cross-reference to the notes to the financial statements~~ is expressly covered by the safe harbor rule for projections. See 17 CFR 230.175 [Rule 175 under the Securities Act], 17 CFR 240.3b-6 [Rule 3b-6 under the Exchange Act], and Securities Act Release No. 6084 (June 25, 1979) (44 FR 33810). ~~In addition, the safe harbor provided in Section 27A of the~~

Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 shall apply, with respect to all types of issuers and transactions, to all information provided pursuant to this Item 303, other than historical facts, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

* * *

8. Discussion of commitments or obligations, including contingent obligations, arising from arrangements with unconsolidated entities or persons that have or are reasonably likely to have a material current or future effect on a registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, cash requirements or capital resources ~~must~~should be provided even when the arrangement results in no obligations being reported in the registrant's consolidated balance sheets. Such off-balance sheet arrangements may include: Guarantees; retained or contingent interests in assets transferred; contractual arrangements that support the credit, liquidity or market risk for transferred assets; obligations that arise or could arise from variable interests held in an unconsolidated entity; or obligations related to derivative instruments that are both indexed to and classified in a registrant's own equity under U.S. GAAP.

9. If the registrant is a foreign private issuer, briefly discuss any pertinent governmental economic, fiscal, monetary, or political policies or factors that have materially affected or could materially affect, directly or indirectly, its operations or investments by United States nationals. The discussion ~~must~~should also consider the impact of hyperinflation if hyperinflation has occurred in any of the periods for which audited financial statements or unaudited interim financial statements are filed. See § 210.3-20(c) of this chapter (Rule 3-20(c) of Regulation S-X) for a discussion of cumulative inflation rates that may trigger the requirement in this instruction 9 to this paragraph (b).

10. If the registrant is a foreign private issuer, the discussion ~~must~~should focus on the primary financial statements presented in the registration statement or report. The foreign private issuer ~~must~~should refer to the reconciliation to United States generally accepted accounting principles and discuss any aspects of the difference between foreign and United States generally accepted accounting principles, not discussed in the reconciliation, that the registrant believes are necessary for an understanding of the financial statements as a whole, if applicable.

* * *

(c) *Interim Periods*. If interim period financial statements are included or are required to be included by 17 CFR 210.3 [Article 3 of Regulation S-X], a management's discussion and analysis of the financial condition and results of operations should be provided ~~so as to enable the reader to assess if there are~~ material changes in financial condition and results of operations between the periods specified in paragraphs (c)(1) and (2) of this section. The discussion and analysis ~~must~~should include a discussion of material changes in those items specifically listed in paragraph (b) of this section.

(1) *Material Changes in Financial Condition*. Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial condition from that date to the date of the most recent interim balance sheet provided also ~~must~~should be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the registrant.

(2) *Material Changes in Results of Operations*.

~~(i) Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year to date period for which a statement of comprehensive income is provided and the corresponding year to date period of the preceding fiscal year.~~

(ii) Discuss any material changes in the registrant's results of operations with respect to either the most recent quarter for which a statement of comprehensive income is provided and the corresponding quarter for the preceding fiscal year or, in the alternative, the most recent quarter for which a statement of comprehensive income is provided and the immediately preceding sequential quarter. If the latter immediately preceding sequential quarter is discussed, then provide in summary form the financial information for that immediately preceding sequential quarter that is subject of the discussion or identify the registrant's prior filings on EDGAR that present such information. If there is a change in the form of presentation from period to period that forms the basis of comparison from previous periods provided pursuant to this paragraph, the registrant **mustshould** discuss the reasons for changing the basis of comparison and provide both comparisons in the first filing in which the change is made.

Instructions to Paragraph (c):

* * *

2. The registrant's discussion of material changes in results of operations **mustshould** identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business.

* * *

Item 305. Quantitative and qualitative disclosures about market risk.

(a) To the extent material to a registrant's business and understanding of its financial position, cash flows, and results of operations, a registrant may provide disclosure that focuses on the information and methods that management actually uses internally to evaluate, monitor, and manage market risk. In evaluating the disclosure, registrants should consider both quantitative and qualitative market risk issues. Registrants may cross reference to risk management disclosures provided in response to other items, including Item 105. Registrants may present the information in the format they believe is appropriate and may consider the following:

