

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 229, 230, 239, 240, 249, 250, 260, and 274

[Release Nos. 33-6383; 34-18524; 35-22407; 39-700; IC-12264; AS-306]

### Adoption of Integrated Disclosure System

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission today announced the adoption of a comprehensive revision to the rules and forms governing the registration of securities under the Securities Act of 1933. This action integrates the disclosure systems under the various Federal securities laws and simplifies and improves the disclosure requirements imposed under these systems. Specifically, this action involves (1) the adoption of three registration forms which constitute the basic framework for registration statements under the Securities Act; (2) the expansion and reorganization of Regulation S-K as the repository for the uniform disclosure requirements of documents filed with the Commission under the Securities Act and the Securities Exchange Act of 1934; (3) the revision of the procedures which govern the registration of securities under the Securities Act and the registration and reports of certain issuers under the Exchange Act; (4) the adoption of a temporary rule governing the shelf registration of securities; (5) the adoption of a rule identifying certain circumstances bearing upon the reasonableness of the investigation to discharge one's obligation under section 11(b) of the Securities Act and upon what constitutes reasonable grounds for belief under that section; (6) the adoption of rules permitting the voluntary disclosure of security ratings in registration statements under the Securities Act; (7) the revision of various rules, forms and schedules under the Securities Act and the Exchange Act to implement and to reflect other changes; and (8) the rescission of obsolete and rarely used forms under the Securities Act and the Exchange Act.

**DATES:** *Effective date:* Except with respect to Rule 415 (17 CFR 230.415), these amendments are effective May 24, 1982, for all documents filed on or after that date. Rule 415 (delayed or continuous offerings) is effective March 16, 1982 and will be effective until December 10, 1982.

*Compliance date:* Registrants are permitted, however, to use Rule 415 immediately and to use the other provisions amended herein in filings made after publication of this release in the Federal Register. If a registrant elects to comply with the provisions amended herein prior to May 24, 1982, it must comply with all the applicable provisions adopted herein (other than Rule 415) upon the election to do so and in any subsequent filings. Notwithstanding the above, registrants are permitted, in filings made after publication of this release in the Federal Register, to comply solely with the\* provisions of Instruction 5 to Item 103 of Regulation S-K amended herein when disclosing environmental proceedings and paragraph (d) of Item 503 of Regulation S-K with respect to the ratio of earnings to fixed charges.

#### FOR FURTHER INFORMATION CONTACT:

Prior to the effective date, questions relating to these actions should be directed to the Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 as follows:

- (1) Forms S-1, S-2, and S-3, Catherine Collins McCoy or Robert Pincus (202-272-2589);
- (2) Regulation S-K, Robert Pincus (202-272-2589);
- (3) Regulations C and 12B, W. Scott Cooper (202-272-2589);
- (4) Shelf registration, Catherine Collins McCoy (202-272-2589) or William L. Larsen (202-272-2604);
- (5) Liability issues, Gregory H. Mathews, (202-272-2589);
- (6) Security ratings, Susan P. Davis, (202-272-2604);
- (7) Securities Act implementing amendments, William L. Larsen (202-272-2604); and
- (8) Exchange Act implementing amendments, Susan P. Davis (202-272-2604).

After the effective date, questions should be directed to the Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2573) as follows:

- (1) Forms S-1, S-2 and S-3, William E. Morley;
- (2) Regulation S-K, Norman R. Schou;
- (3) Regulation C and 12B, William E. Toomey;
- (4) Shelf registration, David B. H. Martin;
- (5) Liability issues, Michael R. Kargula;
- (6) Security ratings, Ann M. Glickman;

(7) Securities Act implementing amendments, Michael R. Kargula; and

(8) Exchange Act implementing amendments, Ann M. Glickman. For questions concerning market related matters, particularly in connection with at the market offerings under Rule 415, contact Eric E. Miller, Division of Market Regulation (202-272-2882). For questions concerning the ratio of earnings to fixed charges, contact Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), or Clarence M. Staubs, Office of the Chief Accountant (202-272-2133). For questions concerning investment companies, contact Sandra Molley, Division of Investment Management (202-272-2033).

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today announced the adoption of various rules, registration forms and disclosure requirements under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. (1976 and Supp. III 1979), as amended by the Small Business Incentive Act of 1980, Pub. L. No. 96-477 (October 21, 1980)] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. III 1979)]. This action, in conjunction with the rescission of the Guides for the Preparation and Filing of Registration Statements (the "Guides"),<sup>1</sup> represents the final stage of the Commission's program to implement an integrated disclosure system under the Securities Act and the Exchange Act.<sup>2</sup> Specifically, the Commission has adopted: (1) Three new registration forms (Forms S-1, S-2 and S-3) (17 CFR 239.11, 239.12 and 239.13) which will serve as the basic framework for the registration of securities under the Securities Act; (2) amendments to

<sup>1</sup>See Release No. 33-6384 (March 3, 1982) which announces the rescission of the majority of the Guides and the reclassification of the remaining Guides as industry guides (the "1982 Industry Guides Release").

<sup>2</sup>The Commission at this time is not adopting the proposed revisions to Items 6, 9 and 22 of Schedule 14A under the proxy rules (17 CFR 240.14a-100) and current Items 4 and 6 of Regulation S-K (17 CFR Part 229) which originally were published in Release No. 34-17517 (February 5, 1981) [46 FR 11954] and were repropose without change in Release No. 33-6338 (August 6, 1981) [46 FR 42042] (the "Exchange Act Coordinating Release") and in Release No. 33-6332 (August 6, 1981) [46 FR 41925] (the "S-K Release"). These proposed amendments, relating to (1) business and other relationships between registrants and directors, (2) full board consideration of shareholder nominations, (3) the vote needed for election to office, (4) management indebtedness and remuneration, (5) beneficial ownership and (6) certain amendments affecting shareholder proposals, will be considered as a part of the Commission's general review of the rules governing proxy solicitations.

Regulation S-K (17 CFR Part 229) which expand and reorganize this regulation, thereby creating a repository for the disclosure requirements of registration statements and reports filed with the Commission under the Securities Act and the Exchange Act, and which adopt provisions relating to the ratio of earnings to fixed charges and an amendment (to Instruction 5 of Item 103) which substantially revises the Commission's environmental disclosure requirement by establishing additional thresholds for disclosure; and (3) amendments to Regulation C (17 CFR 230.400 through 230.494) and Regulation 12B (17 CFR 240.12b-1 through 240.12b-36) which update and coordinate the procedures for filing registration statements and reports with the Commission under the Securities Act and the Exchange Act, respectively.<sup>3</sup> In addition to the revision of various forms, rules and schedules under the Securities Act and the Exchange Act to implement the integrated disclosure system and the rescission of obsolete and rarely used forms, the Commission has taken action to provide guidance on liability issues arising in the integrated disclosure system, to address by temporary rule the registration and sale of securities on a delayed or continuous basis, and to permit the disclosure of security ratings. With respect to liability issues, the Commission has adopted Rule 176 (17 CFR 230.176) identifying certain circumstances bearing upon the reasonableness of the investigation conducted to discharge one's obligation under section 11(b) of the Securities Act and upon what constitutes reasonable grounds for belief under that Section.<sup>4</sup> With respect to the registration and sales of securities that are to be offered and sold on a delayed or continuous basis in the future ("shelf registration"), the Commission has adopted Rule 415 in Regulation C establishing conditions for such registration on a temporary basis. With respect to security ratings, the Commission has set forth a statement of policy in Regulation S-K to permit the voluntary disclosure of security ratings in registration statements under the Securities Act and has adopted amendments to Rule 134 (17 CFR

<sup>3</sup>The Commission is withdrawing certain rules and forms that were proposed at various stages in connection with the Commission's integration program, but are not being adopted. See Release No. 33-6385 (March 3, 1982).

<sup>4</sup>The Commission also has adopted Rule 412 (17 CFR 230.412, proposed as Rule 418) under Regulation C to resolve questions of liability in the context of modified or superseded statements which are found in documents incorporated by reference into other documents.

230.134) and Rule 436 of Regulation C to facilitate such disclosure.

The Commission determined to announce the adoption of these actions in one release in order that registrants, their counsel and other interested persons would have a single document to which they could refer for an understanding of the integrated disclosure system. Attention is directed to the text of the forms and rules, which is presented in the order in which it will appear in the Code of Federal Regulations, for a more complete understanding.

The discussion of the newly adopted registration forms, rules and disclosure requirements has been organized in the same manner as a registrant and its counsel would approach the integrated disclosure system for guidance as to the applicable requirements for the registration of securities under the Securities Act or the preparation of registration statements or periodic reports under the Exchange Act.<sup>5</sup> First, the registrant would look to the registration or report forms to determine the proper form to be used. Second, after choosing the proper form, the registrant would be directed by the form to Regulation S-K for the specific disclosure requirements for each form. Third, after identifying the disclosure requirements, the registrant would look to Regulation C or Regulation 12B for the procedures to be followed in preparing and filing the particular registration statement or report. Moreover, the registrant, its counsel and other persons involved in the registration process should be aware of the statutory obligations and duties under the Securities Act. The following Table of Contents indicates the order and specific components of the discussion set forth herein.

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<sup>5</sup>In light of this organization, certain issues which were highlighted by the use of separate releases at the proposal stage will be discussed in the context of the part of the integrated disclosure system in which they are located. For example, see the discussion of shelf registration in Part IV, "Procedural Provisions," and the discussion of security ratings in Part III, "Substantive Disclosure Provisions."

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## I. Background

The concept of integrating the various disclosure systems under the Federal securities laws has been the subject of theoretical discussion for quite some time.<sup>6</sup> It was long clear that the transaction-oriented framework of the Securities Act and the disclosure system which developed thereunder often overlap with, and produce disclosure duplicative of, that prepared independently in response to the status-oriented framework of the Exchange Act and the continuous disclosure system operating thereunder. The Commission's program<sup>7</sup> to integrate the two disclosure systems has focused on two principal objectives: first, a comprehensive evaluation of the disclosure policies and procedures under both Acts to identify the information which is material to security holders and investors in both the distribution process and the trading markets, such as the minimum information package;<sup>8</sup> and, second, a determination of the circumstances under which information should be disseminated to security holders, investors and the marketplace.<sup>9</sup> The goal of the Commission's integrated disclosure program has been to revise or eliminate overlapping or unnecessary disclosure and dissemination requirements wherever possible, thereby reducing burdens on registrants while at the same time ensuring that security holders, investors and the marketplace have been provided with meaningful, nonduplicative information upon which to base investment decisions.

This rulemaking action is the culmination of several rulemaking proceedings initiated by the Commission

<sup>6</sup> See e.g., Cohen, "Truth in Securities Revisited," 79 Harv. L. Rev. 1340 (1966).

<sup>7</sup> For a comprehensive discussion of the integration program, including its legislative and administrative background, see Release No. 33-6235 (September 2, 1980) [45 FR 63693] (the "ABC Release").

<sup>8</sup> See the ABC Release; Release No. 33-6231 (September 2, 1980) [45 FR 63630] adopting major revisions to Form 10-K (17 CFR 249.310) and the annual report to security holders pursuant to Rule 14a-3 (CFR 240.14a-3); and Release No. 33-6331 (August 6, 1981) [46 FR 41902] proposing three new forms which would represent a comprehensive revision of the system for registration under the Securities Act (the "S-1-2-3 Release") for expanded discussions of the development of the minimum information package.

<sup>9</sup> The dissemination requirements have been developed, in part, on the premise that information regularly furnished to the marketplace through formal Exchange Act periodic reports and informal corporate communications may be reflected in the price of the outstanding securities and thus need not always be reiterated in a prospectus in the context of a distribution. For a comprehensive discussion of this premise, see the S-1-2-3 Release and the ABC Release.

over the past several years.<sup>10</sup> Specifically, this action is based on eight major proposals published for comment in August 1981.<sup>11</sup> Based upon the comment received<sup>12</sup> and its own experience, the Commission has determined to adopt the proposals substantially as published for comment.

## II. Forms

The registration and report forms under the Securities Act and the Exchange Act provide the starting point for registrants complying with the integrated disclosure system. Each of the various Securities Act registration forms establishes the type and amount of disclosure required by registrants able to use the form. The Exchange Act forms establish the type and amount of disclosure required to be provided in the Exchange Act reports which registrants must file.

## A. Securities Act Registration Forms

## 1. Forms S-1, S-2 and S-3.

a. *Operation of the three-tier registration system.*—New Forms S-1, S-2<sup>13</sup> and S-3<sup>14</sup> provide the basic framework for the registration of securities under the Securities Act. These Forms establish three categories for registration statements. The same information will be required to be part of Securities Act registration statements in all categories, either presented in, or delivered with, the prospectus or incorporated by reference from another document. Differences among the three Forms reflect the Commission's determination as to (1) when this

<sup>10</sup> See the S-1-2-3 Release, 46 FR at 41903, for a summary of the actions taken in the 10-K Release, the proposals in Release No. 33-6276 (December 23, 1980) [46 FR 78] (the "Guides Release") and the other rulemaking projects designed to implement the integrated disclosure system.

<sup>11</sup> See the S-1-2-3 Release; the S-K Release; Release No. 33-6333 (August 6, 1981) [46 FR 41971] (the "Regulation C Release"); Release No. 33-6334 (August 6, 1981) [46 FR 42001] (the "Shelf Release"); Release No. 33-6335 (August 6, 1981) [46 FR 42015] (the "Liability Release"); Release No. 33-6336 (August 6, 1981) [46 FR 42024] (the "Security Ratings Release"); Release No. 33-6337 (August 6, 1981) [46 FR 42029] (the "Securities Act Coordinating Release"); and the Exchange Act Coordinating Release.

<sup>12</sup> Pursuant to the Commission's request for comment on the eight releases set forth above, 146 commentators submitted 203 letters addressing one or more of those releases. The letters are available for public inspection and copying at the Commission's Public Reference Room. (See File Nos. S7-893 through S7-900). The Commission has placed in the files a copy of highlights of the public comments prepared by the Division of Corporation Finance.

<sup>13</sup> New Form S-1 represents a substantial revision of existing Form S-1. Existing Form S-2 (for shares of certain corporations in the development stage) will no longer exist; it is being replaced by new Form S-2, which bears no relationship to existing Form S-2.

required information must be presented in full in the prospectus delivered to investors, (2) when certain of the delivered information may be presented on a streamlined basis and supplemented by documents incorporated by reference, and (3) when certain information may be incorporated by reference from documents in the Exchange Act continuous reporting system without delivery to investors.

Generally, it is the registrant-oriented portion of the information relating to a public offering, as opposed to the transaction-specific information, which sometimes may be satisfied otherwise than through full prospectus presentation. Much of this registrant-oriented information is the same as that which is required to be presented in annual reports to the Commission on Form 10-K and in annual reports to security holders, as well as in quarterly and current reports on Forms 10-Q (17 CFR 249.308a) and 8-K (17 CFR 249.308), respectively. Information about the offering, however, will not have been reported on in any other disclosure document or other wise have been publicly disseminated and thus will be required to be presented in the prospectus in all cases.

The registration statement for the first category is Form S-1. It requires complete disclosure to be set forth in the prospectus and permits no incorporation by reference. Form S-1 is to be used by registrants in the Exchange Act reporting system for less than three<sup>15</sup> years and also may be used by any registrants who choose to do so or for whom no other form is available.

The second category of registration statement is Form S-2, which combines reliance on incorporating Exchange Act reports by reference with delivery to investors of streamlined information. Registrants in the Exchange Act reporting system for three years may use this Form, which allows them to choose to either: (1) Deliver a copy of their annual report to security holders along with the prospectus describing the offering or (2) present registrant-oriented information comparable to that of the annual report in the prospectus along with the description of the offering. In either case, the more complete information in the Form 10-K is incorporated by reference into the prospectus.

Form S-3, in reliance on the efficient market theory, allows maximum use of incorporation by reference of Exchange Act reports and requires the least disclosure to be presented in the prospectus and delivered to investors. Generally, the Form S-3 prospectus will

present the same transaction-specific information as will be presented in a Form S-1 or S-2 prospectus. Information concerning the registrant will be incorporated by reference from Exchange Act reports. The prospectus will not be required to present any information concerning the registrant unless there has been a material change in the registrant's affairs which has not been reported in an Exchange Act filing or the Exchange Act reports incorporated by reference do not reflect certain restated financial statements or other financial information.

Most public commentators supported the proposed three-tier Securities Act registration framework in general and agreed that criteria determining prospectus disclosure and delivery requirements based on reporting history and following in the marketplace are more appropriate than criteria related to the quality of the registrant. Accordingly, the Commission has determined to adopt Forms S-1, S-2 and S-3 substantially as proposed.

b. *Revisions in Forms as Adopted.*—  
(1) *Form S-1.* Form S-1 is adopted essentially unchanged from proposed Form S-1. Complete information about both the transaction and the registrant is required to be presented in the prospectus. Reference is made to Regulation S-K and, with respect to financial statements, to Regulation S-X (17 CFR Part 210) for specific content provisions. Commentators generally applauded the proposed Form S-1's simplification, the use of references to the uniform disclosure provisions of Regulation S-K, and the elimination of unnecessary or outmoded disclosure provisions that previously had been required.

The few minor changes from the proposal are as follows. First, General Instruction III relating to the omission of or the filing of substituted financial statements in certain cases has been deleted because it unnecessarily repeats the provisions of Rule 3-13 of Regulation S-X.<sup>14</sup> Second, an instruction has been added to the Instructions as to Summary Prospectuses to clarify the requirements relating to such prospectuses where securities being registered are to be offered pursuant to an exchange offer. Third, revisions were made to correspond to changes made in items of Regulation S-K (specifically, the change of proposed Item 510, Indemnification of Directors and Officers, into Item 510, Disclosure of Commission Position on Indemnification for Securities Act

<sup>14</sup>For the same reason, General Instruction C, Filing of Other Financial Statements in Certain Cases, has been deleted from Form S-2.

Liabilities, and Item 702, Indemnification of Directors and Officers, with the new Item 510 placed in Part I of the registration statement).<sup>15</sup> Finally, several changes were made in the numbering and terminology of certain provisions of Forms S-1 for purposes of clarification and consistency.

(2) *Form S-2.* Form S-2 as adopted reflects no major changes from the Form as proposed. The proposal received general support and few specific comments or objections. While a few commentators were concerned about the Form's optional use of the annual report to security holders and believed it should be expanded to include the optional use of Form 10-K, the Commission has made no change in the formulation of the multiple document delivery aspect of Form S-2. The Commission continues to believe that, by providing an opportunity to make use of the highly readable annual report to security holders, an existing disclosure document, the Form not only affords an opportunity to affect savings in the cost of registration but also promotes the goal of concise, effective communication in the Securities Act context.

A few commentators suggested changing the Form S-2 formulation regarding Exchange Act documents incorporated by reference to allow subsequently filed reports to be incorporated into Form S-2 as is permitted on Form S-3. The Commission has determined not to make this change because it does not believe that companies using Form S-2 are sufficiently widely followed to insure sufficient dissemination of information in Exchange Act reports in the context of an offering of securities under the Securities Act.

A number of changes, of a generally clarifying nature, have been made in response to commentators' suggestions. In the order in which these changes appear in the Form, they are as follows:

First, General Instruction I.G. has been expanded to clarify that Form S-2 may be used by subsidiaries who do not themselves meet the tests for use of the Form but whose parents meet the Form S-2 eligibility requirements and guarantee the securities offered.

Second, Item 11 (Information with Respect to the Registrant) has been changed in several respects.<sup>16</sup> An

<sup>15</sup> Similar changes were made in Form S-2, S-3 and the other Securities Act Forms amended herein to coordinate with this change in Regulation S-K.

<sup>16</sup> Commentators also pointed out that the requirement in Item 11 of proposed Forms S-2 and S-3 to furnish restated financial statements when poolings have occurred subsequent to year end was duplicative of Rule 3-08 of Regulation S-X. In the recent release proposing revisions to the pro forma

instruction has been added to Item 11 to codify the discussion in the S-1-2-3 Release which indicated that where the multiple document delivery option is chosen, each document must be delivered with the preliminary prospectus but need not be redelivered with the final prospectus if the recipient already has been given the document along with the preliminary prospectus. Item 11 also is changed to correct an oversight in proposed Form S-2 by adding to Item 11(b)(2)(j), which sets forth the prospectus disclosure requirements if the annual report option is not chosen, a requirement for interim financial information and a requirement relating to restated financial statements. The provision requiring restated financial statements where there have been business combinations accounted for by the pooling of interest method subsequent to the most recent fiscal year end has been limited so that the item as adopted requires the restated financial statements only when the acquired businesses meet the test of a significant subsidiary.<sup>17</sup>

Several commentators mentioned the possible conflict between Item 11 of proposed Forms S-2 and S-3, which requires restated financial statements when poolings have occurred subsequent to year end, and Paragraph 61 of APB Opinion No. 16, which does not permit the issuance of restated financial statements of combined entities until after the financial statements of the combining entity have been issued. In such circumstances, the staff has permitted inclusion in the filing of the separate financial statements of the combining entities and supplemental pro forma information of the combined entity. This matter will be considered for inclusion in the Commission's final pro forma rules.

Third, Item 12 (Incorporation of Certain Information by Reference) is changed (1) to clarify in paragraph one that only specific portions of the annual and quarterly reports to security holders

financial information rules, the current Rule 3-08 requirements for such restated information are proposed to be included in a revised Article 11 of Regulation S-X. See Release No. 33-6350 (September 24, 1981) [46 FR 48943]. Accordingly, no changes have been made to this provision in the final Form S-2 and S-3 requirements. The financial information requirements of Forms S-2 and S-3 relating to restated financial statements, Rule 3-07 and 3-08 transactions and material dispositions of assets outside the normal course of business will be reviewed and any necessary changes made when final action is taken on the pro forma proposals.

<sup>17</sup>The term "significant subsidiary" is defined identically in Rule 1-02 of Regulation S-X (adopted in Release No. 33-6359, November 6, 1981) [46 FR 56171] and in Rule 405 of Regulation C as adopted herein.

must be incorporated by reference, if applicable, and (2) to add an instruction directing registrants' attention to Rule 439 of Regulation C regarding consents to use of material incorporated by reference. <sup>18</sup>

Finally, the signature provision of Form S-2 has been changed to add a reasonable belief standard to the requirement that the registrant certify that it meets the requirements for filing on Form S-2. <sup>19</sup>The proposed signature provision would have required those signing the registration statement on behalf of the registrant to certify that the registrant meets the requirements for filing on Form S-2. The Commission believes that requiring the registrant to certify that it has reasonable grounds to believe that it meets the tests for use of the Form will insure that sufficient attention is devoted to those tests without at the same time imposing an unnecessary burden or giving rise to the liability concerns to which several commentors expressed objection.

(2) ~~For Form S-3~~ <sup>20</sup>The greatest commentator response was directed to Form S-3, particularly to the criteria for use of the Form. Commentators generally agreed that Form S-3's dual eligibility requirements, *i.e.*, registrant requirements and transaction requirements, adequately meet the objective of relating short-form registration to the existence of widespread following in the marketplace. Moreover, commentators directed substantial attention to the specific transaction requirements for primary offerings and generally believed that (a) a test based on the registrant's float, *i.e.*, the aggregate market value of outstanding voting stock held by non-affiliates, is an appropriate measure of marketplace following and (b) a float of \$150 million is the appropriate level at which short-form registration should be allowed. In addition, a number of commentators supported the alternative transaction requirement on which the Commission specifically requested comment, which would allow use of the Form by registrants with a smaller float who have a minimum volume of shares traded on an annual basis. Accordingly, the Commission has determined to adopt the \$150 million float transaction requirement for the use of Form S-3 by certain registrants and to add an alternative test of \$100 million float and 3 million share annual trading volume.

<sup>18</sup>A reference to Rule 439 also is added to Item 12 of Form S-3.

<sup>19</sup>The signature provision of Form S-3 and the other Securities Act forms amended herein are similarly changed.

The use of Form S-3 to register primary offerings of certain high grade non-convertible debt securities received overwhelming commentator support. Commentators agreed that short-form prospectuses are appropriate for issues of investment grade debt regardless of the registrant's float, because such securities are generally purchased on the basis of interest rates and security ratings. In addition, commentators supported expansion of the test to include high grade non-convertible preferred stock regardless of the registrant's float. The Commission is adopting this transaction requirement, with an expansion to include preferred stock offerings, and is retaining the use of security ratings to define what constitutes an investment grade security. The definition of investment grade for purposes of the use of Form S-3 also is clarified to indicate that a rating in one of the generic rating categories which signify investment grade is required and that typically it is the four highest rating categories (within which there may be gradations, such as pluses or minuses, to indicate relative standing) which signify investment grade.

With respect to transactions involving secondary offerings (*i.e.*, offerings of outstanding securities to be offered for the account of any person other than the registrant), Form S-3 was proposed to be available for offerings of securities of registrants who meet the registrant requirements and the \$150 million float transaction requirement. <sup>20</sup>Most of the commentators who responded to the Commission's specific inquiry as to this change from the provisions of Form S-16 (17 CFR 239.27), which did not impose any float test upon secondary offerings, <sup>21</sup>objected to this aspect of the proposal. These commentators asserted that the Form S-3 test would impact adversely venture capital companies and their investors and such other shareholders as directors and other affiliates of companies acquired in transactions subject to Rule 145 (17 CFR 230.145). They cited the similarities between these shareholders and other holders who purchase their shares in secondary market transactions and the absence of any evidence of abuse related to the more expanded

<sup>20</sup>For secondary offerings of securities acquired pursuant to an offering registered on Form S-8 (17 CFR 239.16b), only the registrant requirements or certain volume limitations specified in Form S-8 must be met.

<sup>21</sup>Form S-16, which is replaced by Form S-3, is being rescinded as part of the rulemaking actions affected in this release.

availability of Form S-16 for secondary offerings. <sup>22</sup>

As a result of the comments received, the Commission further analyzed the secondary offering transactions registered on Form S-16 and concluded that most secondary offerings are more in the nature of ordinary market transactions than primary offerings by the registrant, and, thus, that Exchange Act reports may be relied upon to provide the marketplace the information needed respecting the registrant. Accordingly, if the registrant meets the Exchange Act reporting and other registrant requirements, Form S-3 will be available for registering secondary offerings of securities listed on an exchange or quoted on the automatic quotation system of a national securities association. <sup>23</sup>

In addition to the changes discussed above, Form S-3 has been revised in several further respects, largely in response to public comments. First, the provisions relating to the use of Form S-3 by subsidiaries have been placed in a new General Instruction C which is intended to clarify that the Form may be used if: (a) The subsidiary itself meets the various eligibility requirements; (b) the parent meets the eligibility requirements and guarantees the securities offered; or (c) the parent meets the registrant requirements (Exchange Act reporting history, *etc.*) and the securities offered are investment grade debt or preferred stock. The Commission believes that this revision responds to those commentators whose concerns suggested a lack of clarity in the provision as proposed. In addition, the expansion of the investment grade securities test to include preferred stock responds to the concerns of those commentators who advocated relaxing the requirement for parent guarantees or otherwise expanding the use of Form S-3 by subsidiaries. The Commission does not believe any further expansion for subsidiaries is necessary or appropriate for short form registration.

Second, a new General Instruction D has been added to allow foreign private issuers who meet certain registrant criteria to use Form S-3 to register securities to be offered upon the exercise of certain outstanding rights.

<sup>22</sup>Form S-16 has permitted use of short form registration statements for secondary offerings since its adoption in 1970. See Release No. 33-5117 (December 23, 1970) (36 FR 777).

<sup>23</sup>Because this determination reflects only a difference as to actual delivery (the Exchange Act reports would be incorporated by reference into the registration statement), the selling security holder retains statutory responsibility for the accuracy of the entire registration statement.

Such rights offerings previously have been allowed to be registered on Form S-16. The new instruction is intended to maintain the status quo for rights offerings by foreign private issuers until such time as the Commission takes final action with respect to the outstanding proposals for an integrated disclosure system for foreign private issuers.<sup>24</sup>

Third, Item 9 (Description of Securities to be Registered) and Item 12 (Incorporation of Certain Information by Reference) have been revised to allow the description of securities to be incorporated by reference from Exchange Act reports, rather than presented in the prospectus, where capital stock is being registered and securities of the same class are registered pursuant to Section 12 of the Exchange Act.

Fourth, Item 11 (Material Changes) has been revised in several respects in light of substantial comment. Paragraph (b) has been revised to provide that the restated financial statements and other financial information specified therein may be incorporated by reference in lieu of prospectus presentation not only from those Exchange Act reports which Item 12(a) requires to be incorporated by reference (Form 10-K and all other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act), but also from other documents filed with the Commission (proxy statements pursuant to section 14(a) of the Exchange Act or Rule 424(c) prospectuses under the Securities Act) which may contain the specified information. The provisions specifying the necessary additional financial information have been clarified and a materiality standard relating to the test for a significant subsidiary has been added to the requirement for restated financial statements for acquisitions accounted for by the pooling of interests method. While some commentators believed the additional financial information required by Item 11(b) is inappropriate in a short form prospectus, it should be noted that such financial statements and information would need to be presented in the prospectus only if not disclosed in reports on Forms 10-K, 8 (17 CFR Part 249.460), 8-K or 10-Q, in proxy statements or in previous Securities Act prospectuses which are incorporated by reference into the registration statement.<sup>25</sup>

<sup>24</sup>Release No. 33-6360 (November 20, 1981) [46 FR 58511].

<sup>25</sup>A number of commentators expressed concern that outdated financial statements from the latest Form 10-K would be incorporated by reference when restated financial statements are included in the prospectus or are incorporated by reference because of an accounting change or pooling

The final change to Item 11 is the deletion of proposed paragraph (b)(2), which would have required a brief prospectus description of the transaction, accounting change, correction or disposition with respect to which financial information is incorporated by reference. The Commission agrees with the commentators, who opposed this mandatory description provision, that prospectus descriptions of the information incorporated by reference should be addressed more flexibly, relying on registrant discretion and on the facts of individual cases.

The Commission has determined to adopt Form S-3 as proposed with respect to a number of matters on which public comment was received. First, commentators widely applauded the proposal to provide that registration statements relating solely to dividend or interest reinvestment plans become effective automatically on the twentieth day after filing.

Commentators also supported the decision reflected in the S-1-2-3 Release to maximize the flexibility provided in Form S-3 by not mandating a specific minimum time period between filing and effectiveness of a registration statement on Form S-3. The Commission believes that it can deal effectively with this issue through its administrative discretion to grant requests for acceleration, and, therefore, that it is not necessary to impair Form S-3's flexibility by imposing a specified minimum time period requirement before Form S-3 registration statements may become effective.

While a number of commentators advocated making Forms S-3 and S-2 available for registering securities issued in an exchange offer for securities of another person, the Commission has determined not to make these Forms available for exchange offer registration at this time. For the reasons more fully described in the S-1-2-3 Release, the Commission believes it is more appropriate to address the appropriate form and content for exchange offer registration statements as part of the separate business combination project which the staff will be considering this year.

subsequent to the most recent fiscal year end. Additionally, concern was expressed that the staff may require an accountant's consent for such outdated financial statements. Rule 412 of Regulation C would operate to make the restated financial statements supersede the Form 10-K financial statements and would render the superseded items not a part of the registration statement or prospectus for purposes of the Securities Act. Therefore, no consent would be required for the superseded financial statements.

## 2. Rescission of Forms S-7 and S-16 and Replacement of Existing Form S-2.

As a consequence of the adoption of new Forms S-2 and S-3, the Commission is rescinding Forms S-7 (17 CFR 239.26) and S-16 (17 CFR 239.27) and replacing existing Form S-2.

3. *Rescission of Obsolete Forms.* In an effort to streamline further the Securities Act registration system, the Commission proposed to rescind the following infrequently used or obsolete forms: Form C-2 (17 CFR 239.4) (for Certain Types of Certificates of Interest in Securities); Form D-1 (17 CFR 239.6) (for Certificates of Deposit); Form D-1A (17 CFR 239.7) (for Certificates of Deposit Issued by Issuers of Securities Called for Deposit); Form S-10 (17 CFR 239.17) (for Oil or Gas Interests or Rights); and Form S-13 (17 CFR 239.25) (for Registration under the Securities Act of 1933 of Voting Trust Certificates).<sup>26</sup> Commentators generally supported rescission of these Forms, but urged that the Commission state what forms registrants should employ instead of those rescinded. The Commission is rescinding the Forms as proposed and believes that any questions with respect to the appropriate form to be used can be answered by the staff on a case by case basis.

4. *Amendments to Other Securities Act Forms.* In addition to adopting the basic Securities Act registration framework consisting of Forms S-1, S-2 and S-3, the Commission reviewed the other major Securities Act registration forms and proposed a number of changes in certain forms.<sup>27</sup> These proposed changes were intended to be consistent with the new registration framework and to clarify, streamline and integrate disclosure requirements by (1) substituting, where possible, the uniform disclosure items of Regulation S-K for existing disclosure items; (2) eliminating unnecessary and burdensome disclosure items; and (3) standardizing certain other aspects of the forms, such as instructions and signature clauses. Public comment on the proposed changes was predominantly favorable. Therefore, the Commission is adopting most of the coordinating and technical amendments to the Securities Act forms as proposed. However, in certain instances discussed below, the Commission has made some changes in response to public comments or where otherwise deemed appropriate.

<sup>26</sup>Securities Act Coordinating Release.

<sup>27</sup>Securities Act Forms proposed to be amended in the Securities Act Coordinating Release included Forms S-8, S-11 (17 CFR 239.18), S-14 (17 CFR 239.23) and S-15 (17 CFR 239.29).

There are two minor changes that affect all of the Forms proposed to be amended. The signature requirement for all of the Forms has been changed in the same respect as has that of Forms S-2 and S-3 so that registrants need only certify that they have reasonable grounds to believe that they meet all of the requirements for filing a particular form. In addition, a change in the format of amended Regulation S-K will be reflected in all of the Forms so that they now will include, in the prospectus, an item calling for disclosure of the Commission position on indemnification for Securities Act liabilities and, in Part II of the registration statement, an item requiring certain information regarding the indemnification of directors and officers. This change necessitated renumbering of certain items in all of the Forms. Finally, where necessary, coordinating changes have been made in all of the Forms to reflect changes in numeration or other technical changes that have been made in Regulation C and other parts of the integrated disclosure system.

Other respects in which the amendments to the Forms differ from the proposals are as follows:

a. *Form S-8*.—The number of additional copies required by Rules 402 and 472 of Regulation C as specified in Instruction D has been raised from two to three to meet the Commission's data processing requirements. In addition, several commentators requested that Form S-8 be made available for resales by affiliates. The Commission continues to believe that it would be inappropriate to allow the use of Form S-8 for resales by affiliates. Moreover, Form S-3 is available for resales of securities acquired pursuant to Form S-8 by affiliates of the issuer pursuant to registration under Rule 415, provided that the registrant satisfies the Registrant Requirements for use of Form S-3, which are the same as the eligibility requirements for the use of Form S-2.

b. *Form S-11*.—With the exception of the general changes discussed above, the revisions to Form S-11 are adopted substantially as proposed.

c. *Form S-14*.—General Instruction D regarding the cross-reference sheet has been relocated as an Instruction to Item 1 of the Form. The Commission has

<sup>28</sup>This item would require prospectus disclosure only in the unusual cases where, because no request for acceleration of effective date is made, the undertaking required by Item 512(i) is not required to be included in the registration statement.

<sup>29</sup>See Release No. 33-5767 (November 22, 1976) [41 FR 52662] where the Commission amended Form S-8 to prohibit the use of the Form for reoffers or resales because Form S-8 prospectuses do not provide adequate notice of or information with respect to the registered reoffer.

eliminated proposed Item 5 regarding dilution because it does not wish to alter existing practice with respect to disclosure in merger transactions pending consideration of the separate business combination project. Form items are renumbered accordingly. Paragraph (a) of Item 6 (Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters) is replaced by a reference to Item 507 of Regulation S-K (Selling Security Holders), which calls for substantially the same information.

d. *For Form S-15*.—Similar to the treatment given parallel Item 6(a) of Form S-14, paragraph (a) of Item 10, which calls for information on selling security holders, is replaced by a reference to Item 507 of Regulation S-K (Selling Security Holders).