~~(b)~~ Quantitative information about market risk. (1) Registrants **shallmay** provide, in their reporting currency, quantitative information about market risk as of the end of the latest fiscal year, in accordance with one of the following three disclosure alternatives. In preparing this quantitative information, registrants **shallmay** categorize market risk sensitive instruments into instruments entered into for trading purposes and instruments entered into for purposes other than trading purposes. Within both the trading and other than trading portfolios, separate quantitative information **shallmay** be presented, to the extent material, for each market risk exposure category (i.e., interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk). A registrant may use one of the three alternatives set forth in this section for all of the required quantitative disclosures about market risk. A registrant also may choose, from among the three alternatives, one disclosure alternative for market risk sensitive instruments entered into for trading purposes and another disclosure alternative for market risk sensitive instruments entered into for other than trading purposes. Alternatively, a registrant may choose any disclosure alternative, from among the three alternatives, for each risk exposure category within the trading and other than trading portfolios. The three disclosure alternatives are:

(i) (A)(I) Tabular presentation of information related to market risk sensitive instruments; such information **shallmay** include fair values of the market risk sensitive instruments and contract terms sufficient to determine future cash flows from those instruments, categorized by expected maturity dates.

(2) Tabular information relating to contract terms ~~shall~~may allow readers of the table to determine expected cash flows from the market risk sensitive instruments for each of the next five years. Comparable tabular information for any remaining years ~~shall~~may be displayed as an aggregate amount.

(3) Within each risk exposure category, the market risk sensitive instruments ~~shall~~may be grouped based on common characteristics. Within the foreign currency exchange rate risk category, the market risk sensitive instruments ~~shall~~may be grouped by functional currency and within the commodity price risk category, the market risk sensitive instruments ~~shall~~may be grouped by type of commodity.

(4) See the Appendix to this item for a suggested format for presentation of this information; and

(B) Registrants ~~shall~~may provide a description of the contents of the table and any related assumptions necessary to understand the disclosures required under paragraph (a)(1)(i)(A) of this Item 305; or

(ii) (A) Sensitivity analysis disclosures that express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments resulting from one or more selected hypothetical changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices over a selected period of time. The magnitude of selected hypothetical changes in rates or prices may differ among and within market risk exposure categories; and

(B) Registrants ~~shall~~may provide a description of the model, assumptions, and parameters, which are necessary to understand the disclosures required under paragraph (a)(1)(ii)(A) of this Item 305; or

* * *

(iii) (A) Value at risk disclosures that express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments over a selected period of time, with a selected likelihood of occurrence, from changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices;

(B) (1) For each category for which value at risk disclosures are required under paragraph (a)(1)(iii)(A) of this Item 305, provide either:

(i) The average, high and low amounts, or the distribution of the value at risk amounts for the reporting period; or

(ii) The average, high and low amounts, or the distribution of actual changes in fair values, earnings, or cash flows from the market risk sensitive instruments occurring during the reporting period; or

(iii) The percentage or number of times the actual changes in fair values, earnings, or cash flows from the market risk sensitive instruments exceeded the value at risk amounts during the reporting period;

(2) Information required under paragraph (a)(1)(iii)(B)(1) of this Item 305 is not required for the first fiscal year end in which a registrant ~~must~~presents Item 305 information; and

(C) Registrants ~~shall~~may provide a description of the model, assumptions, and parameters, which are necessary to understand the disclosures ~~made pursuant to paragraphs (a)(1)(iii)(A) and (B) of~~to this Item 305.

(2) Registrants ~~shall~~may discuss material limitations that cause the information ~~required~~provided under paragraph (a)(1) of this Item 305 not to reflect fully the net market risk exposures of the entity. This discussion ~~shall~~may include summarized descriptions of instruments, positions, and transactions omitted from the

quantitative market risk disclosure information or the features of instruments, positions, and transactions that are included, but not reflected fully in the quantitative market risk disclosure information.

(3) Registrants ~~shall~~may present summarized market risk information for the preceding fiscal year. In addition, registrants ~~shall~~may discuss the reasons for material quantitative changes in market risk exposures between the current and preceding fiscal years. ~~Information required by this paragraph (a)(3), however, is not required if disclosure is not required under paragraph (a)(1) of this Item 305 for the current fiscal year. Information required by this paragraph (a)(3) is not required for the first fiscal year end in which a registrant must present Item 305 information.~~

(4) If registrants change disclosure alternatives or key model characteristics, assumptions, and parameters used in providing quantitative information about market risk (e.g., changing from tabular presentation to value at risk, changing the scope of instruments included in the model, or changing the definition of loss from fair values to earnings), and if the effects of any such change is material, the registrant ~~shall~~may:

* * *

E. If a currency swap eliminates all foreign currency exposures in the cash flows of a foreign currency denominated debt instrument, neither the currency swap nor the foreign currency denominated debt instrument ~~are required to~~should be disclosed in the foreign currency risk exposure category. However, both the currency swap and the foreign currency denominated debt instrument should be disclosed in the interest rate risk exposure category; and

* * *

5. Under paragraph 305(a)(2), limitations that should be considered include, but are not limited to:

A. The exclusion of certain market risk sensitive instruments, positions, and transactions from the disclosures ~~discussed~~required under paragraph 305(~~ba~~ba)(1) (e.g., derivative commodity instruments not permitted by contract or business custom to be settled in cash or with another financial instrument, commodity positions, cash flows from anticipated transactions, and certain financial instruments excluded under Instruction 3.C.ii. of the General Instructions to Paragraphs 305(~~ba~~ba) and 305(~~cb~~cb)). ~~Failure to include such instruments, positions, and transactions in preparing the disclosures under paragraph 305(a)(1) may be a limitation because the resulting disclosures may not fully reflect the net market risk of a registrant~~

* * *

General Instructions to Paragraphs 305(a) and 305(b).

* * *

2. In preparing the disclosures under paragraphs 305(~~ba~~ba) and 305(~~cb~~cb), registrants ~~are required to~~should include derivative financial instruments, other financial instruments, and derivative commodity instruments.

* * *

4.A. In addition to providing ~~required~~ disclosures for the market risk sensitive instruments defined in Instruction 2. of the General Instructions to Paragraphs 305(a) and 305(b), registrants are encouraged to include other market risk sensitive instruments, positions, and transactions within the disclosures ~~required~~ under paragraphs 305(~~ab~~ab) and 305(~~cb~~cb). Such instruments, positions, and transactions might include commodity positions, derivative commodity instruments that are not permitted by contract or business custom to be settled in cash or with another financial instrument, cash flows from anticipated transactions, and certain financial instruments excluded under Instruction 3.C.ii. of the General Instructions to Paragraphs 305(a) and 305(b).

B. Registrants ~~that may voluntarily~~ include other market risk sensitive instruments, positions and transactions within their quantitative disclosures about market risk under the sensitivity analysis or value at

risk disclosure alternatives ~~are not required to provide separate market risk disclosures for any voluntarily selected instruments, positions, or transactions. Instead, r~~ Registrants selecting the sensitivity analysis and value at risk disclosure alternatives ~~are permitted to~~ may present comprehensive market risk disclosures, which reflect the combined market risk exposures inherent in both the required and any voluntarily selected instruments, position, or transactions. Registrants that ~~choose these the~~ tabular presentation disclosure alternative should present ~~the voluntarily~~ selected instruments, positions, or transactions in a manner consistent with the requirements in Item 305(ba) for market risk sensitive instruments.

C. If a registrant elects to include ~~voluntarily~~ a particular type of instrument, position, or transaction in their quantitative disclosures about market risk, that registrant should include all, rather than some, of those instruments, positions, or transactions within those disclosures. For example, if a registrant holds in inventory a particular type of commodity position and elects to include that commodity position within their market risk disclosures, the registrant should include the entire commodity position, rather than only a portion thereof, in their quantitative disclosures about market risk.

(d) Interim Periods. If interim period financial statements are included or are required to be included by Article 3 of Regulation S-X, discussion and analysis ~~shall~~ may be provided so as to enable the reader to assess the sources and effects of material changes in information that would be provided under Item 305 of Regulation S-K from the end of the preceding fiscal year to the date of the most recent interim balance sheet.

~~Instructions to Paragraph 305(c). 1. Information required under paragraph (c) of this Item 305 is not required until after the first fiscal year end in which this Item 305 is applicable.~~

(e) Safe Harbor. (1) The safe harbor provided in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 (“statutory safe harbors”) shall apply, with respect to all types of issuers and transactions, to information provided pursuant to ~~paragraphs (a), (b), and (c) of~~ this Item 305, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (ed) of this Item 305 only:

(i) All information ~~provided pursuant to required by paragraphs (a), (b)(1)(i), (b)(1)(iii), and (c) of~~ this Item 305 is considered “forward looking statements” for purposes of the statutory safe harbors, except for historical facts ~~such as the terms of particular contracts and the number of market risk sensitive instruments held during or at the end of the reporting period; and~~

(ii) ~~With respect to paragraph (a) of this Item 305, the “meaningful cautionary statements” prong of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same paragraph (a) of this Item 305.~~

General Instructions to Paragraphs 305(ab), 305(cb), 305(de), 305(ed), and 305(fe).