B. *Exchange Act Reporting and Registration Forms*. In the Exchange Act Coordinating Release, the Commission proposed to revise the remaining<sup>30</sup> major component in the periodic reporting system, Form 8-K, for current reporting pursuant to Section 13 or 15(d) of the Exchange Act, and to revise Forms 10, 8-A and 8-B (17 CFR 249.210, 249.208a and 249.208b), for the registration of securities pursuant to Section 12(b) or (g) of the Exchange Act, in order to clarify, streamline and otherwise improve their disclosure requirements. In the same release, the Commission proposed several clarifying amendments to Form 10-K, as well as two amendments to elicit certain fourth quarter information in order to produce a continuous flow of corporate information. In addition, the Commission proposed to amend the instructions to Forms 10-K and 10-Q to clarify the conditions pursuant to which informal annual or quarterly reports to shareholders may be combined with the required Form 10-K or 10-Q information. Finally, several Exchange Act reports and registration forms, Forms 12 (17 CFR 249.212), 14 (17 CFR 249.214), 16 (17 CFR 249.216), 14-K (17 CFR 249.314), 16-K (17 CFR 249.316) and 4-MD (17 CFR 249.404), were proposed to be rescinded. Through these proposals, which are explained in more detail in the Exchange Act Coordinating Release, the Commission intended substantially to complete its program to ensure the proper functioning of Exchange Act reports and registration statements in the integrated disclosure system.

The comments of the few commentators who specifically

<sup>30</sup>Forms 10-K and 10-Q were revised in earlier phases of the integration program. See the 10-K Release and Release No. 33-6288 (February 9, 1981) [46 FR 12480].

commented on the proposed revisions to Exchange Act reports and registration statements were generally favorable. Accordingly, the Commission is adopting the proposed amendments, with several minor changes discussed below made in response to commentators' suggestions or where otherwise deemed appropriate.

1. *Rescission of Obsolete Forms*. The Commission is rescinding, as proposed, three registration forms, Form 12 (for Issuers Filing Reports With Other Federal Agencies), Form 14 (for Certificates of deposit Issued by a Committee) and Form 16 (for Voting Trust Certificates), and three annual report forms, Forms 14-K and 4-MD (Annual Reports for Certificates of Deposit Issued by a Committee) and Form 16-K (Annual Report for Voting Trust Certificates). The proposal met with no opposition, although one commentator requested that the Commission clarify what form a registrant should use instead of any of the rescinded Forms. As in the case of the rescinded Securities Act Forms, any questions with respect to the appropriate form to be used can be answered by the staff on a case by case basis.

2. *Forms 10, 8-A and 8-B*. The Commission is adopting amendments to revise Exchange Act registration Forms 10, 8-A and 8-B as proposed with one minor renumbering change.<sup>31</sup>

3. *Form 8-K*. Form 8-K plays a critical role in the periodic reporting system, which is intended to provide investors with a continuous stream of corporate information. Reports on Form 8-K are used to provide material information concerning certain specified events that may have occurred since the latest annual report on Form 10-K or quarterly report on Form 10-Q was filed. In addition, registrants may, and in fact are encouraged to, file voluntary reports on Form 8-K pursuant to Item 5 describing any other events that may be of interest to investors.

Commentators were very supportive of most of the proposed amendments to Form 8-K, which included, among other things, new instructions relating to incorporation by reference of press releases and filing of required financial statements for an acquired business up to 60 days after the Form 8-K is filed.<sup>32</sup>

<sup>31</sup>Due to the renumbering of Regulation S-K Item 510(a) as Item 702, Item 11 of Form 10 (Indemnification of Directors and Officers), which as proposed referred to Item 510(a), is changed to refer to Item 702.

<sup>32</sup>The Commission recently solicited comment (Release No. 33-6350) on whether Form 8-K should

The only proposal that received substantial comment was that replacing the requirement to file a report pursuant to Item 5 of Form 8-K (Other Materially Important Events) within 10 days after the event with a statement encouraging registrants to file "promptly" after the event. While several commentators applauded the increased flexibility that would be afforded to registrants under the new provision, other commentators were concerned that the change would create an unnecessary ambiguity as to the time for filing voluntary reports on Form 8-K. Since reports pursuant to Item 5 are voluntary, the Commission believes it is inconsistent to establish a specific time by which such reports must be filed. Accordingly, the Commission is adopting the Item 5 timing requirement as proposed.

The Commission also is making an additional change in Item 5 suggested by a commentator. Item 5 is being amended to make clear that registrants may file voluntary reports not only to report material events, but also to inform their security holders of other matters that may be of interest. The amendment is intended to encourage further voluntary reports on Form 8-K and to remove any reluctance that registrants may have to file voluntary reports pursuant to Item 5 on the basis that they will be deemed to have admitted the materiality of the event reported.<sup>33</sup>

4. *Form 10-K.* The Commission is adopting several amendments to Form 10-K to eliminate ambiguities and close disclosure gaps that came to light after the Commission's revision of that Form in December 1980. First, the Commission is requiring that a registrant include information relating to the fourth quarter of its fiscal year concerning terminated legal proceedings and matters submitted to a vote of security holders. In connection with these amendments, the Commission also is amending Instruction J of Form 10-K, as suggested by one commentator, to permit certain wholly-owned subsidiaries to omit fourth quarter information relating to matters submitted to a vote of security holders. These changes are intended to make the disclosure requirements relating to a registrant's fourth quarter consistent with those in Form 10-Q.

be revised to require pro forma financial information for consummated transactions, as was suggested by one commentator in response to the Exchange Act Coordinating Release. The Commission will consider the issue as part of its final action with respect to the pro forma proposals.

<sup>33</sup>In addition, the amendment to Item 5 is intended to clarify that reports on Form 8-K may be used as vehicles to file information or exhibits with the Commission which otherwise would require disclosure in a Form S-3 or would necessitate a post-effective amendment thereto.

relating to the registrant's other fiscal quarters.<sup>34</sup>

Second, the Commission is adopting the proposed note to the cover page intended to clarify the staff's position with respect to calculating the aggregate market value of voting stock held by non-affiliates, but it is revising the proposal, as suggested by a commentator, to incorporate the "unreasonable effort and expense" standard of Exchange Act Rule 12b-21. Finally, the Commission is eliminating the last sentence of General Instruction C(1) as unnecessary in view of the Instruction's reference to Rule 12b-13.

### III. Disclosure Provisions

A. *Operation and Philosophy of Regulation S-K.* Since its initial adoption,<sup>35</sup> Regulation S-K has evolved beyond a source of certain standardized registrant-related disclosure provisions to become a more complete compendium of disclosure requirements applicable to Securities Act and Exchange Act filings.<sup>36</sup> This evolution was noted in the S-K Release and endorsed by the commentators. The adopted revisions represent a major step in the consolidation of disclosure requirements into Regulation S-K. The Commission intends to continue this consolidation of disclosure requirements in Regulation S-K.<sup>37</sup>

In general, Regulation S-K is not self-executing: inclusion of the information specified in the Regulation is required only to the extent a form or schedule governing a document specifically directs inclusion of the information prescribed by an Item of Regulation S-

<sup>34</sup>Disclosure of matters submitted to a vote of security holders by certain wholly-owned subsidiaries is not required by Form 10-Q.

<sup>35</sup>See Release No. 33-5893 (December 23, 1977) [42 FR 65554].

<sup>36</sup>The disclosure requirements being added to Regulation S-K were taken from Guides of general applicability (See the Guides Release and the S-K Release), from Regulation C provisions containing disclosure requirements (See the Regulation C Release), and from various rules and forms. The Commission has endeavored, to the extent practicable, to make the disclosure requirements of the various Securities Act and Exchange Act rules and forms consonant by substituting the uniform disclosure items of Regulation S-K for existing disclosure items. This substitution of Regulation S-K items has occurred in almost every form to some extent and is discussed in greater detail in the Securities Act Coordinating Release and the Exchange Act Coordinating Release, as well as in relation to amendments to particular forms discussed above. In addition, where forms contained a preexisting reference to an Item of Regulation S-K, the references have been revised to reflect the reorganized structure of Regulation S-K, as now adopted.

<sup>37</sup>The next step will be to expand Regulation S-K to include a list of currently applicable interpretive releases relating to disclosure in Commission filings to which Regulation S-K is applicable.

K. There are two exceptions to this general rule in the Regulation as adopted today. The Commission policies outlined in the General section of the Regulation with respect to projections and security ratings are applicable to all disclosure documents, without direct reference in the schedule or form to the specific provision of the Regulation setting forth such policies and whether or not the schedule or form incorporates any Item of Regulation S-K. Likewise, the Industry Guides listed in the last section of the Regulation are applicable to the disclosure documents indicated in the list, whether or not the applicable form or schedule refers to Regulation S-K or to the Industry Guide.<sup>38</sup>

B. *Synopsis of Revisions.* The proposed reorganization of Regulation S-K into nine major sections met with the general approval of the commentators. However, to simplify CFR references, the numbering of the Items has been revised to permit direct citation to specific Items of the Regulation, rather than to the nine sections of the Regulation. The only changes to the proposed reorganization are an incorporation of the requirements regarding disclosure of the ratios of earnings to fixed charges in the Registration Statement and Prospectus Provisions section of the Regulation and the relocation of paragraph (a) of proposed Item 510 specifying the required description of indemnification provisions into the Miscellaneous, section of the Regulation. The move of the ratio disclosure requirements from the Financial Information section reflects the fact that such information is required only in Securities Act filings and the move of the indemnification provisions is based on the fact that such disclosure is required in Form 10 registration statements under the Exchange Act, as well as in Securities Act filings.

There follows a brief discussion of the more substantive changes made to the Items as proposed in the S-K Release.

1. *General.* The only change to the General section of the Regulation is the inclusion in paragraph (c) of the Commission's Policy on Security Ratings.

2. *Item 101—Description of Business.* Since, as noted in the S-K Release, Items 101, 102, 103, 401, 402 and 403 of Regulation S-K will be the subject of future "sunset" review, no major reconsideration of these Items was undertaken.<sup>39</sup> Commentators'

<sup>38</sup>See the 1982 Industry Guides Release.

<sup>39</sup>It should be noted that Items 401, 402 and 403 vary from those included in the S-K Release to the

suggestions with respect to the Items will be considered in connection with such future rulemaking projects. Several changes have been made in Item 101, however, principally for clarification purposes.

Reference to required updating has been revised throughout the Regulation, including paragraphs (b)(2) and (d)(3) of Item 101, to make clear that such requirements apply where interim financial statements are included voluntarily, as well as where they are required by Regulation S-K to be included in the document.

Paragraph (c)(vii) has been revised to require the name of certain customers of the registrant and its subsidiaries only where the loss of such customer would have a material adverse effect on the registrant and its subsidiaries taken as a whole.

Paragraph (d) reflects two changes which make it parallel the provisions of paragraph (b) of Item 101. Subparagraph (1) refers to operating profit and loss of the registrant's geographic area, rather than profitability and permits cross-reference to the financial statements where the required information is included therein. Neither of these revisions is intended to effect a substantive change.

3. *Item 102—Description of Property.* Item 102 has been amended to delete the requirements of paragraph (b) with respect to oil and gas operations. The Commission's proposal to move the provisions of paragraph (b) into an Industry Guide was overwhelmingly endorsed by the commentators and such relocation has been effected.<sup>40</sup> The provisions of paragraph (b) have been reformulated, without substantive change from those proposed in the S-K Release, as new Industry Guide 2 (Disclosure of Oil and Gas Operations).

While the Commission requested comment with respect to possible revision of Item 102 to permit disclosure of any kind of reserves with appropriate discussion, it has determined to postpone any consideration of such a change until the Financial Accounting Standards Board (the "FASB") completes its review of disclosures concerning oil and gas producing activities.<sup>41</sup>

extent that the revisions proposed in Release No. 34-17517 are not reflected and the currently effective provisions of Items 4 and 6 of Regulation S-K which were proposed to be revised have been reinstated. See Note 2, *supra*.

<sup>40</sup>See the 1982 Industry Guides Release.

<sup>41</sup>The Commission notes that the possible revisions of Item 102 elicited a wide range of responses. Three commentators supported the possible revision. Three commentators believed such disclosure is too speculative and would be generally misleading. Four other commentators

Instruction 5 to Item 102 was proposed to be revised to permit disclosure of less than proved or probable reserves in certain cases where the staff of the Commission could be shown that such disclosure was required by foreign law or was necessary to prevent the disclosure from being misleading. The conditions proposed as the basis for inclusion of such information were the subject of commentator criticism. As a result, Instruction 5 has been revised to permit disclosure of less than proved oil and gas reserves, or proved or probable reserves in other cases, where such information is required by foreign or state law to be disclosed in the document. The Instruction now also permits such reserve data to be disclosed where it has been provided previously to a person (or any of its affiliates) that is engaged in an acquisition of the registrant or its equity securities.

#### 4. *Items 103—Legal Proceedings.*

Instruction 5 of proposed Item 103 reflects the adoption of amendments to the instruction relating to environmental disclosure which the Commission proposed in May 1981.<sup>42</sup> The proposed amendments were designed to establish thresholds for disclosure of environmental proceedings involving governmental authorities and would have required that registrants list, or make available upon request, the names and addresses of those governmental authorities from which to obtain compliance-related reports associated with disclosable environmental proceedings.

Most commentators who addressed the general effect of the proposals believed that adoption of materiality thresholds similar to those proposed would alleviate many of the problems experienced with the existing requirements. Clause (a) of Instruction 5, which requires disclosure of all environmental proceedings, including governmental proceedings, that are material to the business or financial condition of the registrant, was overwhelmingly endorsed by the commentators and is adopted without change.

suggested that the FASB project may have some bearing on this issue and therefore that the Commission may wish to wait until the FASB completes its project. See FASB Invitation to Comment on Disclosures About Oil and Gas Producing Activities (May 13, 1981).

<sup>42</sup>Release No. 33-6815 (May 4, 1981) [46 FR 25638]. 110 comment letters were submitted and are available for public inspection and copying at the Commission's Public Reference Room (File No. S7-884). The Commission has placed in the files a copy of highlights of the public comments prepared by the Division of Corporation Finance.

Clause (b) of Instruction 5, which requires disclosure of damage actions or governmental proceedings involving potential monetary sanctions, capital expenditures, deferred charges or charges to income in which the amount involved, exclusive of interest and costs, exceeds 10 percent of current assets on a Consolidated basis, was supported by the commentators, and it, too, is being adopted as proposed.

Proposed clause (c) would have required disclosure of governmental proceedings involving potential monetary sanctions unless the registrant reasonably believes that such proceedings will result in fines of less than \$100,000. Although a majority of the commentators supported the addition of a dollar amount threshold, many contended that, in view of the difficulty in making meaningful predictions about the outcome of pending proceedings, it would be preferable to base disclosure on the actual damages imposed at the conclusion of the proceeding. The Commission believes, however, that after-the-fact disclosure would be less useful to investors and that the "reasonable belief" standard is appropriate because, as a number of commentators pointed out, it is similar to the standard registrants currently utilize for determining the proper accounting treatment of financial contingencies.<sup>43</sup> The majority of commentators opined that the proposed \$100,000 figure would be appropriate if the reasonable belief standard were adopted.

Several commentators believed that a burdensome data collection and evaluation effort would be required in order to determine whether the potential fines likely to be imposed in similar proceedings would meet the \$100,000 threshold of clause (c). In response to this concern, the definition of "proceeding" is revised to clarify that aggregation of similar proceedings is not required for purposes of clause (c). It should be noted that since clause (c) concerns proceedings involving potential monetary sanctions, permit proceedings and requests for waivers or variances would not be disclosable pursuant to clause (c).

Several commentators asserted that the increasing number of legislative and regulatory provisions which arguably relate to environmental matters sometimes makes it difficult to determine whether disclosure is

<sup>43</sup>See, *generally*, Financial Accounting Standards Board, *Statement of Financial Accounting Standards No. 5: Accounting For Contingencies* (1975).

required because of the Instruction's reference to proceedings arising from provisions " \* \* \* otherwise relating to the protection of the environment." In order to eliminate any ambiguity in the language, the Commission is substituting the phrase "or primarily for the purpose of protecting the environment." Another change provides that aggregation of proceedings only is required with respect to proceedings involving the same "legal and factual" issues. Accordingly, the Commission is adopting clause (c) as proposed and amending the definition of "proceeding" in the manner described above.<sup>44</sup>

There was extensive adverse reaction to the proposal to delete the current provision allowing similar legal proceedings to be grouped and described generically. Because generic descriptions would be more efficient and may be more intelligible to investors, the option of a generic discussion is being retained in the final form of the Instruction.

Most commentators criticized the proposal to require disclosure of the governmental authorities from whom compliance-related reports can be obtained. In view of these objections and the absence of any expressed desire for such information by a substantial number of investors, the Commission is withdrawing this proposed requirement.

Finally, the Commission solicited comment on the need for, and feasibility of, an additional provision which would require brief aggregate disclosure of the number of, and total amount involved in, governmental proceedings not otherwise subject to disclosure under proposed clause (a), (b) or (c). A large number of commentators argued that such a provision would reimpose most of the administrative burdens the proposed revisions sought to eliminate and that the resulting disclosures would be meaningless and confusing to investors. Consequently, the Commission has determined not to adopt such an additional provision.

5. *Item 201—Market Price and Dividends on the Registrant's Common Equity and Related Stockholder Matter.* Other than clarifying changes, only two substantive changes have been made to Item 201. The first revises the "overhang" disclosure required. The Commission has determined that specific disclosure requirements with

respect to securities "overhanging" the market for a registrant's common equity is needed primarily where common equity securities are being registered on a Form S-1 or Form 10 and there is no established public trading market for such securities. In such cases, the likely development of a public trading market and the commencement of public reporting under the Exchange Act gives rise in itself to the possibility of a material market overhang. The deletion of the specific requirements of proposed paragraph (a)(3) with respect to market overhang does not rescind the general disclosure obligation to set forth those facts that the registrant knows which reasonably suggest that the historical market prices reported will be materially adversely affected by securities overhanging the market for the registrant's common equity. Further, the reference in paragraph (a)(2) to common equity "which may be registered under the Securities Act for sale by security holders" has been revised to refer to common equity "that the registrant has agreed to register under the Securities Act for sale by security holders."

Paragraph (c) has been amended to permit cross-reference to descriptions of dividend limitations and discussion thereof in the financial statements and the management's discussion and analysis of financial condition and operating results, thereby eliminating duplicative disclosure of the terms of such restrictions. Where the current or future payment of dividends is, or is reasonably expected by the registrant to be, materially limited, such fact still must be noted in connection with the disclosure of information concerning dividends paid in the last two fiscal years.

Instruction 5 defining common equity has been deleted because a definition of common equity is included in Regulations C and 12B as adopted herein.

6. *Item 202—Description of Registrant's Securities.* In addition to clarifying changes, Item 202 incorporates one major revision. Paragraph (a)(5) with respect to antitakeover provisions has been revised substantially. A number of provisions previously specified in paragraph (a)(5), such as classification of the board of directors, super-majority rules and restrictions on alienability of the stock are addressed in the list in paragraph (a)(1) of disclosable terms of the securities. Paragraph (a)(5) has been redrafted to require a discussion of the effect on control of the registrant of certain charter and by-law provisions where such provisions are

effective only in the case of a major corporate transaction, such as a merger, liquidation, sale of substantially all assets or tender offer, and where they would delay, deter or prevent a change in control of the registrant.

7. *Item 301—Selected Financial Data.* Item 301 has been amended to delete all reference to the ratio of earnings to fixed charges. The requirements applicable to disclosure of such ratio are included in Items 503 and 601 of Regulation S-K.

Instruction 2 to the Item also has been revised to delete reference to the qualified auditor's report and to require instead a brief note as to matters affecting the comparability of the five year information, as well as certain contingencies.

8. *Item 302—Supplementary Financial Information.* As the Commission noted in the S-K Release, because the criteria specified in paragraph (a) as to registrants required to include certain historical quarterly financial data appear to have little relevance to those upon which the integrated disclosure system is based, the Commission anticipates undertaking a reconsideration of the requirements in paragraph (a) in the near future.<sup>45</sup>

9. *Item 503—Summary Information, in Risk Factors and Ratio of Earnings to Fixed Charges.* Provisions regarding disclosure of the ratio of earnings to fixed charges are being adopted as paragraph (d) of Item 503.<sup>46</sup> The provisions are located in the Registration Statement and Prospectus Provisions section of the Regulation because the ratio only is being required in certain Securities Act filings.

In addition to editorial changes of a clarifying nature, the proposed ratio rules have been changed in the

<sup>45</sup>Item 302(b) has been revised to reflect the issuance of Statement of Financial Accounting Standards No. 54, "Financial Reporting and Changing Prices: Investment Companies."

<sup>46</sup>The requirements governing disclosure of the ratio of earnings to fixed charges were proposed initially in Release No. 33-6285 (February 6, 1981) [46 FR 12756] and repropoed without change in the S-K Release. No amendments to those provisions of Rules 13e-3 (17 CFR 240.13e-3) and 13e-4 (17 CFR 240.13e-4) and Schedules 13E-3 (17 CFR 240.13e-100) and 13E-4 (17 CFR 240.13e-101) relating to the ratio of earnings to fixed charges are being adopted because the Commission believes the transactions subject to those rules present unusual disclosure issues. Until reexamination of the ratio requirements in these rules, registrants are expected to compute the ratios in accordance with the Item 503(d) provisions adopted today.

Accounting Series Release ("ASR") Nos. 119 and 122 are being rescinded and Topics 3B and 9B of Staff Accounting Bulletin ("SAB") No. 40 are being withdrawn in a concurrently issued release because they discuss elements of the computation of the ratio which are covered in the new rules. See Accounting Series Release No. 307 (March 3, 1982).

<sup>44</sup>Several commentators raised questions about the types of matters covered by the term "proceeding." In a previous interpretive release the Commission expressed its views regarding the scope of the definition of "proceeding" and registrants should consult this release for further guidance. Release No. 33-6130 (September 27, 1979) [42 FR 44860].

following respects. First, the present practice of requiring the ratio of earnings to fixed charges in debt offerings and the combined ratio in preferred stock offerings is being retained. The Commission agrees with the view of many of the commentators that the combined ratio may not be meaningful to a potential debtholder since the preferred stockholder has a subordinate claim on the registrant's earnings. Of course, registrants may choose to disclose one or both ratios in other filings.

Second, the proposal has been revised to incorporate Topic 9B of Staff Accounting Bulletin No. 40, which requires disclosure of the ratio of a registrant's parent as well as the registrant's ratio when the registrant's parent company is artificially maintaining the registrant's ratio of earnings to fixed charges, for example, in order to meet the minimum borrowing standard stipulated by a state agency. In addition, disclosure of the parent's ratio is required if the registrant's parent is guaranteeing the registrant's debt securities or preferred stock.

Third, the proposed definition of earnings for purposes of computation of the ratio has been changed to exclude earnings from discontinued operations. Commentators believed that comparisons between years and companies would be facilitated by computation of the ratios on the basis of only continuing operations because such earnings are more stable and consistent.

Finally, Item 503(d) permits an earnings adjustment equal to the amortization of current and prior year's capitalized interest. Many commentators agreed that such an adjustment was desirable but noted the problems involved in requiring such an adjustment in all situations.

10. *Item 504—Use of Proceeds.* Instruction 6 has been revised to delete the "reasonably probable" test objected to by the commentators as too vague. Instead, the exception to the disclosure required by Instruction 6 will be available only where Regulation S-X would not require inclusion of financial statements of the company to be acquired and disclosure of the required information would jeopardize the acquisition.

11. *Item 506—Dilution.* The requirement to discuss dilution has been revised to minimize instances where such disclosure would be required of more seasoned companies whose securities are selling on the basis of earnings, and where dilution of book value generally is not material to the investor.

12. *Item 508—Plan of Distribution.* A new paragraph (j) has been added to this item to elicit disclosure regarding any principal underwriter's intentions to sell to their discretionary accounts. As was the case pursuant to previous Item 2 of Form S-1, this disclosure is required only where the registrant was not subject to Exchange Act reporting requirements.

13. *Item 510—Disclosure of Commission Position on Indemnification for Securities Act Liabilities.* As noted above, paragraph (a) of proposed Item 510 is adopted as Item 702 of Regulation S-K. Item 510 as adopted is comprised of paragraph (b) of proposed Item 510 without substantive change.

14. *Item 512—Undertakings.* The undertaking specified in paragraph (a) has been revised by adding an instruction regarding managing underwriters as described below in the discussion of shelf registration.

15. *Item 601—Exhibits.* A number of revisions have been made to Item 601 as proposed in the S-K release. The majority of these changes have been made in response to public comment and seek to clarify the description of the various exhibit items. Other revisions have been made in order to implement certain aspects of the integrated disclosure system.

a. *Revisions to the exhibit table.* ¶1—Instruction 2 to the exhibit table has been revised in order to make clear that an exhibit filed with the Commission in connection with a Securities Act registration statement subsequently may be incorporated by reference as an exhibit to an Exchange Act report, even if such exhibit was not previously filed with every exchange on which the registrant's securities have been listed.

Exhibit Item 1 [Underwriting agreements] will be required to be filed with all underwritten offerings on Form S-14, although this requirement had been proposed to be deleted. ¶2—After reconsideration, the Commission has determined that this exhibit may be relevant in connection with transactions registered on that Form.

Exhibit Item 2 [Plan of acquisition, reorganization, arrangement, liquidation or succession] will be required to be filed with a report on Form 10-Q where such plan is described in the report. This change is made for clarification only, as Exhibit Item 19 [Previously unfiled

¶1 If the revisions to Form S-18 (17 CFR 239.28) are adopted as proposed, the exhibit table will be revised further to include a column setting forth those exhibits which will be required to be filed with such form. See Release No. 33-6388 (March 3, 1982).

¶2 See the S-K Release, 46 FR at 41936.

documents] otherwise would require that this exhibit be filed.

Exhibit Item 9 [Voting trust agreement] will be required to be filed in connection with an annual report on Form 10-K. In light of the importance of this exhibit to shareholders, investors and others and the fact that this exhibit may be incorporated by reference from a previously filed document, the Commission does not believe that this requirement will place an undue burden upon registrants.

Exhibit Item 12 [Statement re computation of ratios] will be required to be filed with all Securities Act registration statements for debt or preferred stock offerings.

b. *Revisions to the description of exhibits.*—Exhibit Item 1 [Underwriting agreement], as revised, may be filed with a report on Form 8-K, where such report is incorporated into a registration statement subsequent to its effectiveness.\*

Exhibit Item 4 [Instruments defining the rights of security holders—including indentures] has been revised for clarification and, with respect to Forms 8-K and 10-Q, to delete the requirement to file the exhibit where additional securities or indebtedness of a class outstanding are issued or reissued. Because the information elicited by such requirement is already on file with the Commission, there is no need for registrants to refile it.

Exhibit Item 5, paragraph (ii) [Opinion re legality] has been revised for clarification in response to public comment. The description, as revised, allows registrants to file either an opinion of counsel or an Internal Revenue Service determination letter regarding the legality of securities issued pursuant to a plan subject to the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) both when the plan is adopted originally and when it is amended subsequently.

Exhibit Items 6 [Opinion re discount on capital shares] and 7 [Opinion re liquidation preferences] have been amended in response to comment to allow counsel to refer specifically to any applicable constitutional or statutory provisions in his opinion, rather than setting forth each provision.

Exhibit Item 10 [Material contracts] has been revised in response to comment to expand the exemption proposed to be included in paragraph (iii)(B)(6) to exempt wholly-owned subsidiaries of registered companies from filing copies of remunerative plans, contracts or arrangements in connection

with the registration of non-voting preferred stock on Form S-2.

Exhibit Item 12 [Statement re computation of ratios] has been revised for clarification.

Exhibit Item 15 [Letter re unaudited financial information], as revised, may be filed with a report on Form 10-Q, where such report is incorporated by reference into a Securities Act registration statement. This revision has been adopted to give registrants the option of filing this letter with their Form 10-Q report, with their Securities Act registration statement or as an amendment thereto.

Exhibit Item 19 [Previously unfiled documents], which is primarily a quarterly updating requirement, has been rewritten for clarification only.

Exhibit Item 22 [Subsidiaries of the registrant] has been amended to allow registrants to incorporate by reference their list of subsidiaries if an accurate and complete list is contained in one document previously filed with the Commission.

Exhibit Item 24 [Consents of experts and counsel] has been revised to implement Rule 439. This revision gives registrants the option of filing an otherwise required consent as an exhibit to a report on Form 8-K, 10-Q or 10-K when such report is incorporated by reference into a Securities Act registration statement subsequent to its effectiveness.

Exhibit Items 24 and 25 [Power of attorney] have been revised to make clear that consents or powers of attorney may be filed in a separate part of the registration statement or document filed therewith, so long as a reference is made in the exhibit index to the part of the registration statement or document which contains such consent or power.

Exhibit Item 26 [Statement of eligibility of trustee] has been revised to make clear that such statement, contained in a Form T-1, is also a filing under the Trust Indenture Act of 1939 and, therefore, for the convenience of the staff, shall be separately bound.

16. Item 702—*indemnification of directors and officers*.—This item is taken without substantive change from paragraph (a) of Proposed Item 510.

C. *Security Ratings*.—In the Security Ratings Release, the Commission announced its determination to permit registrants to disclose, on a voluntary basis, ratings assigned by nationally recognized statistical rating organizations ("NRSROs") to classes of debt securities, convertible debt securities and preferred stock in registration statements and in periodic reports. Prior to that time, the

Commission staff has discouraged disclosure of security ratings except in limited circumstances.<sup>49</sup>

The Commission, however, had been reconsidering its position against disclosure of security ratings for several years. Public comment was solicited in 1977 concerning, among other things, the appropriateness of encouraging or requiring ratings disclosure and the impact of subjecting rating organizations to potential liability as experts under Section 11 of the Securities Act in connection with ratings disclosed in registration statements.<sup>50</sup> On the basis of the comments received on the 1977 Release, the Commission had determined that it would not be appropriate to mandate disclosure of ratings. Nonetheless, it recognized the importance of security ratings to investors and the marketplace and the significance attached to ratings by various regulatory entities.

After further considering the benefit \* that investors may derive from security ratings disclosure and determining to condition the availability of proposed Form S-3, for certain issuers registering investment grade non-convertible debt securities, on the rating assigned to such securities by an NRSRO, the Commission determined to permit disclosure of ratings in registration statements and in periodic reports. In the Security Ratings Release, the Commission set forth its views on certain matters to be considered when including a rating, such as the inclusion of additional information, additional ratings and rating changes.

The Commission also proposed two rule amendments to facilitate disclosure of ratings. First, a new paragraph (g) was proposed to be added to Rule 436 under the Securities Act to provide that a rating assigned by an NRSRO to debt and convertible debt securities and preferred stock would not be considered a part of a registration statement under Sections 7 and 11 of the Securities Act. The rule amendment would eliminate the requirement to file the consent of any NRSRO in connection with any registration statement disclosing such a rating, thus exempting the NRSRO from section 11 liability. The proposed exemption from section 11 liability was

<sup>49</sup>Security ratings have been permitted in investment company registration statements provided the rating organization's consent, or a waiver of consent, has been obtained. In addition, material changes in security ratings of registrants' outstanding securities may be reported under Rule 408 under the Securities Act (17 CFR 230.408), Rule 12b-20 (17 CFR 240.12b-20), Rule 14a-9 (17 CFR 240.14a-9) of Schedule 14A under the Exchange Act or Item 5 of Form 8-K.

<sup>50</sup>Release No. 33-5882 (November 3, 1977) [45 FR 58414] (the "1977 Release").

based on the practical problems of requiring the consent of NRSROs and the recognition that such organizations already are subject to the antifraud provisions of the federal securities laws.<sup>51</sup> Second, Rule 134 under the Securities Act was proposed to be amended to permit disclosure of security ratings assigned by NRSROs to debt and convertible debt securities and preferred stock in certain communications deemed not to be a prospectus ("tombstone advertisements") on the basis that such disclosure is consistent with disclosure of security ratings in registration statements.

The Commission received approximately forty comment letters on its new policy and related proposals. Although some commentators objected to disclosure of security ratings in Commission filings under any circumstances, the majority of commentators supported voluntary disclosure of ratings and the proposed amendments. Commentators did request, however, additional guidance as to the application and operation of the new policy and rules.

The Commission continues to believe that ratings should be permitted to be disclosed in Commission filings and tombstone advertisements and that it is appropriate to exempt NRSROs from Section 11 liability if their ratings are included in Securities Act registration statements. Accordingly, the Commission today is affirming its new policy and adopting the proposed amendments to Rules 436 and 134.<sup>52</sup>

Furthermore, although disclosure of security ratings remains entirely voluntary, the Commission, as suggested by commentators, is setting forth its views on ratings disclosure in Regulation S-K in order to provide additional guidance and certainty. The Commission believes inclusion of the policy in Regulation S-K is consistent with the Regulation's function as the repository of uniform disclosure requirements and with the treatment of the Commission's policy on projections, which also is set forth in Regulation S-

<sup>51</sup>Section 17(a) of the Securities Act and section 10(b) of the Exchange Act and Rule 10b-5 (17 CFR 240.10b-5) thereunder; and when registered as investment advisers, NRSROs are subject to section 206 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.).

<sup>52</sup>The Commission wishes to make clear that its new policy and rules are limited to disclosure of security ratings. They do not extend to disclosure of policyholder ratings assigned to insurance companies. The Commission recently solicited public comment on whether disclosure of policyholder ratings should be permitted (Release No. 33-6376 (January 11, 1982) [47 FR 3130]) and will resolve that issue after it has had an opportunity to consider any comments that may be received.

K. The policy on security ratings, which is included in Regulation S-K after the policy on projections as paragraph (d) of the General section, clarifies the views of the Commission expressed in the Security Ratings Release, with certain modifications suggested by commentators or otherwise deemed appropriate.

The policy statement provides that ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock may be included in registration statements<sup>33</sup> and in periodic reports. The statement thus makes clear that disclosure of security ratings is not limited to Securities Act registration statements, but extends to certain Exchange Act filings as well. In addition, the statement makes clear the Commission's determination to permit disclosure of security ratings by rating organizations other than NRSROs.<sup>34</sup> The Commission believes that, if a registrant determines that the rating of a non-NRSRO would be of interest to investors and the marketplace, it should not be prevented by the Commission from including such rating in its registration statement or periodic report.<sup>35</sup>

The statement also provides that security ratings assigned by NRSROs may be included in tombstone advertisements pursuant to Rule 134.

In paragraphs (1) (i) through (iii), the policy statement provides the

<sup>33</sup>In the case of investment company registration statements, such ratings may be included for debt securities being registered or in connection with the company's schedule of portfolio debt securities. In addition, investment companies will continue to be permitted to include security ratings assigned to their equity securities being registered, but may not be able to rely on Rule 436(g) in connection with such ratings in view of the Rule's limitation to debt and convertible debt securities and preferred stock.

<sup>34</sup>The term "nationally recognized statistical rating organization" is stated in Rules 436 and 134, adopted today, to have the same meaning as in the Commission's uniform net capital rule. (17 CFR 240.15c3-1(c)(2)(vi)(F)). Several commentators objected that the net capital rule does not contain any specific definition of the term, and that, accordingly, rating organizations that are not NRSROs are not provided with sufficient guidance as to how to qualify as such. The Commission is not aware at this time of any substantial burden being imposed on rating organizations that are not NRSROs due to any absence of guidance in this area. Currently, the following organizations are accepted as NRSROs under the net capital rule: Standard & Poor's Corporation; Moody's Investors Services, Inc.; Fitch Investors Services, Inc.; and Duff and Phelps, Inc. Accordingly, the Commission believes that the determination made by the Commission staff concerning NRSRO status for net capital rule purposes is sufficient at present for security ratings disclosure purposes.