~~1. Bank registrants, thrift registrants, and non-bank and non-thrift registrants with market capitalizations on January 28, 1997 in excess of \$2.5 billion should provide Item 305 disclosures in filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1997. Non-bank and non-thrift registrants with market capitalizations on January 28, 1997 of \$2.5 billion or less should provide Item 305 disclosures in filings with the Commission that include financial statements for fiscal years ending after June 15, 1998.~~

Item 403. Security ownership of certain beneficial owners and management.

(d) *Security Ownership of Certain Beneficial Owners.* ~~For initial public offerings, f~~Furnish the following information, at least as recent as the end of the registrant's most recently ended fiscal year ~~practicable date~~, in substantially the tabular form indicated, with respect to any person (including any "group" as that term is used in Section 13(d)(3) of the Exchange Act) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities, based on publicly available information or the registrant's actual knowledge. The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in Rule 13d-3(d)(1) under the Exchange Act.

* * *

Item 404. Transactions with related persons, promoters and certain control persons.

(a) *Transactions With Related Persons.* Describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds 2% of the registrant's annual gross revenue, and in which any person who is a related person, and who the registrant has actual knowledge had or will have a direct or indirect material interest. Disclose the following information regarding the transaction:

- (1) The name of the related person and the basis on which the person is a related person.
- (2) To the registrant's actual knowledge, t~~t~~The related person's interest in the transaction with the registrant, including, as to the registrant's actual knowledge, ~~the~~ the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.
- (3) The approximate dollar value of the amount involved in the transaction.
- (4) To the registrant's actual knowledge, t~~t~~The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.
- (5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.

(6) ~~Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.~~

Instructions to Item 404(a).

1. For the purposes of paragraph (a) of this Item, the term related person means:

* * *

iii. Any immediate family member of a director or executive officer of the registrant, or of any nominee for director when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director, which means any child, ~~stepchild,~~ parent, ~~stepparent,~~ spouse, sibling, ~~mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law,~~

~~or sister-in-law~~ of such director, executive officer or nominee for director, ~~and any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director;~~ and

b. Any person who was in any of the following categories when a transaction, that the registrant had actual knowledge of occurred or existed, and in which such person had a direct or indirect material interest ~~occurred or existed~~:

i. A security holder covered by Item 403(a) (§ 229.403(a)) who is an affiliate of the registrant; or

ii. Any immediate family member of any such security holder who is a natural person, which means any child, ~~stepchild~~, parent, ~~stepparent~~, spouse, sibling, ~~mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law~~ of such security holder, ~~and any person (other than a tenant or employee) sharing the household of such security holder.~~

2. For purposes of paragraph (a) of this Item, a transaction ~~includes, but is not limited to,~~ any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships as to which the registrant has actual knowledge, which the registrant may obtain without unreasonable effort and expense.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

* * *

~~b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the registrant's last fiscal year and all amounts of interest payable on it during the last fiscal year.~~

5. a. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

* * *

ii. The executive officer is not an immediate family member (as specified in Instruction 1 to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§ 229.402) as compensation earned for services to the registrant if the executive officer was a named executive officer as that term is defined in Item 402(a)(3) (§ 229.402(a)(3)), ~~and such compensation had been approved, or recommended to the board of directors of the registrant for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the registrant;~~ or

* * *

(d) Smaller Reporting Companies. A registrant that qualifies as a “smaller reporting company,” as defined by § 229.10(f)(1), must provide the following information in order to comply with this Item:

(1) The information required by paragraph (a) of this Item for the period specified there for a transaction in which the amount involved exceeds the lesser of \$~~120,000~~250,000-500,000, adjusted for inflation every two years] or one percent of the average of the smaller reporting company's total assets at year end for the last two completed fiscal years;

* * *

Instructions to Item 404.

1. If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, information shall be given for the periods specified in the Item and, in addition, for ongoing arrangements or transactions the two fiscal years preceding the registrant's last fiscal year, unless the information is being incorporated by reference into a registration statement on Form S-4 (17 CFR 239.25), in which case, information shall be given for the periods specified in the Item.