<sup>35</sup>Inclusion of a rating assigned by a non-NRSRO in a Securities Act registration statement, however, would require the filing of the written consent of the rating organization under Section 7 of the Securities Act.

Commission's views on certain matters, including additional disclosures, to be considered when including a security rating in a Securities Act filing.<sup>36</sup>

Paragraph (1)(i) sets forth certain basic considerations when filing a registration statement that includes a rating. First, the registrant should consider including every other available rating intended for public dissemination assigned to such class by an NRSRO that is materially different from any rating disclosed. The Commission has determined that, contrary to its position in the Security Ratings Release, it is not necessary for registrants to include additional available ratings that are not materially different.<sup>37</sup> The clause "intended for public dissemination" in paragraph (1)(i) makes clear that disclosure of non-public ratings or of non-public preliminary indications of a rating is not intended.

Second, a registrant also should consider including certain limited additional information to provide the reader with a concise explanation of the fundamental characteristics of security ratings and to make clear the source of the rating from which an investor may obtain more detailed information. In this regard, the Commission does not intend that registrants include lengthy and detailed explanations of the ratings process. However, it does not agree with certain commentators that information other than the rating and name of the rating organization is so easily accessible that it would not be useful to investors and that it would be unduly burdensome for registrants to disclose. A concise explanation of the meaning of a rating would appear to be very helpful to investors, particularly in the case where more than one rating is disclosed, and would help to ensure that investors do not place undue emphasis on such ratings.

Third, if a registrant includes a rating assigned by a rating organization that is not an NRSRO, it should include the written consent of such organization as is required under section 7 of the Securities Act. With respect to ratings assigned by NRSROs, the registrant is referred to Rule 436(g) which contains

<sup>36</sup>Additional disclosures, other than the name of the rating organization, may not be necessary in certain circumstances, such as in connection with the inclusion of security ratings in management's discussion and analysis of financial condition and results of operations furnished pursuant to Item 303 of Regulation S-K.

<sup>37</sup>The additional ratings that should be considered to be disclosed are likewise limited to materially different NRSRO ratings in other paragraphs of the policy statement concerning additional ratings assigned subsequent to the filing of the registration statement and additional ratings in Exchange Act filings.

the exemption from filing such organizations' consents.<sup>38</sup>

Paragraphs (1) (ii) and (iii) of the policy statement set forth the Commission's views concerning the appropriate considerations in the event materially different additional ratings or rating changes become available subsequent to the filing of the registration statement. Paragraph (1)(ii) provides, that, if a rating that was disclosed in the registration statement changes prior to the registration statement's effectiveness, the rating change generally should be disclosed in the final prospectus. However, if there is a material change in a disclosed rating or if a materially different additional NRSRO rating becomes available, the registrant should consider amending the registration statement to disclose the additional rating or rating change and recirculating the preliminary prospectus.

The "materially different" standard, used in paragraph (1)(ii) to indicate when an additional NRSRO rating might necessitate amending the registration statement, has been substituted for the "substantially different" standard contained in the Security Ratings Release to provide more guidance to registrants and to avoid placing excessive burdens on registrants to amend their filings. Likewise, whereas the Security Ratings Release advised consideration of an amendment to the registration statement and recirculation of the preliminary prospectus in the case of any change in a disclosed rating, the policy statement makes clear that such consideration is appropriate only in the case of a "material change."

Paragraph (1)(iii) provides that, if a materially different additional NRSRO rating becomes available after effectiveness of the registration statement, or if there is a material change in a disclosed rating at any time while offers and sales are being made, the registrant should consider disclosing such additional NRSRO rating or rating change by means of a post-effective amendment or sticker to the prospectus pursuant to Rule 424(c) under the Securities Act. However, in the case of a registration statement on Form S-3, the registrant may incorporate such information by reference. As in paragraph (1)(ii), the "materially different" and "material change" standards are used to provide guidance

<sup>38</sup>Several commentators expressed concern about the effect the exemption from Section 11 liability for NRSROs would have on the liability of issuers, officers, directors and underwriters in connection with ratings. The Commission notes that disclosure of ratings is optional and, in any event, issuers may seek to obtain an NRSRO's written consent.

and to avoid placing undue burdens on registrants.

Paragraphs (2) (i) and (ii) present the Commission's views as to the appropriate considerations when including a rating in an Exchange Act filing. Paragraph (2)(i) makes clear that, if a registrant includes a rating in an Exchange Act filing, it also should consider including any materially different additional NRSRO ratings and such additional information as would be considered for inclusion in a Securities Act registration statement disclosing a security rating. Finally, paragraph (2)(ii), consistent with current practice, provides that registrants, in the event of a material change in the ratings of their outstanding securities, should consider filing a periodic report disclosing such change.

#### IV. Procedural Provisions

##### A. Background

The third aspect of the integrated disclosure system consists of Regulation C and Regulation 12B, which contain the procedures to be used in preparing and filing registration statements and reports under the Securities Act and the Exchange Act, respectively.<sup>59</sup> As part of the rulemaking proceeding to develop an integrated disclosure system, the Commission proposed revisions to Regulations C and 12B to accomplish three objectives. First, revisions were proposed to centralize all disclosure requirements in Regulation S-K.<sup>60</sup> Second, revisions were proposed to establish Regulations C and 12B as the source of procedural requirements in the integrated disclosure system. Prior to this rulemaking proceeding, procedural provisions were found not only in Regulations C and 12B, but also in the Guides and in the instructions to registration forms and reports. Because the provisions in the Guides and the instructions were often duplicative of, and in some situations inconsistent with, the provisions of Regulations C and 12B, the Commission proposed amendments to eliminate duplications and to harmonize inconsistencies.<sup>61</sup> Third, revisions were proposed to modify current rules and to remove

<sup>59</sup>The rules in Regulation C and 12B which have not been revised are not reprinted in this release.

<sup>60</sup>The following disclosure items previously found in Regulation C have been moved to Regulation S-K: the description of securities in Rule 406; the undertakings in Rules 415 and 428; the table of contents requirement in Rule 421; the legend provisions in Rules 425, 425a, 426 and 433; and certain exhibit provisions in Rules 435, 445 and 446.

<sup>61</sup>Corresponding revisions in the registration forms and reports were proposed in the S-1-2-3 Release, the Securities Act Coordinating Release and the Exchange Act Coordinating Release.

obsolete and unnecessary rules as part of a "sunset" review of Regulations C and 12B.<sup>62</sup> Related to the sunset review was a solicitation of public comment on the necessity of restructuring Regulation C.

##### B. Synopsis of Revisions

The comments received in response to the proposed revisions to Regulations C and 12B supported the Commission's objectives, with the vast majority of the comment directed toward a few specific points of interest for each commentator. However, certain commentators recommended either the development of a new procedural regulation encompassing the procedural provisions of Regulations C and 12B, as well as those of the proxy rules, or a total reorganization of Regulation C. The Commission has determined that a new procedural regulation encompassing all procedural provisions, similar to Regulation S-K for disclosure matters and Regulation S-X for accounting matters, is not appropriate because, unlike certain disclosure and accounting matters, the procedural requirements are not as interchangeable. Procedures for filing registration statements are necessarily different from the procedures for filing proxy statements, because of the different functions which such statements fulfill under the statutes. While there is some overlap in the provisions of Regulation C, Regulation 12B and the proxy regulations, the Commission has determined that the better approach is to eliminate unnecessary inconsistencies among the provisions and to continue the current pattern of separate procedural rules to which a registrant and its counsel can turn easily for specific guidance on the procedures to be used in satisfying statutory obligations.

With respect to the organization of Regulation C, in response to comment, the Commission has determined to locate the rules specifically relating to registration statements for competitive bidding<sup>63</sup> and to investment companies and business development companies<sup>64</sup>

<sup>62</sup>No overall review has been undertaken for some time. See the Regulation C Release, 48 FR at 41972, for a discussion of the background and the development of Regulations C and 12B.

<sup>63</sup>Current Rules 415, 428 and 471(b) have been recast as Rules 445, 446 and 447, respectively, under the heading "Competitive Bids."

<sup>64</sup>One aspect of a reorganization of Regulation C that was the subject of comment was the rules proposed for registration statements under the Securities Act for investment companies and business development companies. Since the forms for the registration of securities by such companies do not reference Regulation S-K, the provisions of Regulation C which were proposed to be transferred

under separate headings within Regulation C.

In general, the discussion of the revisions of the rules in Regulation C and of the corresponding revisions of the rules in Regulation 12B follows the organization of Regulation C. Because of the importance of the shelf registration concepts, this subject will be discussed under a separate heading. This discussion will highlight only the significant changes made in the proposed revisions as set forth in the Regulation C Release.<sup>65</sup>

1. *General Requirements.* Several commentators requested that the Commission delete or otherwise modify the final clause of paragraph (g) of proposed Rule 401 which generally provided that the Commission could notify a registrant that the effectiveness of a registration statement would provide no presumption as to the appropriateness of the registration form used by the registrant.<sup>66</sup> They contended that a good faith, but erroneous, determination as to the availability of a registration form should not result in contingent liability for the sale of unregistered securities. Based on these and related comments and the implementation of certification requirements in the signature provisions of the registration forms, the Commission has determined to delete the last clause of Rule 401(g).

The majority of the comments on the Regulation C proposals addressed the definitions in proposed Rule 405 and proposed Rule 12b-2. Certain commentators requested that the Commission retain the current definition of the term "material" or modify the proposed definition. Since the proposed definition is based on the definition as set forth by the Supreme Court in *TSC*

to Regulation S-K were set forth in four special rules, denominated by the letter "y", which were to apply only to investment companies and business development companies. Comment was requested on whether these rules and other rules which apply only to such companies should be located in a special section of Regulation C. Proposed Rule 406y, proposed Rule 425y, Rule 434d, proposed Rule 445y, proposed Rule 461y and Rule 465 have been recast as Rules 480 through 485, respectively, under the heading "Investment Companies; Business Development Companies." Rule 400 has been revised and a note has been added to Regulation C following such heading to make clear that these rules are applicable to such companies in addition to all of the remaining rules of Regulation C.

<sup>65</sup>See the Regulation C Release for a complete discussion of all of the proposed revisions to Regulations C and 12B.

<sup>66</sup>See the Regulation C Release, 46 FR at 41976, for a discussion of the operation of proposed Rule 401 and the purpose of the last clause of proposed Rule 401(g).

*Industries, Inc. v. Northway*,<sup>67</sup> the Commission has determined to adopt the definition of the term "material" as proposed. Other comments suggested that the definition of the term "executive officer" be revised to limit the scope of the definition by emphasizing policy making functions as the determining factor for classifying a person as an executive officer. The Commission has determined to adopt a uniform definition for the term "executive officer" based substantially on the proposed definition, but revised to emphasize policy making functions.<sup>68</sup> It should be noted that policy making functions would include business and legal decisions. Pursuant to other comments, the definition of the term "significant subsidiary" has been conformed to the definition of that term as adopted by the Commission in Regulation S-X.<sup>69</sup> A definition of the term "common equity" has been adopted because it is used in several places<sup>70</sup> and a definition of the term "business development company" has been added to avoid repetitious references. A definition of the term "managing underwriter" has been added in response to comment received on the Rule governing shelf registration.

Rule 485 relating to confidential treatment of contracts has been recast as Rule 406.

The commentators made various suggestions relating to the rules governing incorporation by reference. Certain language changes have been made to clarify the procedures of incorporation by reference. Other changes made pursuant to comment include, most notably, the incorporation of the substance of Rules 422 and 12b-24, dealing with summaries of documents, into revised Rules 411 and 12b-23 respectively.

The incorporation by reference rules are an important aspect of the operation of the integrated disclosure system. Pursuant to Rule 24 of the Commission's Rules of Practice (17 CFR 201.24), incorporation of information by reference to a document may not be made if the referred to document

<sup>67</sup>426 U.S. 438 (1976). See the Regulation C Release, 46 FR at 41977-8, for discussion of the *Northway* standard.

<sup>68</sup>The same definition is adopted for the Exchange Act in Rule 3b-7. As a result, definitions of the term "executive officer" previously found in Rule 13e-3, Rule 13e-4, Schedule 13D [17 CFR 240.13d-101], Rule 14a-3, Rule 14c-3 [17 CFR 240.14c-3] and Rule 14d-1 [17 CFR 240.14d-1] under the Exchange Act; and Instruction 1(b) to Item 4(h) of Regulation S-K have been deleted. 1

<sup>69</sup>See Release No. 33-6359.

<sup>70</sup>This definition is derived from the definition of the term "common equity" in Instruction 5 to proposed Item 201 of Regulation S-K. See the Regulation S-K Release, 46 FR at 41946.

incorporates by reference a third document; except where incorporation by reference is expressly required. Under the Securities Act in Rule 411, subject to Rule 24, incorporation of information may be made by reference to any document filed with the Commission; except that with respect to a prospectus, information may be incorporated by reference only where the particular registration form so permits or to qualify a required summary or outline of a document. Under the Exchange Act in Rule 12b-23, subject to Rule 24, incorporation of information may be made by reference to any document, provided that such document is filed as an exhibit to the Exchange Act report or statement; except that information or documents required to be filed as exhibits to an Exchange Act report or statement may be incorporated by reference if previously filed with the Commission and no additional filing is required.

Rule 414 has been revised in response to comment to extend the coverage of the rule to certain intrastate reorganizations, where the issuer is changing only its form of organization, such as a trust to a corporation or vice versa. The extension of Rule 414 to such intrastate reorganizations is conditioned on the satisfaction by the successor issuer of the requirements of paragraphs (a) through (d) of Rule 414.

Because proposed Rule 418 has been recast as Rule 412,<sup>71</sup> proposed Rule 419 (Supplemental information) has been recast and adopted as Rule 418.<sup>72</sup> In addition to certain minor revisions, the Commission has determined to delete the paragraph on information concerning the underwriter's due diligence investigation with respect to new registrants and issues of securities about which certain risk factors are required to be disclosed.<sup>73</sup>

Other minor revisions have been made to the rules comprising the General Requirements.

2. *Shelf Registration*. Rule 415 is a temporary rule, effective until December 10, 1982, which governs the registration of securities that are to be offered and sold on a delayed or continuous basis in the future ("shelf registration").<sup>74</sup> The

<sup>71</sup>See discussion of liability issues in Part V, *infra*.

<sup>72</sup>A supplemental information rule has been added to Regulation 12B: Rule 12b-4.

<sup>73</sup>The deletion of this paragraph does not affect the Commission's view that, "[a] thorough and intensive underwriter's investigation is especially important in an initial public offering by companies in the development stage or those dealing with 'high technology' products or processes. Release No. 33-5275 (July 27, 1972) [37 FR 16011 at 16013].

<sup>74</sup>The Rule was first proposed in the Guides Release as proposed Rule 462A. It was repropo-

Rule codifies staff practice concerning shelf offerings which have occurred to date, such as securities to be offered in a continuing acquisition program.<sup>75</sup> Under certain circumstances, it contemplates shelf registration for primary offerings of equity securities which the registrant intends to sell on a non-fixed price basis over time depending on market conditions. Also, the Rule contemplates an issuer's selling the securities registered on the shelf in a succession of different kinds of offerings.

A substantial number of commentators expressed views on the shelf rule proposal ranging from support for the rule, as proposed or with modifications, to concern that the proposal would have worked potential impacts upon the capital raising process.<sup>76</sup> Recognizing the importance of the views and concerns of the commentators, the Commission is taking a series of procedural steps to afford the opportunity for continued consideration of shelf registration and is adopting the Rule, with modifications, on a temporary basis.

The procedural steps will include public hearings to explore the impact of a shelf registration rule and to give all interested parties further opportunity to present their views to the Commission. The hearings will be announced officially in a separate release published in the near future and will begin in approximately four months. During the period prior to the commencement of the hearings, interested investors, registrants and members of the securities industry may wish to form groups or task forces to organize and prepare their presentations. Following the hearings, the Commission may publish further rulemaking proposals for notice and comment.

again as proposed Rule 462A, in conjunction with the Commission's proposed integration program in the "Shelf Release." These two proposing releases contain extensive discussion of the background and issues relating to shelf registration.

<sup>75</sup>It should be noted that Rule 415 replaces former Guide 4 and various no-action and interpretive letters issued by the staff concerning particular offerings to be made on a delayed or continuous basis. Accordingly, registrants should no longer rely on previous staff positions and letters and comply with Rule 415.

<sup>76</sup>In addition to the 55 comment letters on the shelf rule proposal (File No. S7-896) received during the official comment period ending October 30, 1981 or shortly thereafter, the Commission received 44 comment letters in the seven weeks preceding its consideration of the shelf rule on February 24, 1982. These 44 letters are not included in the comment highlights prepared by the Division of Corporation Finance (See Note 12, *supra*), but were accepted and included in the public record and are available for public inspection and copying at the Commission's Public Reference Room (File No. S7-896). See 17 CFR 202.6(b).

The temporary Rule will be effective until December 10, 1982. During that period, the Commission will monitor the operation and impact of the new Rule. Prior to the temporary Rule's expiration, the Commission expects that the further proceedings noted above will have been concluded and a determination will be made whether to adopt Rule 415 as a permanent rule, adopt a modification of Rule 415 or allow the Rule to expire.<sup>77</sup>

Rule 415 reflects changes from the proposal in two respects: (1) the addition of two further conditions for primary, at the market offerings of equity securities and (2) the clarification of related Item 512(a) of Regulation S-K (undertakings to file post-effective amendments) and Rule 405 (definitions) with respect to managing underwriters. The following discussion is intended to clarify certain issues raised by commentators in response to the proposed Rule and to highlight the changes made in the proposals. Because the Guides Release and the Shelf Release discussed in detail the background and major issues of shelf registration, as well as the essential features of the Rule, this release does not repeat earlier explanatory material.

*a. Bona Fide Intention to Offer and Sell.*—Rule 415(a)(1)(i) as proposed in the Shelf Release permits registration of any security on a shelf registration statement in an amount that is reasonably expected to be offered and sold within two years of the registration statement's effective date. Some commentators argued that this standard is inappropriate and unnecessary. The Commission adheres to its belief that the flexible, yet measurable, standard provided by the two-year benchmark is a proper condition to the general use of shelf registration statements for primary offerings. Paragraphs (a)(1)(ii) through (a)(1)(vii) of the Rule set forth those types of offerings that in the Commission's experience may be permitted without regard to the two-year standard and are adopted as proposed.

*b. Accurate and Current Information.*—One of the basic concerns which must be met in the context of shelf registration is ensuring that investors are provided accurate and current information where offers or sales are not to be made immediately after the registration statement becomes effective. Rule 415(a)(2) addresses this issue by setting forth when and how

updating should be done, *ie.*, when updating may be done by prospectus supplement pursuant to Rule 424(c) (a "sticker") and when a post-effective amendment to the shelf registration statement is appropriate, by requiring registrants to furnish the undertakings required by Item 512(a) of Regulation S-K to file post-effective amendments in specified circumstances. The Item 512(a) undertakings are adopted substantially as proposed.<sup>78</sup> They relate only to periods in which offers or sales are being made, thus making clear that there is no need to maintain an accurate and current, or "evergreen," prospectus when no offers or sales are being made pursuant to the shelf registration. The circumstances under which registrants must undertake to file post-effective amendments are: (1) To include any prospectus required by section 10(a)(3) of the Securities Act; (2) to reflect any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereto) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and (3) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement, including (but not limited to) any addition or deletion of a managing underwriter other than as a co-manager.

The provisions relating to updating, particularly respecting "fundamental changes," are intended to reflect current practice in determining the need for a post-effective amendment as opposed to a prospectus sticker. As indicated in the Shelf Release, the Commission believes that the filing of a post-effective amendment is appropriate in certain instances in order to ensure full statutory liability for the information disclosed and to afford the Commission's staff an opportunity to review the disclosure in appropriate cases. However, the Commission also is aware that staff practice concerning the filing of post-effective amendments and

<sup>78</sup>The Commission is adopting as proposed the requirement in Item 512(a)(2) of Regulation S-K that registrants undertake that each post-effective amendment "shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be initial bona fide offering thereof," which results in a new statute of limitations period under Section 13 of the Securities Act. As indicated in the Guides Release and again in the Shelf Release, this undertaking reflects the Commission's view of the law in this area as well as the longstanding staff practice of requiring the inclusion of such an undertaking in many shelf registration statements.

stickers, for all registration statements, has been somewhat flexible depending on the nature of the information to be disclosed or modified and the ability to reflect that information in a short sticker to the prospectus. The Commission wishes to preserve the flexibility of current practice within the context of a shelf registration statement.

Most of the commentators who addressed the provisions relating to updating generally supported the proposals. A few commentators, however, requested further guidance as to what constitutes a "fundamental" change and thus makes a post-effective amendment appropriate. While the Commission continues to believe that a detailed listing in Item 512(a) of the situations in which post-effective amendments are appropriate would impair the flexibility of current practice, it does wish to provide some guidance in this area. As the Shelf Release noted, the use of the term "fundamental" is intended to reflect current staff practice under which post-effective amendments are filed when major and substantial changes are made to information contained in the registration statement.<sup>79</sup> Material changes that can be stated accurately and succinctly in a short sticker will continue to be permitted. While many variations in matters such as operating results, properties, business, product development, backlog, management and litigation ordinarily would not be fundamental, major changes in the issuer's operations, such as significant acquisitions or dispositions, would require the filing of a post-effective amendment.<sup>80</sup> Also, any change in the business or operations of the registrant that would necessitate a restatement of the financial statements always would be reflected in a post-effective amendment.<sup>81</sup> At the same time, pursuant to the undertaking, a registrant using a shelf registration statement for a series of debt offerings would be able to sticker the prospectus to reflect changes in interest rates, redemption, prices and maturities.

<sup>79</sup>The proposal also reflects the fact that numerous small changes to information in the registration statement can become cumulatively fundamental. Cf. *In re Franchard Corporation*, 42 S.E.C. 163, 184-65 (1964).

<sup>80</sup>Similarly, a change in the registrant's capital structure caused by sales of securities under the shelf registration statement could, if sufficiently large, be such a fundamental change.

<sup>81</sup>See also the undertakings required by the staff in connection with a shelf registration for a continuing acquisition program. Letter re Beatrice Foods Co., (1973) Fed. Sec. L. Rep. (CCH) ¶ 79,351 (available January 17, 1973). These undertakings are subsumed within the undertaking to file post-effective amendments to reflect fundamental changes.

<sup>77</sup>The Commission contemplates that, when it takes subsequent action either to adopt Rule 415 on a permanent basis (in the same or revised form) or to withdraw the Rule, registrants with then-effective shelf registration statements pursuant to Rule 415 will be subject immediately to the subsequent action. See Rule 401(f).

Although such information is material to any investor in the securities, it does not represent a fundamental change in the information set forth in the registration statement when all other details remain the same.

With respect to the undertaking to file a post-effective amendment to disclose any material information relating to the plan of distribution, a few commentators urged that it would enhance the flexibility of the shelf rule to allow automatic effectiveness for such post-effective amendments. The Commission does not believe it appropriate to eliminate all possibility of review of such post-effective amendments, but will monitor this area to avoid any undue delays.

Also in connection with the Item 512(a)(1)(iii) undertaking, the Commission noted in the Shelf Release that a sticker supplement to the prospectus could be used to reflect the final terms of the transaction in the circumstance where a registration statement contained a full description of several alternative methods of distribution with the only missing information consisting of numerical details such as price and underwriting spread. The Commission emphasizes, in response to public comment, that in order to permit use of a sticker supplement the registration statement description of such alternative methods of distribution must be complete, omitting only such information as price and spread. If the registration statement names several underwriters who may participate in the shelf-registered offering, the selection of any one or more of those underwriters to be the underwriter(s) with respect to a particular portion of the shelf offering may be indicated by sticker supplement to the prospectus.

The use of a single shelf registration statement for widely diverse plans of financing may be inappropriate in cases where a complete description of each plan of distribution to which the filing relates, together with a discussion of the impact on the issuer of such plan alone and in combination with the other contemplated financings, becomes so complex as to reduce substantially the effectiveness of the disclosures. In such

<sup>82</sup>If the plan of distribution description discloses that an offering may be distributed by an underwriting syndicate, the identity of or changes in the identity of the members of the underwriting syndicate may be indicated by sticker. If the registration statement is on Form S-3, which incorporates by reference Exchange Act reports filed subsequent to effectiveness of the registration statement, underwriting agreements or other required exhibits may be filed with a report on Form 8-K.

cases, more than one registration statement may be necessary.

Undertaking (a)(1)(iii) of Item 512 of Regulation S-K recognizes the materiality to the plan of distribution of a change in managing underwriter. The proposed Rule did not define the term "managing underwriter," but the Shelf Release generally described the characteristics and duties of a managing underwriter. The release specifically requested public comment regarding the need for a definition, either in Rule 415 or in Regulation C. The commentators had no specific suggestions for a definition of managing underwriter, but two commentators urged codification of the term. The Commission agrees that it would be useful to codify a definition of the term "managing underwriter" and has decided to include the term in the definition section of Regulation C, Rule 405. The definition is similar to the description of "managing underwriter" provided in the Shelf Release. As defined, a "managing underwriter" includes an underwriter (or underwriters) who, by contract or otherwise, deals with the issuer; organizes the selling effort; receives some benefit from the underwriting which is not shared by other underwriters; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

In addition to providing a definition of the term "managing underwriter," the Commission is adding two clarifying instructions to Item 512(a)(1). Instruction (1) states that a post-effective amendment need not be filed to disclose the addition or deletion of a managing underwriter as a co-manager unless there is no longer at least one managing underwriter who was named in the registration statement or the most recent post-effective amendment thereto. This instruction clarifies, in response to public comment, when the addition or deletion of a co-manager must be reflected in a post-effective amendment, as opposed to a sticker supplement to the prospectus. With the addition of Instruction (1) to Item 512(a)(1), there is no need for the phrase "other than as a co-manager" at the end of the last clause of Item 512(a)(1)(iii) and it has been deleted. Instruction (2) addresses the situation where there may be more than one managing underwriter and the

<sup>83</sup>See the Shelf Release, 46 FR at 42008.

<sup>84</sup>The remaining named managing underwriter need not be the "books-running manager."

relationship of one underwriter to another is that of co-manager.

The Rule 415 undertakings provide an exception to the duty to update in the case of a registration statement filed on either Form S-3 or Form S-8 if the information required to be included in a post-effective amendment pursuant to Item 512(a)(1)(i) and (a)(1)(ii) of Regulation S-K is contained in periodic reports filed under the Exchange Act and incorporated by reference in the registration statement. Two commentators suggested that registrants filing on Forms S-1 and S-2 also should be able to incorporate by reference subsequently filed Exchange Act reports. As noted in the discussion of Form S-2, the Commission has determined not to allow incorporation by reference of subsequently filed Exchange Act reports on Form S-1 or S-2 because it does not believe that there is sufficiently widespread marketplace following with respect to registrants using those forms to assure sufficient dissemination of information for purposes of the delayed or continuous offering of securities. Thus, the Commission reemphasizes that registrants filing on Forms S-2 or S-1 must meet the duty to update by filing post-effective amendments pursuant to the undertaking in Item 512(a)(1).

*c. Exemptions from Application of Shelf Rule.*—The Commission is adopting as proposed the provisions creating exemptions from the application of Rule 415 for offerings by a face amount certificate company or offerings of redeemable securities by an open-end management company or unit investment trust under the Investment Company Act and for any registration statement filed by any foreign government. The exemption relating to investment companies recognizes the specific provisions for continuous registration which are contained in the Investment Company Act. As indicated in the Shelf Release, foreign government registration statements are exempted because the Commission is still gaining experience with shelf registration by such registrants pursuant to a staff interpretive letter which set forth procedures to be followed by foreign governmental issuers in using a shelf registration that differed somewhat from the proposed Rule. Until such time as the Commission determines whether to codify the interpretive release or

<sup>85</sup>See Staff Release No. 33-6240 (September 17, 1980) [45 FR 61609]. In particular, the staff imposed certain additional prospectus delivery requirements upon the registrant and limited the availability of the shelf registration to securities which the registrant proposed to sell in one year.

otherwise to address foreign government shelf registration, foreign governmental issuers may continue to use the procedures set forth in the staff interpretive letter.

d. *At the Market Offerings*—(1) *Conditions.* Rule 415 permits shelf registration of "at the market offerings" of equity securities directly by or on behalf of the registrant. Because such offerings raise concerns for the public and for the marketplace, the Shelf Release proposed the imposition of two conditions. First, the Commission proposed that those securities must be sold through an underwriter or underwriters, acting as principal(s) or agent(s) for the registrant, and that such underwriter(s) must be named in the prospectus which is part of the registration statement. Second, the Commission proposed to define an "at the market offering" as an offering of securities into an existing trading market for outstanding shares of the same class of securities at other than a fixed price on or through the facilities of a national securities exchange or to a market maker otherwise than on an exchange.

A number of commentators agreed with the Commission that it should impose conditions upon the availability of shelf registration for an at the market offering. The Commission has determined to adopt the conditions proposed and to adopt two further conditions: (1) That the registrant must meet the registrant requirements and applicable transaction requirements of Form S-3 and (2) that the amount of Securities registered must not exceed ten percent of the registrant's non-affiliate float. The Commission is conditioning primary equity offerings at the market on Form S-3 availability and is limiting such offerings to ten percent of a registrant's float in view of the experimental nature of the temporary rule.<sup>85</sup>

The Commission is adopting the requirement for a named underwriter because it believes that the direct involvement of an underwriter can provide a desirable discipline upon such offerings of equity securities into an existing trading market<sup>87</sup> and that the presence of an underwriter helps to ensure that accurate and current disclosure is made to investors in the prospectus and that the prospectus

<sup>85</sup>It should be noted that Rule 415 is not intended to allow registrants not eligible to use Form S-3 to circumvent the Form S-3 condition on at the market offerings by registering shelf offerings at a fixed price and then using frequent prospectus stickers to change price.

<sup>87</sup>Cf. *In re Hazel Bishop Inc.*, 40 S.E.C. 718, 729-32 (1961).

delivery requirements of the Securities Act are met. A few commentators opposed this requirement or expressed concerns about related issues of liability and anti-manipulative rule application. The Commission is confident that the liability concerns will be allayed as both registrants and underwriters gain experience with the shelf rule. In addition, the Commission does not believe that the anti-manipulative rules will impose any unduly burdensome prohibitions upon underwriters named in the prospectus.<sup>88</sup>In this regard, it should be noted that the Commission's monitoring of the shelf rule will include attention to this requirement to determine, among other things, whether it would be appropriate to adopt a provision, as advocated by some commentators, which would require issuers to obtain the underwriter's consent to being named.

(2) *Treatment of Statutory Underwriter.* Rule 415 permits a direct distribution of securities by a registrant into an existing trading market over an extended period of time and thus raises the issue of underwriter status<sup>89</sup> in a novel situation. The Shelf Release set forth the Commission's views as to the status of various market professionals as statutory underwriters in an at the market offering of equity securities by a registrant under the proposed Rule. The views expressed received comment from only four commentators, three of whom generally agreed with the Commission's stated positions. The Commission has determined to reaffirm without change the positions regarding treatment as a statutory underwriter which were published in the Shelf Release.<sup>90</sup>

(3) *Application of Anti-Manipulative Rules.* At the market offerings of securities pursuant to Rule 415 also raise a number of questions concerning the maintenance of orderly market processes, the prevention of market manipulation, and the application of the

<sup>88</sup>Under Rule 415(a)(3), a registration statement providing for an at the market offering of equity securities registered therein could be declared effective without a named underwriter or underwriters if such an at the market offering would not begin immediately following the effective date of the registration statement. Offerings of securities under the registration statement could then be made without underwriter involvement, provided that such offerings were not made at the market.

<sup>89</sup>Section 2(11) of the Securities Act defines an underwriter as "any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such underwriting, or participates or has a participation in the direct or indirect underwriting of any such undertaking."

<sup>90</sup>46 FR at 42011.

anti-manipulative rules,<sup>91</sup> specifically the application of Rule 10b-6 (17 CFR 240.10b-6) under the Exchange Act, to these offerings. The Shelf Release contained an extensive discussion of the various Rule 10b-6 issues raised by at the market offerings, set forth a number of staff positions with respect to these issues, and specifically solicited comment on a number of issues.<sup>92</sup>

A substantial number of commentators addressed the Rule 10b-6 issues discussed in the Shelf Release and offered helpful suggestions as to how the Rule could be interpreted or modified to avoid unduly interfering with at the market offerings permitted by Rule 415 while still affording the market sufficient protection from manipulation. In addition, a number of commentators suggested that Rule 10b-6 should be modified generally, not only for purposes of shelf registrations. The Commission has considered these comments and has incorporated its determinations with respect thereto into a separate release proposing amendments to Rule 10b-6<sup>93</sup> published concurrently with this release. The Rule 10b-6 Release resolves the issues raised in the Rule 415 context as well as analogous issues raised more generally. Attention is directed to that release for the text of the proposed amendments and a complete discussion thereof. In addition, the Rule 10b-6 Release indicates the staff's intention, so long as the issuer qualifies to use new Form S-2 or S-3, to follow the interpretive

<sup>91</sup>The existing regulatory framework includes rules adopted both by the Commission and by the self regulatory organizations.

<sup>92</sup>The issues discussed included: (1) Whether and how to define the term "distribution" for purposes of a shelf offering; (2) when a distribution should be deemed to commence with respect to a shelf registration; (3) what kinds of conditions such as "cooling off" periods should be imposed on registrants engaged in no selling efforts with respect to the shelf-registered securities; (4) whether purchases by affiliates should be treated differently from purchases by registrants; (5) what kinds of conditions should be imposed on purchases by broker-dealers with continuing agreements with the registrant to participate in the shelf offering during periods in which all sales and selling efforts have been suspended; (6) whether to clarify the applicability of Rule 10b-6 to market professionals who purchase securities in connection with a primary shelf offering; (7) whether special problems need to be addressed with respect to registrants and broker-dealers acting on behalf of registrants where there is a combination of conventional fixed price offerings and shelf offerings; (8) whether the staff position with respect to the distribution of research reports should be expanded for purposes of broker-dealers with continuing agreements with the registrant; and (9) whether a staff interpretive position regarding debt securities [Letter re American Telephone and Telegraph Company (February 26, 1975)] should be expanded.

<sup>93</sup>Release No. 34-18528 (March 3, 1982) (the "Rule 10b-6 Release").

positions codified in the proposed amendments on an administrative basis pending adoption of the amendments in order to facilitate the implementation of Rule 415.94

3. *Form and Contents of Prospectus.* The revisions to the rules comprising this section of Regulation C have been adopted substantially as proposed. In addition to the rules which were deleted because their substance was transferred to Regulation S-K, the Commission has determined to rescind Rules 430, 431, 432, 434 95 and 434c as unnecessary or obsolete. In light of such rescissions, current Rules 433, 434a and 434b have been recast as Rules 430, 431 and 432. Pursuant to comment and its own experience, the Commission has determined to revise proposed Rule 434a (renumbered as Rule 431), concerning summary prospectus eligibility and use, to permit non-United States issuers to use the Rule on the same basis as they are permitted to use Form S-3.

4. *Written Consents.* The proposed revisions to the rules, including paragraph (g) of the Rule 436, comprising this section of Regulation C have been adopted as proposed. Since the substance of Rule 435 has been transferred to Regulation S-K, the Commission has rescinded Rule 435.

5. *Competitive Bids.* This is a new section of Regulation C with contains the provisions that apply specifically to registration statements for securities to be offered at competitive bid. The previous heading of this section was "Exhibits," but that heading has been withdrawn, because the substance of the rules concerning exhibits has been transferred to Regulation S-K (Rules 445

and 446) and to Rule 411 (Rule 447). It is believed that a separate section for competitive bidding registration statements will make it easier for registrants and their counsel to comply with the requirements for such registration statements.

6. *Filings, Fees, Effective Date.* The proposed revisions to the rules comprising this section of Regulation C have been adopted substantially as proposed. Two technical changes have been made to Rule 457 to clarify the operation of that Rule. First, Rule 457 (e)(2) has been amended to include registrants with a negative book value but not in bankruptcy or receivership within the filing fee requirements of that paragraph. Second, Rule 457(k) has been revised to include all issuers of standardized options within the filing fee requirements of that paragraph.