Item 405. Compliance with Section 16(a) of the Exchange Act. *[Reserved.]*

~~(e) *Reporting Obligation.* Every registrant having a class of equity securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78l) and every closed-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) must:~~

~~(2) Under the caption "Delinquent Section 16(a) Reports," identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of equity securities of the registrant registered pursuant to Section 12 of the Exchange Act, or any other person subject to Section 16 of the Exchange Act with respect to the registrant because of the requirements of Section 30 of the Investment Company Act ("reporting person") that failed to file on a timely basis reports required by Section 16(a) of the Exchange Act during the most recent fiscal year or prior fiscal years.~~

~~(3) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(3) of this section, unless the registrant otherwise knows that no Form 5 is required.~~

~~*Instruction 1 to Paragraph (a) of Item 405.* If no disclosure is required, registrants are encouraged to exclude the caption "Delinquent Section 16(a) Reports."~~

~~*Instruction 2 to Paragraph (a) of Item 405.* The registrant is only required to disclose a failure to file timely once. For example, if in the most recently concluded fiscal year a reporting person filed a Form 4 disclosing a transaction that took place in the prior fiscal year, and should have been reported in that year, the registrant should disclose that late filing and transaction pursuant to this Item 405 with respect to the most recently concluded fiscal year, but not in material filed with respect to subsequent years.~~

~~(4) *Scope of the Inquiry.* In determining whether disclosure is required pursuant to paragraph (a) of this section, the registrant may rely only on the following:~~

~~(2) A review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto filed electronically with the Commission during the registrant's most recent fiscal year;~~

~~(3) A review of Forms 5 (17 CFR 249.105) and amendments thereto filed electronically with the Commission with respect to the registrant's most recent fiscal year; and~~

~~Any written representation from the reporting person that no Form 5 is required. The registrant must maintain the representation in its records for two years, making a copy available to the Commission or its staff upon request.~~

Item 406. Code of ethics.

(a) Disclose any whether the registrant has adopted a code of ethics that the registrant has adopted that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller,

or persons performing similar functions. ~~If the registrant has not adopted such a code of ethics, explain why it has not done so.~~

* * *

Item 407. Corporate Governance.

(a) Director Independence.

* * *

(3) For each director and nominee for director that is identified as independent, describe, by specific category or type, any material transactions, relationships or arrangements not disclosed pursuant to Item 404(a) (§ 229.404(a)), or for investment companies, Item 22(b) of Schedule 14A (§ 240.14a-101 of this chapter), that were considered by the board of directors under the applicable independence definitions in determining that the director is independent, other than transactions, relationships, or arrangements entered into in the ordinary course of business.

* * *

(c) *Nominating Committee.* ~~If the registrant does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of director nominees~~

(1) Provide the following information regarding the registrant's director nomination process:

~~(iii) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a policy;~~

* * *

Instructions to Item 407(c)(3).

~~2. For purposes of paragraph (c)(3) of this Item, adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.~~

~~(d) Audit Committee.~~

~~(1) State whether or not the audit committee has a charter. If the audit committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the audit committee charter.~~

~~(2) If a listed issuer's board of directors determines, in accordance with the listing standards applicable to the issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in § 240.10A-3 of this chapter), including as a result of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.~~

~~(3) The audit committee must state whether:~~

~~(A) The audit committee has reviewed and discussed the audited financial statements with management;~~

~~(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the applicable requirements of the Public Company Accounting Oversight Board (“PCAOB”) and the Commission;~~

~~(C) The audit committee has received the written disclosures and the letter from the independent accountant required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant’s communications with the audit committee concerning independence, and has discussed with the independent accountant the independent accountant’s independence; and~~

~~(D) Based on the review and discussions referred to in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this Item, the audit committee recommended to the board of directors that the audited financial statements be included in the company’s annual report on Form 10-K (17 CFR 249.310) (or, for closed-end investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), the annual report to shareholders required by section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(e)) and Rule 30d-1 (17 CFR 270.30d-1) thereunder) for the last fiscal year for filing with the Commission.~~

~~(ii) The name of each member of the company’s audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by paragraph (d)(3)(i) of this Item.~~

~~(4) If the registrant meets the following requirements, provide the disclosure in paragraph (d)(4)(ii) of this Item:~~

~~(A) The registrant is a listed issuer, as defined in § 240.10A-3 of this chapter;~~

~~(B) The registrant is filing an annual report on Form 10-K (§ 249.310 of this chapter) or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a et seq.) if action is to be taken with respect to the election of directors; and~~

~~(C) The registrant is neither:~~

~~(1) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A-3(c)(2) of this chapter; nor~~

~~(2) Relying on any of the exemptions in § 240.10A-3(c)(4) through (c)(7) of this chapter.~~

~~(ii) State whether or not the registrant has a separately designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78e(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant’s audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78e(a)(58)(B)), so state.~~

~~(A) If applicable, provide the disclosure required by § 240.10A-3(d) of this chapter regarding an exemption from the listing standards for audit committees.~~