Certain commentators objected to the treatment of insurance against liabilities arising under the Securities Act for investment companies and business development companies in proposed Rule 461(c). The Commission has determined to revise the Rule 461(c) on adoption to make clear that such insurance will not be considered a bar to acceleration of a registration statement if the cost of the insurance is borne by the insured officer or director of the registrant.

7. *Amendments, Withdrawals.* The proposed revisions to the rules comprising this section of Regulation C have been adopted substantially as revised. With respect to Rules 477 and 479, the Commission requested specific comment on the necessity of retaining the marking procedure for withdrawn or abandoned registration statements in light of the Commission's current system for retaining official documents on microfiche.<sup>96</sup> The commentators opined that a marking procedure was not necessary. The revised procedure provides that an order declaring a registration statement to be either withdrawn or abandoned will be placed under the same file number as the registration statement to which such order relates.

8. *Investment Companies, Business Development Companies.* This grouping of rules is a new section within Regulation C. It has been developed to bring together all of the special rules for investment companies and business development companies. The Commission emphasizes that this grouping does not mean that only these rules and not others in Regulation C apply to such companies. All rules

within Regulation C are applicable to registration statements filed by investment companies and a note has been added to the Regulation to that effect. The proposed rules and the proposed revisions to existing rules have been adopted substantially as proposed.

9. *Registration by Foreign Governments.* The Commission did not propose revisions to the rules comprising this section of Regulation C nor did the commentators suggest any revisions. Hence, there have been no changes to these rules.

## V. Liability Issues

### A. Background

The Liability Release published for comment three proposals addressing certain issues of civil liability under the Commission's integrated disclosure program. Proposed Rule 176 would identify certain of the circumstances bearing upon the reasonableness of the investigation and the determination of what constitutes reasonable ground for belief under section 11(b) of the Securities Act.<sup>97</sup> Proposed Rule 412 would deem the effective date of documents incorporated by reference into a registration statement to be the document's initial filing date and proposed Rule 418 would: (1) Deem a statement contained in a document incorporated by reference to be modified or superseded to the extent that it has been modified or replaced by a statement contained in the prospectus or in any other subsequently filed document incorporated by reference; (2) provide that the making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement constituted a violation of the federal securities laws; and (3) provide that any statement so modified or superseded shall not be deemed in its prior form to constitute a part of the registration statement or prospectus for purposes of the Securities Act.

<sup>97</sup>Section 11(b) of the Securities Act provides that each person, other than the issuer, will not be held liable, if he can sustain the burden of proof that his conduct, under the circumstances, was reasonable. Specifically, section 11(b)(3) permits the defendant to prove that he made a reasonable investigation of and had reasonable grounds to believe in the accuracy of the non-expertised portions of the registration statement or, with respect to any part presented upon the authority of an expert other than the defendant, that he had no reasonable ground to believe and did not believe there was a material omission or misstatement. 15 U.S.C. 77k(b)(3). Section 11(c) provides that "the standard of reasonableness shall be that required of a prudent man in the management of his own property." 15 U.S.C. 77k(c).

<sup>94</sup>With respect to research reports distributed by broker-dealers with continuing agreements with the registrant, the staff generally has taken the position that reports complying with Rule 139 under the Securities Act (17 CFR 230.139) do not constitute prohibited inducements to purchase under Rule 10b-6. Under Rule 139, the distribution or publication by a dealer of certain types of information, opinions or recommendations concerning an issuer are deemed not to constitute an offer for sale or offer to sell securities of that issuer, for purposes of sections 2(10) and 5(c) of the Securities Act, even if the dealer is participating in an underwritten offering of the issuer's securities. The interim no action position announced in the Rule 10b-6 Release with respect to Rule 415 shelf registrations would operate to allow those persons subject to Rule 10b-6 to distribute research reports beyond those complying with Rule 139 up until three business days prior to the commencement of sales. A similar position will be taken with respect to research reports for purposes of sections 2(1) and 5(c) of the Securities Act and Rule 139 thereunder. It also should be noted that Rule 139 will be the subject of the "sunset" review of the "100" rules under the Securities Act (17 CFR 230.100 to 230.175).

<sup>95</sup>Summary prospectuses prepared by independent organizations and filed by a registrant as part of its registration statement shall comply with the requirements of revised Rule 431.

<sup>96</sup>See the Regulation C Release, 46 FR at 41984.

There were relatively few comments directed to proposed Rule 176. Although commentators generally supported adoption of the proposed Rule,<sup>98</sup> several commentators criticized the description in the Liability Release of several information-gathering techniques which could minimize the amount of time required for investigation immediately prior to the filing of a short form registration statement. The Commission, therefore, wishes to emphasize that the techniques identified were in no way intended to be mandatory, but rather were presented to help facilitate the development of procedures compatible with the integrated approach to registration. Underwriters and others may accept or reject any of the measures described in this part of the Liability Release. The important point is that each subject person should evaluate the surrounding facts, including the extent of his prior relationship with the registrant, and utilize techniques of investigation appropriate to the circumstances of the offering.

#### B. Implementing Rules

1. *Rule 176.* Proposed Rule 176 would codify section 1704(g) of the proposed Federal Securities Code (the "Code"),<sup>99</sup> which the Commission has endorsed with certain modifications.<sup>100</sup> While the Rule describes some circumstances which may affect the reasonableness of an inquiry, the Commission recognizes that there are other circumstances beyond those enumerated in the Rule which may bear upon the reasonableness of the conduct of persons subject to Section 11. Judicial interpretations of section 11 have confirmed the principle that what constitutes reasonable investigation and reasonable ground for belief depends upon the circumstances of each registration.<sup>101</sup> The prospect of continued flexible application of that standard by the courts should provide assurance to subject persons that they

<sup>98</sup>It should be noted that three commentators urged the Commission to adopt, in lieu of proposed Rule 176, a safe harbor rule for underwriters with respect to documents incorporated by reference. In 1978, however, the Commission declined to adopt a proposed rule which would have provided underwriters a safe harbor from liability under section 11 and section 12(2). Release No. 33-5998 (November 17, 1978) [43 FR 56054]. See the Liability Release for a more detailed discussion of these proposals.

<sup>99</sup>ALL, *Federal Securities Code* (1980).

<sup>100</sup>Release No. 33-6242, (September 18, 1980).

<sup>101</sup>For example, the Commission believes that a court would not expect the investigation undertaken in connection with a short form registration of a seasoned company to be the same as that which would be reasonable in connection with an initial public offering.

will not incur unreasonable investigative burdens.

Several commentators urged that the Commission restore the reference to the underwriter's access to information which appeared in clause (b) of section 1704(g) of the Code before it was modified and endorsed by the Commission in September 1980. The Commission objected to the Code's reference to access to information because the word "access" could imply that a registrant's refusal to grant the underwriter access to pertinent information would be a legitimate ground for not investigating. There, however, will be occasions where information cannot be investigated fully because of its unavailability. For example, the information may be in the possession of a hostile subject company.<sup>102</sup> To take account of circumstances such as these, the Commission is inserting in paragraph (g) the phrase "the availability of information with respect to the registrant."

Accordingly, the Commission is adopting Rule 176 as proposed with the addition to paragraph (g) described above. The Commission staff will monitor the operation of Rule 176 and Section 31 suits involving short form registration statements in order to determine whether there is need for further action by the Commission or the Congress in view of the conduct of persons subject to Section 11 and the standards to which they are held by the courts.

2. *Proposed Rule 412.* A number of commentators, for a variety of reasons, opposed the adoption of proposed Rule 412. Among other things, it was noted that the Rule seemed unnecessary and could be confusing to subject persons. In light of these problems, the Commission is withdrawing proposed Rule 412.

3. *Proposed Rule 418.* The majority of the commentators supported proposed Rule 418 and the Rule is being adopted as proposed. In view of the withdrawal of proposed Rule 412, the final Rule, originally proposed as Rule 418, is being renumbered as Rule 412.

4. *Possible Amendment of Rule 461.* In the Liability Release, the Commission specifically solicited comment on whether there is any need to amend Rule 461 (Requests for acceleration of effective date of registration statements) to require that the managing underwriter state, in connection with a request for acceleration, whether there has been time to reasonably review and comment upon documents incorporated by

reference into the registration statement. Most commentators opined that such a determination already is implicit in the underwriter's participation and that such a written statement could impair the underwriter's defense in litigation arising from the offering. Accordingly, the Commission is not amending Rule 461.

#### VI. Implementing and Coordinating Amendments

In order to facilitate implementation of the integrated disclosure program, the Commission reviewed Securities Act and Exchange Act rules, forms and schedules generally to determine whether any coordinating amendments in addition to those discussed above were necessary. Those amendments proposed together with the other August 1981 proposals are as follows.

##### A. Securities Act Rules 135 and 138<sup>103</sup>

Rule 135 (17 CFR 230.135, Notice of certain proposed offerings) is being amended substantially as proposed in the Securities Act Coordinating Release, but now will permit dissemination of the information specified by the Rule not only with respect to exchange listed securities, but also with respect to securities quoted on the NASDAQ interdealer quotation system. Dissemination will be permitted through the facilities of the consolidated transaction reporting system and the NASDAQ system as well as through the facilities of the national exchanges and the Dow Jones broad tape. This change should assure more complete dissemination of information with respect to rights offerings of securities.

Rule 138 (17 CFR 230.138, Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications) is being amended as proposed in the Securities Act Coordinating Release. The changes will replace references to deleted forms.

##### B. Exchange Act Rules and Schedules

In the Exchange Act Coordinating Release, the Commission proposed to amend (1) Item 15 of Schedule 14A of Regulation 14A to require registrants to furnish management's discussion and analysis of financial condition and results of operations as required by Item 303 of Regulation S-K relating to proxy statements soliciting action with respect to certain authorizations or issuances of securities and the modification or

<sup>103</sup>Rule Rules 135, 138 and 139 (discussed above in connection with the shelf rule) are among those rules which will be the subject of the "sunset" review of the "100" rules under the Securities Act which will be undertaken during the next year.

<sup>102</sup>For Further Information: *Lea Soc. Data Processing Equipment Co.*, 332 F. Supp. 544 at 584-85 (E.D.N.Y. 1971).

exchange of securities; (2) Rule 15c2-8 (17 CFR 240.15c2-8) regarding delivery of prospectuses to incorporate the "48-hour rule" of Release No. 33-4968; <sup>104</sup> and (3) Rules 13e-4 and 14d-6 (17 CFR 240.14d-6) regarding summary financial disclosure in tender offers. In addition, Appendix A of Schedule 14A was proposed to be deleted. No commentators objected to the proposals, although several changes were suggested. Accordingly, the Commissions adopting the amendments, with certain changes as discussed below, and is deleting Appendix A. <sup>105</sup> In addition, the Commission is making several technical changes in Regulation 14A to correct inadvertent omissions.

1. *Regulation 14A.* In addition to amending Item 15 of Schedule 14A and deleting Appendix A, the Commission is making three technical amendments to Regulation 14A. The first concerns Item 4 of Schedule 14A, which specifies information to be included in a proxy statement about certain persons who have an interest in any matter to be acted upon. It has come to light that the requirement in Item 4(b)(2) to describe, in connection with solicitations subject to Rule 14a-11 (17 CFR 240.14a-11), the interest of "any person named in answer to Item 6(b)" was inadvertently left unchanged when Item 6(b) was changed substantially in 1978. <sup>106</sup> Prior to 1978, Item 6(b) concerned certain persons who were a party to an arrangement or understanding pursuant to which a nominee was to be elected. Since the substance of Item 4(b)(2) was not intended to be changed when Item 6(b) was amended, the Commission is now amending Item 4(b)(2) to require information with respect to the persons formerly described in Item 6(b).

Second, the Commission has become aware that the Code of Federal Regulations does not correctly state the text of Item 20 of Schedule 14A, which specifies the disclosure required in a proxy statement if action is to be taken with respect to any amendment of the issuer's charter, bylaws or other documents. Accordingly, Item 20 is being amended to include the correct text.

Third, it also has come to light that the fee requirements applicable to the filing

<sup>104</sup>(April 24, 1969) [34 FR 7235]. The 48-hour rule requires a broker-dealer to distribute a copy of the preliminary prospectus to each person who is expected to receive a confirmation of sale at least 48 hours prior to the mailing of such confirmation.

<sup>105</sup>As noted in the discussion above of Rule 405 of Regulation C, the adoption of a definition of the term "executive officer" in Rule 3b-7 necessitated deleting definitions of that term previously found in various Exchange Act rules and schedules

<sup>106</sup>Release No. 34-15384 (December 8, 1978) [43 FR 58522].

of proxy statements, ordinarily contained in Rule 14a-6, were inadvertently omitted from that rule when it was amended in coordination with the adoption of Form S-15. <sup>107</sup> Accordingly, the Commission is amending Rule 14a-6 to reinsert paragraph (i) setting forth the fee schedule. In coordination with this, existing paragraph (i) is being redesignated as paragraph (j).

2. *Rule 15c2-8.* The proposed amendment to Rule 15c2-8, which sets forth the specific steps participating brokers or dealers must follow reasonably to distribute the preliminary prospectus, required a broker-dealer to comply with the 48-hour rule in connection with any issue of securities the issuer of which had not previously been required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act or is required to include in the prospectus reference to material risks pursuant to Item 501 of Regulation S-K. After further consideration, the Commission is amending Rule 15c2-8 to require compliance with the 48-hour rule only in the case of registrants not subject to the reporting requirements of section 13(a) or 15(d) and to provide that compliance is not required where a registrant is not required to file reports to section 13(a) or 15(d) because it has been exempted from those requirements pursuant to section 12(h) of the Exchange Act.

3. *Rules 13e-4 and 14d-6.* Rules 13e-4 and 14d-6 under the Exchange Act, regarding tender offer disclosure requirements, are revised to substitute the substantive summary financial information contained in paragraph (e) of Guide 59 for the references to Guide 59 previously contained in the Rules. As explained in the Exchange Act Coordinating Release, the substitutions are necessary in view of the Commission's decision to rescind Guide 59. They are intended to ensure that Rules 13e-4 and 14d-6 will continue to provide guidance as to what is sufficient to constitute a fair and adequate summary of financial information for purposes of the disclosure requirements therein.

#### *C. Safe Harbor Rules for Projections*

The Commission is amending the safe harbor rules for projections under the Exchange Act (Rule 3b-6, 17 CFR 240.3b-6), Securities Act (Rule 175, 17 CFR 230.175), and related federal securities laws <sup>108</sup> in order to clarify and

<sup>107</sup>Securities Act Release No. 33-6332 (September 2, 1981) [45 FR 63647].

<sup>108</sup>Specifically, Rule 103A (17 CFR 250.103A) under the Public Utility Holding Company Act of

broaden the scope of the safe harbor protection provided thereunder. The amendments make clear the Rules' original intent that safe harbor protection extend to projections made in a quarterly report on Form 10-Q, a registration statement on Form 10 or an annual report to security holders furnished to the Commission, even though the registrant has not yet been required to file an annual report on Form 10-K, as well as to the registrant's first filing on Form 10-K.

#### Statutory Authority and Findings

The Commission hereby adopts the rulemaking actions set forth below pursuant to the following statutory authority. The actions revising 17 CFR Parts 230 and 239 are adopted pursuant to the authority in sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933. The actions revising 17 CFR Parts 240 and 249 are adopted pursuant to the authority in sections 3(b), 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934. The action revising 17 CFR Part 250 is adopted pursuant to the authority in section 20(a) of the Public Utility Holding Company Act of 1935. The action revising 17 CFR Part 260 is adopted pursuant to the authority in section 319(a) of the Trust Indenture Act of 1939. The action revising 17 CFR Part 274 is adopted pursuant to the authority in section 38(a) of the Investment Company Act of 1940. The action revising 17 CFR Parts 200, 201 and 229 are adopted pursuant to the authority in sections 6, 7, 8, 10 and 19(a) of the Securities Act; sections 3(b), 12, 13, 14, 15(d) and 23(a) of the Exchange Act; section 20(a) of the Public Utility Holding Company Act; section 319(a) of the Trust Indenture Act; and section 38(a) of the Investment Company Act.

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact that the rulemaking actions revising 17 CFR Parts 200, 201, 229, 240 and 249, taken pursuant to the various provisions of the Exchange Act would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Pursuant to section 553(d) of the Administrative Procedure Act of 1949 (5 U.S.C. 553), the Commission finds for good cause that Rule 415 shall become effective immediately upon publication in the Federal Register (March 16, 1982),

1935, 15 U.S.C. 79a et seq., and Rule 0-11 under the Trust Indenture Act of 1939, 15 U.S.C. 77aaa-77bbb.

in view of the temporary basis on which it is adopted, and that it and the other rulemaking actions adopted herein may be used and relied upon prior to their effective dates by any persons desiring to do so.

**Availability of Final Regulatory Flexibility Analysis With Regard to Forms S-1, S-2 and S-3**

In accordance with 5 U.S.C. 604, the Commission has prepared a final Regulatory Flexibility Analysis with regard to Forms S-1, S-2 and S-3. The corresponding Initial Regulatory Flexibility Analysis was included in the S-1-2-3 Release at 46 FR 41923. Members of the public who wish to obtain copies of the Final Regulatory Flexibility Analysis of Forms S-1, S-2 and S-3 should contact William L. Larsen, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-272-2604).

**Text of Forms, Regulations and Rules**

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

**PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS**

1. By revising paragraphs (a)(3), the first phrase, and (4) of § 200.30-1 to read as follows:

**§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.**

(a) \* \* \*  
(3) To grant applications for confidential treatment of contract provisions pursuant to Rule 406 (§ 230.406 of this chapter) under the Act;

(4) To accelerate the use or publication of any summary prospectus filed with the Commission pursuant to section 10(b) of the Act (15 U.S.C. 77j(b)) and Rule 431(g) (§ 230.431(g) of this chapter) thereunder.

2. By revising the introductory text of paragraph (b-2) of § 200.30-5 to read as follows:

**§ 200.30-5 Delegation of authority to Director of Division of Investment Management**

(b-2) With respect to post-effective amendments filed pursuant to paragraph (a) of Rule 485 (§ 230.485 of this chapter) under the Act.

3. By revising paragraph (a)(3) of § 200.30-6 to read as follows:

**§ 200.30-6 Delegation of authority to Regional Administrators.**

(a) \* \* \*  
(3) To grant applications for confidential treatment of contract provisions pursuant to Rule 406 (§ 230.406 of this chapter) under the Act.

4. By removing existing Forms S-1, S-2, S-7, and S-16 and by removing the proposed designation of Forms S-1, S-2 and S-3 in paragraph (b) of § 200.800 to read as follows:

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) *Display.*

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.	Expiration date
Form S-1	\$239.11	3235-0065	June 30, 1982
Form S-2	\$239.12	3235-0072	June 30, 1982
Form S-3	\$239.13	3235-0073	June 30, 1982

**PART 201—RULES OF PRACTICE**

5. By revising § 201.24 to read as follows:

**§ 201.24 Incorporation by reference.**

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing in which such document was physically filed, Except where a registrant or issuer is expressly required to incorporate a document or documents by reference, reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except—

(a) Documents contained in registration statements which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission;

(b) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

6. By revising in paragraph (a) the first sentence in its entirety and the second sentence up to the first comma, and in (b)(1) the first sentence up to the fourth comma, of § 201.25 to read as follows:

§ 201.25 Confidential treatment of certain matters.

(a) *Requests for confidential treatment.* Confidential treatment of material listed in § 201.25(a) may be requested for good cause where authorized by statute. Request for confidential treatment may be made pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933 and § 230.406 of this chapter thereunder, \* \* \*

(b) *Procedure in confidential treatment cases.* (1) All papers containing data as to which confidential treatment is sought, together with any application making objection to the disclosure thereof, or other papers relating in any way to such application, shall be made available to the public only in accordance with orders of the Commission and/or the applicable provisions of §§ 230.406, \* \* \*

7. By revising Part 229 to read as follows:

**PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K**

**Subpart 229.1—General.**

Sec. 229.10 General.

**Subpart 229.100—Business.**

229.101 (Item 101) Description of business.  
229.102 (Item 102) Description of property.  
229.103 (Item 103) Legal proceedings.

**Subpart 229.200—Securities of the Registrant.**

- 229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.
- 229.202 (Item 202) Description of registrant's securities.

**Subpart 229.300—Financial Information.**

- 229.301 (Item 301) Selected financial data.
- 229.302 (Item 302) Supplementary financial information.
- 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.
- 229.304 (Item 304) Disagreements with accountants on accounting and financial disclosure.

**Subpart 229.400—Management and Certain Security Holders.**

- 229.401 (Item 401) Directors and executive officers.
- 229.402 (Item 402) Management remuneration and transactions.
- 229.403 (Item 403) Security ownership of certain beneficial owners and management.

**Subpart 229.500—Registration Statement and Prospectus Provisions.**

- 229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.
- 229.502 (Item 502) Inside front and outside back cover pages of prospectus.
- 229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.
- 229.504 (Item 504) Use of proceeds.
- 229.505 (Item 505) Determination of offering price.
- 229.506 (Item 506) Dilution.
- 229.507 (Item 507) Selling security holders.
- 229.508 (Item 508) Plan of distribution.
- 229.509 (Item 509) Interests of named experts and counsel.
- 229.510 (Item 510) Disclosure of Commission position on indemnification for Securities Act liabilities.
- 229.511 (Item 511) Other expenses of issuance and distribution.
- 229.512 (Item 512) Undertakings.

**Subpart 229.600—Exhibits.**

- 229.601 (Item 601) Exhibits.

**Subpart 229.700—Miscellaneous.**

- 229.701 (Item 701) Percent sales of unregistered securities.
- 229.702 (Item 702) Indemnification of directors and officers.

**Subpart 229.800—List of Industry Guides.**

- 229.801 Securities Act industry guides.
- 229.802 Exchange Act industry guides.

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 28(c) 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118,

119, 155; 15 U.S.C. 55f, 77g, 77h, 77i, 77s(a), 78f, 78m, 78n, 78(d), 78w(a).

**Subpart 229.1—General****§229.10 General.**

(a) *Application of Regulation S-K.* This part (together with the General Rules and Regulations under the Securities Act of 1933, 15 U.S.C. 77a et seq., as amended ("Securities Act"), and the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., as amended ("Exchange Act")) (Parts 230 and 240 of this chapter), the Interpretative Releases under these Acts (Parts 231 and 241 of this chapter) and the forms under these Acts (Parts 239 and 249 of this chapter) states the requirements applicable to the content of the non-financial statement portions of:

(1) Registration statements under the Securities Act (Part 239 of this chapter) to the extent provided in the forms to be used for registration under such Act; and

(2) Registration statements under section 12 (Subpart C of Part 249 of this chapter), annual or other reports under sections 13 and 15(d) (Subparts D and E of Part 249 of this chapter), annual reports to security holders and proxy and information statements under section 14 of the Exchange Act (Part 240 of this chapter), and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under such Act.

(b) *Commission policy on projections.* The Commission encourages the use in documents specified in Rule 175 under the Securities Act (§ 230.175 of this chapter) and Rule 3b-6 under the Exchange Act (§ 240.3b-6 of this chapter) of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines set forth herein represent the Commission's views on important factors to be considered in formulating and disclosing such projections.

(1) *Basis for projections.* The Commission believes that management must have the option to present in Commission filings its good faith assessment of a registrant's future performance. Management, however, must have a reasonable basis for such an assessment. Although a history of operations or experience in projecting may be among the factors providing a basis for management's assessment, the Commission does not believe that a registrant always must have had such a history or experience in order to formulate projections with a reasonable basis. An outside review of management's projections may furnish

additional support for having a reasonable basis for a projection. If management decides to include a report of such a review in a Commission filing, there also should be disclosure of the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant, and other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act, the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

(2) *Format for projections.* In determining the appropriate format for projections included in Commission filings, consideration must be given to, among other things, the financial items to be projected, the period to be covered, and the manner of presentation to be used. Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items. Revenues, net income (loss) and earnings (loss) per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however, when it is appropriate to present earnings (loss) from continuing operations, or income (loss) before extraordinary items in addition to or in lieu of net income (loss). It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstances. In addition, management, in making a projection, should disclose what, in its opinion, is the most probable specific amount or the most reasonable range for each financial item projected based on the selected assumptions. Ranges, however, should not be so wide as to

make the disclosures meaningless. Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range and would be permitted.

(3) *Investor understanding.* (i) When management chooses to include its projections in a Commission filing, the disclosures accompanying the projections should facilitate investor understanding of the basis for and limitations of projections. In this regard investors should be cautioned against attributing undue certainty to management's assessment, and the Commission believes that investors would be aided by a statement indicating management's intention regarding the furnishing of updated projections. The Commission also believes that investor understanding would be enhanced by disclosure of the assumptions which in management's opinion are most significant to the projections or are the key factors upon which the financial results of the enterprise depend and encourages disclosure of assumptions in a manner that will provide a framework for analysis of the projection.

(ii) Management also should consider whether disclosure of the accuracy or inaccuracy of previous projections would provide investors with important insights into the limitations of projections. In this regard, consideration should be given to presenting the projections in a format that will facilitate subsequent analysis of the reasons for differences between actual and forecast results. An important benefit may arise from the systematic analysis of variances between projected and actual results on a continuing basis, since such disclosure may highlight for investors the most significant risk and profit-sensitive areas in a business operation.

(iii) With respect to previously issued projections, registrants are reminded of their responsibility to make full and prompt disclosure of material facts, both favorable and unfavorable, regarding their financial condition. This responsibility may extend to situations where management knows or has reason to know that its previously disclosed projects no longer have a reasonable basis.

(iv) Since a registrant's ability to make projections with relative confidence may vary with all the facts and circumstances, the responsibility for determining whether to discontinue or to resume making projections is best left to management. However, the Commission encourages registrants not to discontinue or to resume projections in

Commission filings without a reasonable basis.

(c) *Commission policy on security ratings.* In view of the importance of security ratings ("ratings") to investors and the marketplace, the Commission permits registrants to disclose, on a voluntary basis, ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock in registration statements and periodic reports. In addition, the Commission permits, pursuant to Rule 134(a)(14) under the Securities Act (§ 230.134(a)(14) of this chapter), voluntary disclosure of ratings assigned by any nationally recognized statistical rating organizations ("NRSROs") in certain communications deemed not to be a prospectus ("tombstone advertisements"). Set forth herein are the Commission's views on important matters to be considered in disclosing security ratings.

(1) *Securities Act filings.* (i) If a registrant includes in a registration statement filed under the Securities Act any rating(s) assigned to a class of securities, it should consider including: (A) Any other rating intended for public dissemination assigned to such class by a NRSRO ("additional NRSRO rating") that is available on the date of the initial filing of the document and that is materially different from any rating disclosed; and (B) the name of each rating organization whose rating is disclosed; each such rating organization's definition or description of the category in which it rated the class of securities; the relative rank of each rating within the assigning rating organization's overall classification system; and a statement informing investors that a security rating is not a recommendation to buy, sell or hold securities, that it may be subject to revision or withdrawal at any time by the assigning rating organization, and that each rating should be evaluated independently of any other rating. The registrant also should include the written consent of any rating organization that is not a NRSRO whose rating is included. With respect to the written consent of any NRSRO whose rating is included, see Rule 436(g) under the Securities Act (§ 230.436(g) of this chapter).

(ii) If a change in a rating already included is available subsequent to the filing of the registration statement, but prior to its effectiveness, the registrant should consider including such rating change in the final prospectus. If the rating change is material or if a materially different rating from any disclosed becomes available during this period, the registrant should consider

amending the registration statement to include the rating change or additional rating and recirculating the preliminary prospectus.

(iii) If a materially different additional NRSRO rating or a material change in a rating already included becomes available during any period in which offers or sales are being made, the registrant should consider disclosing such additional rating or rating change by means of post-effective amendment or sticker to the prospectus pursuant to Rule 424(c) under the Securities Act (§ 230.424(c) of this chapter), unless, in the case of a registration statement on Form S-3 (§ 239.13 of this chapter), it has been disclosed in a document incorporated by reference into the registration statement subsequent to its effectiveness and prior to the termination of the offering.

(2) *Exchange Act filings.* (i) If a registrant includes in a registration statement or periodic report filed under the Exchange Act any rating(s) assigned to a class of securities, it should consider including the information specified in paragraphs (c)(1)(i)(A) and (B) of this section.

(ii) If there is a material change in the rating(s) assigned by any NRSRO(s) to any outstanding class(es) of securities of a registrant subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act, the registrant should consider filing a report on Form 8-K (§ 249.308 of this chapter) or other appropriate report under the Exchange Act disclosing such rating change.

#### Subpart 229.100—Business

##### § 229.101 (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) during the past five years, or such shorter period as the registrant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business.

(1) In describing developments, information shall be given as to matters such as the following: the year in which the registrant was organized and its form of organization; the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reclassification, merger or consolidation of the registrant or any of its significant subsidiaries; the

acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

(2) Registrants, (i) filing a registration statement on Form S-1 (§ 239.11 of this chapter) under the Securities Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act, (ii) not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of such registration statement, and (iii) that (including predecessors) have not received revenue from operations during each of the three fiscal years immediately prior to the filing of registration statement, shall provide the following information: (A) if the registration statement is filed prior to the end of the registrant's second fiscal quarter, a description of the registrant's plan of operation for the remainder of the fiscal year; or (B) if the registration statement is filed subsequent to the end of the registrant's second fiscal quarter, a description of the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year. If such information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan shall include such matters as:

(1) In the case of a registration statement on Form S-1, a statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant; the specific reasons for such opinion shall be set forth and categories of expenditures and sources of cash resources shall be identified; however, amounts of expenditures and cash resources need not be provided; in addition, if the narrative statement is based on a cash budget, such budget shall be furnished to the Commission as supplemental information, but not as part of the registration statement;

(2) An explanation of material product research and development to be performed during the period covered in the plan;

(3) Any anticipated material acquisition of plant and equipment and the capacity thereof;

(4) Any anticipated material changes in number of employees in the various departments such as research and development, production, sales or administration; and

(5) Other material areas which may be peculiar to the registrant's business.

(b) *Financial information about industry segments.* State for each of the registrant's last three fiscal years or for each fiscal year the registrant has been engaged in business, whichever period is shorter, the amounts of revenue (with sales to unaffiliated customers and sales or transfers to other industry segments of the registrant shown separately), operating profit or loss and identifiable assets attributable to each of the registrant's industry segments. (See Appendix A to this Item for a suggested tabular format for presentation of this information.) To the extent that financial information included pursuant to this paragraph (b) complies with generally accepted accounting principles, the registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative information about its segments in the financial statements; conversely, a registrant may cross reference to the financial statements.

(1) The prior period information shall be restated retroactively in the following circumstances, unless not material, with appropriate disclosure of the nature and effect of the restatement:

(i) When the financial statements of the registrant as a whole have been restated retroactively; or (ii) when there has been a change in the way the registrant's products or services are grouped into industry segments and such change affects the segment information being reported; restatement is not required when a registrant's reportable segments change solely as a result of a change in the nature of its operations or as a result of a segment losing or gaining in significance.

(2) If the registrant includes, or is required by Article 3 of Regulation S-X [17 CFR 210] to include, interim financial statements, discuss any facts relating to the performance of any of the segments during the period which, in the opinion of management, indicate that the three year segment financial data may not be indicative of current or future operations of the segment. Comparative financial information shall be included to the extent necessary to the discussion.

(c) *Narrative description of business.*

(1) Describe the business done and intended to be done by the registrant and its subsidiaries, focusing upon the registrant's dominant industry segment or each reportable industry segment about which financial information is presented in the financial statements. To the extent material to an understanding of the registrant's business taken as a whole, the description of each such segment shall include, the information

specified in paragraphs (c)(1) (i) through (x) of this Item. The matters specified in paragraphs (c)(1) (xi) through (xiii) of this Item shall be discussed with respect to the registrant's business in general; where material, the industry segments to which these matters are significant shall be identified.

(i) The principal products produced and services rendered by the registrant in the industry segment and the principal markets for, and methods of distribution of, the segment's principal products and services. In addition, state for each of the last three fiscal years the amount or percentage of total revenue contributed by any class of similar products or services which accounted for 10 percent or more of consolidated revenue in any of the last three fiscal years or 15 percent or more of consolidated revenue, if total revenue did not exceed \$50,000,000 during any of such fiscal years.

(ii) A description of the status of a product or segment (e.g. whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary), if there has been a public announcement of, or if the registrant otherwise has made public information about, a new product or industry segment that would require the investment of a material amount of the assets of the registrant or that otherwise is material. This paragraph is not intended to require disclosure of otherwise nonpublic corporate information the disclosure of which would affect adversely the registrant's competitive position.

(iii) The sources and availability of raw materials.

(iv) The importance to the industry segment and the duration and effect of all patents, trademarks, licenses, franchises and concessions held.

(v) The extent to which the business of the industry segment is or may be seasonal.

(vi) The practices of the registrant and the industry (respective industries) relating to working capital items (e.g., where the registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; where the registrant provides rights to return merchandise; or where the registrant has provided extended payment terms to customers).

(vii) The dependence of the segment upon a single customer, or a few customers, the loss of any one or more of which would have a material adverse effect on the segment. The name of any

customer and its relationship, if any, with the registrant or its subsidiaries shall be disclosed if sales to the customer by one or more segments are made in an aggregate amount equal to 10 percent or more of the registrant's consolidated revenues and the loss of such customer would have a material adverse effect on the registrant and its subsidiaries taken as a whole. The names of other customers may be included, unless in the particular case the effect of including the names would be misleading. For purposes of this paragraph, a group of customers under common control or customers that are affiliates of each other shall be regarded as a single customer.

(viii) The dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog. (There may be included as firm orders government orders that are firm but not yet funded and contracts awarded but not yet signed, provided an appropriate statement is added to explain the nature of such orders and the amount thereof. The portion of orders already included in sales or operating revenues on the basis of percentage of completion or program accounting shall be excluded.)

(ix) A description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government.

(x) Competitive conditions in the business involved including, where material, the identity of the particular markets in which the registrant competes, an estimate of the number of competitors and the registrant's competitive position, if known or reasonably available to the registrant. Separate consideration shall be given to the principal products or services or classes of products or services of the segment, if any. Generally, the names of competitors need not be disclosed. The registrant may include such names, unless in the particular case the effect of including the names would be misleading. Where, however, the registrant knows or has reason to know that one or a small number of competitors is dominant in the industry it shall be identified. The principal methods of competition (*e.g.*, price, service, warranty or product performance) shall be identified, and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist,

shall be explained if known or reasonably available to the registrant.

(xi) If material, the estimated amount spent during each of the last three fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state, if material, the estimated dollar amount spent during each of such years on customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(xii) Appropriate disclosure also shall be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. The registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year and for such further periods as the registrant may deem materials.

(xiii) The number of persons employed by the registrant.

(d) *Financial Information about Foreign and Domestic Operations and Export Sales.* (1) State for each of the registrant's last three fiscal years, or for each fiscal year the registrant has been engaged in business, whichever period is shorter, the amounts of revenue (with sales to unaffiliated customers and sales or transfers to other geographic areas shown separately), operating profit or loss and identifiable assets attributable to each of the registrant's geographic areas and the amount of export sales in the aggregate or by appropriate geographic area to which the sales are made. (See Appendix B to this Item for a suggested tabular format for presentation of this information.) To the extent that financial information included pursuant to this paragraph (d) complies with generally accepted accounting principles, the registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative data in its financial statements; conversely a registrant may cross-reference to the financial statements. The prior period information shall be retroactively restated in the following circumstances, unless not material, with appropriate disclosure of the nature and effect of the restatement:

(1) When the financial statements of the registrant as a whole have been retroactively restated, or

(ii) When there has been a change in the way a registrant's foreign operations are grouped into geographic areas and such change affects the geographic area information being reported. Restatement is not required when a registrant's geographic areas change as a result of a change in the nature of operations or as a result of an area losing or gaining in significance.

(2) Any risks attendant to the