~~(5) *Audit Committee Financial Expert.*~~

~~(i) Disclose that the registrant’s board of directors has determined that the registrant either:~~

~~(1) Has at least one audit committee financial expert serving on its audit committee; or~~

~~(2) Does not have an audit committee financial expert serving on its audit committee.~~

~~(B) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(1) of this Item, it must disclose the name of the audit committee financial expert and whether that person is independent, as independence for audit committee members is defined in the listing standards applicable to the listed issuer.~~

~~(C) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(2) of this Item, it must explain why it does not have an audit committee financial expert.~~

~~*Instruction to Item 407(d)(5)(i).*~~

~~If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.~~

~~(ii) For purposes of this Item, an audit committee financial expert means a person who has the following attributes:~~

~~(A) An understanding of generally accepted accounting principles and financial statements;~~

~~(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;~~

~~(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;~~

~~(D) An understanding of internal control over financial reporting; and~~

~~(E) An understanding of audit committee functions.~~

~~(iii) A person shall have acquired such attributes through:~~

~~(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;~~

~~(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;~~

~~(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or~~

~~(D) Other relevant experience.~~

~~(iv) *[Safe Harbor]*.~~

~~(v) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 407.~~

~~(vi) The designation or identification of a person as an audit committee financial expert pursuant to this Item 407 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations~~

~~and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.~~

~~(vii) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.~~

~~(viii) Instructions to Item 407(d)(5).~~

~~(ix) 1. The disclosure under paragraph (d)(5) of this Item is required only in a registrant's annual report. The registrant need not provide the disclosure required by paragraph (d)(5) of this Item in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to General Instruction G(3) to Form 10-K (17 CFR 249.310).~~

~~(x) 2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (d)(5)(iii)(D) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 401(e) (§ 229.401(e)).~~

~~(xi) In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A-3(c)(3) of this chapter, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (d)(5)(ii)(A) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.]~~

(e) Compensation Committee.

(1) Disclose whether the registrant ~~If the registrant does not have~~ has a standing compensation committee or committee performing similar functions, ~~state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee, and if not~~ and identify each director who participates in the consideration of executive officer and director compensation.

(3)(iii)

* * *

(A) If such compensation consultant was engaged by the compensation committee (or persons performing the equivalent functions) to provide advice or recommendations on the amount or form of executive and director compensation (other than any role limited to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) and the compensation consultant or its affiliates also provided additional services to the registrant or its affiliates in an amount in excess of ~~\$120,000~~ \$500,000, with adjustments for inflation every two years during the registrant's last completed fiscal year, then disclose the aggregate fees for determining or recommending the amount or form of executive and director compensation and the aggregate fees for such additional services. Disclose whether the decision to engage the compensation consultant or its affiliates for these other services was made, or recommended, by management, and whether the compensation committee or the board approved such other services of the compensation consultant or its affiliates.

(B) If the compensation committee (or persons performing the equivalent functions) has not engaged a compensation consultant, but management has engaged a compensation consultant to provide advice or recommendations on the amount or form of executive and director compensation (other than any role limited to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) and such compensation consultant or its affiliates has provided additional services to the registrant in an amount in excess of ~~\$120,000~~\$500,000 with adjustments for inflation every two years during the registrant's last completed fiscal year, then disclose the aggregate fees for determining or recommending the amount or form of executive and director compensation and the aggregate fees for any additional services provided by the compensation consultant or its affiliates.

(iv) With regard to any compensation consultant identified in response to Item 407(e)(3)(iii) whose work has raised any material conflict of interest, disclose the nature of the conflict and how the conflict is being addressed.

Instruction to Item 407(e)(3)(iv). For purposes of this paragraph (e)(3)(iv), the factors listed in § 240.10C-1(b)(4)(i) through (vi) of this chapter are among the factors that should be considered in determining whether a conflict of interest exists.

4. (i) Under the caption "Compensation Committee Interlocks and Insider Participation":

* * *

(C) Had any relationship requiring disclosure by the registrant under any paragraph of Item 404 (§ 229.404). In this event, provide a cross reference to the disclosure required by Item 404 (§ 229.404) ~~shall accompany such identification.~~

* * *

(h) *Board Leadership Structure and Role in Risk Oversight.* Briefly describe the leadership structure of the registrant's board, such as whether the same person serves as both principal executive officer and chairman of the board, or whether two individuals serve in those positions, and, in the case of a registrant that is an investment company, whether the chairman of the board is an "interested person" of the registrant as defined in section 2(a)(19) of the Investment Company Act (15 U.S.C. 80a-2(a)(19)). If one person serves as both principal executive officer and chairman of the board, or if the chairman of the board of a registrant that is an investment company is an "interested person" of the registrant, disclose whether the registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the board. ~~This disclosure should indicate why the registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the registrant. In addition, disclose the extent of the board's role in the risk oversight of the registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.~~

(i) ~~Employee, Officer and Director Hedging.~~ In proxy or information statements with respect to the election of directors:

(1) Describe any practices or policies that the registrant has adopted regarding the ability of ~~employees (including executive officers)~~ or directors of the registrant, or any of their designees, to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds), or otherwise engage in transactions, that hedge or offset, or are designed to hedge or offset, any decrease in the market value of registrant equity securities—

- (i) Granted to the ~~employee-executive officer~~ or director by the registrant as part of the compensation of the ~~employee-executive officer~~ or director; or
- (ii) Held, directly or indirectly, by the ~~employee-executive officer~~ or director.

* * *

Item 408. Insider trading arrangements and policies. *[Reserved.]*

~~(j) Disclose whether, during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report), any director or officer (as defined in § 240.16a-1(f) of this chapter) adopted or terminated:~~

~~(i) Any contract, instruction or written plan for the purchase or sale of securities of the registrant intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) (§ 240.10b5-1(c) of this chapter) (a "Rule 10b5-1 trading arrangement"); and/or~~

~~(ii) Any "non Rule 10b5-1 trading arrangement" as defined in paragraph (c) of this section.~~

~~(3) Identify whether the trading arrangement is intended to satisfy the affirmative defense of Rule 10b5-1(c), and provide a description of the material terms, other than terms with respect to the price at which the individual executing the Rule 10b5-1 trading arrangement or non Rule 10b5-1 trading arrangement is authorized to trade, such as:~~

~~(A) The name and title of the director or officer;~~

~~(B) The date on which the director or officer adopted or terminated the trading arrangement;~~

~~(C) The duration of the trading arrangement; and~~

~~(D) The aggregate number of securities to be purchased or sold pursuant to the trading arrangement.~~

~~(4) The disclosure provided pursuant to paragraphs (a)(1) and (2) of this section must be provided in an Interactive Data File as required by 17 CFR 232.405 (Rule 405 of Regulation S-T) in accordance with the EDGAR Filer Manual.~~

~~(k) Disclose whether the registrant has adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of the registrant's securities by directors, officers and employees, or the registrant itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any listing standards applicable to the registrant. If the registrant has not adopted such policies and procedures, explain why it has not done so.~~

~~(2) If the registrant has adopted insider trading policies and procedures, the registrant must file such policies and procedures as an exhibit. If all of the registrant's insider trading policies and procedures are included in its code of ethics (as defined in 17 CFR 229.406(b)) and the code of ethics is filed as an exhibit pursuant to 17 CFR 229.406(c)(1), that would satisfy the exhibit requirement of this paragraph.~~

~~(3) The disclosure provided pursuant to paragraph (b)(1) of this section must be provided in an Interactive Data File as required by 17 CFR 232.405 in accordance with the EDGAR Filer Manual.~~

~~(4) For purposes of this Item 408, a director or officer (as defined in § 240.16a-1(f) of this chapter) (each a "covered person") has entered into a non Rule 10b5-1 trading arrangement where:~~

~~(2) The covered person asserts that at a time when they were not aware of material nonpublic information about the security or the issuer of the security they had adopted a written arrangement for trading the securities; and~~

~~(3) The trading arrangement:~~

~~(i) Specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold;~~

~~(ii) Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or~~

~~(iii) Did not permit the covered person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the trading arrangement, did exercise such influence must not have been aware of material nonpublic information when doing so.~~

* * *

Item 506. Dilution. [Reserved.]

~~Where common equity securities are being registered and there is substantial disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons of common equity acquired by them in transactions during the past five years, or which they have the right to acquire, and the registrant is not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act immediately prior to filing of the registration statement, there shall be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where common equity securities are being registered by a registrant that has had losses in each of its last three fiscal years and there is a material dilution of the purchasers' equity interest, the following shall be disclosed:~~

~~(d) The net tangible book value per share before and after the distribution;~~

~~(e) The amount of the increase in such net tangible book value per share attributable to the cash payments made by purchasers of the shares being offered; and~~

~~(f) The amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.~~

Item 601. Exhibits.

(a) Exhibits and Index Required.

(4) If a material contract or plan of acquisition, reorganization, arrangement, liquidation or succession is executed or becomes effective during the reporting period reflected by a Form 10-Q or Form 10-K, it shall be filed as an exhibit to the Form 10-Q or Form 10-K filed for the corresponding period. Any material amendment or material modification to a previously filed exhibit to a Form 10, 10-K or 10-Q document shall be filed as an exhibit to a Form 10-Q and Form 10-K. Such amendment or modification need not be filed where such previously filed exhibit would not be currently required.

* * *

(2) *Plan of Acquisition, Reorganization, Arrangement, Liquidation, or Succession.*

(i) Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation, or arrangement and any material amendments thereto described in the statement or report.

* * *

(10) Material Contracts.

* * *

(ii) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it shall be filed except where immaterial in amount or significance:

(A) Any material contract to which directors, officers, promoters, ~~voting trustees, security holders named in the registration statement or report~~, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(B) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent;

(C) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15 percent of such fixed assets of the registrant on a consolidated basis; or

(D) Any material lease under which a part of the property described in the registration statement or report is held by the registrant.

(iii) ~~(A) -Any material management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the registrant, as defined by Item 402(a)(3), participates, shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.~~

(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the registrant) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a registrant in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make further grants or awards of its equity securities shall be considered a compensation plan of the registrant for purposes of the preceding sentence.

(iv) The registrant may redact specific provisions or terms of exhibits required to be filed by this paragraph (b)(10) if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality

and privacy or confidentiality analyses. ~~Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses.~~ The registrant may request confidential treatment of the supplemental material submitted under this paragraph (b)(10)(iv) pursuant to § 200.83 of this chapter while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it if the registrant complies with the procedures outlined in §§ 230.418 or 240.12b-4 of this chapter.

(17) *Correspondence on Departure of Director.* Any material written correspondence from a former director concerning the circumstances surrounding the former director's retirement, resignation, refusal to stand for re-election or removal, including any letter from the former director to the registrant stating whether the former director agrees with statements made by the registrant describing the former director's departure.

(19) *Insider Trading Policies and Procedures.* ~~[Reserved.] Any insider trading policies and procedures, or amendments thereto, that are the subject of the disclosure required by § 229.408(b) (Item 408(b) of Regulation S-K).~~

* * *

(97) ~~[Reserved] Policy Relating to Recovery of Erroneously Awarded Compensation. A registrant that at any time during its last completed fiscal year had a class of securities listed on a national securities exchange registered pursuant to section 6 of the Exchange Act (15 U.S.C. 78f) or a national securities association registered pursuant to section 15A of the Exchange Act (15 U.S.C. 78o-3) must file as an exhibit to its annual report the compensation recovery policy required by the applicable listing standards adopted pursuant to 17 CFR 240.10D-1.~~

* * *

Item 701. Recent sales of unregistered securities; use of proceeds from registered securities.

~~Furnish the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act. Include sales of reacquired securities, as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.~~

~~(a) *Securities Sold.* Give the date of sale and the title and amount of securities sold.~~

~~(b) *Underwriters and Other Purchasers.* Give the names of the principal underwriters, if any. As to any such securities not publicly offered, name the persons or identify the class of persons to whom the securities were sold.~~

~~(c) *Consideration.* As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.~~

~~(d) *Exemption From Registration Claimed.* Indicate the section of the Securities Act or the rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.~~

~~(e) *Terms of Conversion or Exercise.* If the information called for by this paragraph (e) is being presented on Form 8-K, Form 10-Q, Form 10-K, or Form 10-D under the Exchange Act (§ 249.308, § 249.308(a), § 240.310 or § 249.312) of this chapter, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.~~

(f) *Use of Proceeds*. As required by § 230.463 of this chapter, following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to Sections 13(a) and 15(d) of the Exchange Act after effectiveness of its Securities Act registration statement, ~~and thereafter on each of its subsequent periodic reports filed pursuant to Sections 13(a) and 15(d) of the Exchange Act through the later of disclosure of the application of all the offering proceeds, or disclosure of the termination of the offering. If a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (f)(2) through (f)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to Sections 13(a) and 15(d) of the Exchange Act after effectiveness of the registration statement filed under the Securities Act. Subsequent periodic reports filed pursuant to Sections 13(a) and 15(d) of the Exchange Act need only provide the information required in paragraphs (f)(2) through (f)(4) of this Item if any of such required information has changed since the last periodic report filed.~~ In disclosing the use of proceeds in the first periodic report filed pursuant to the Exchange Act, the issuer or successor issuer should include the following information: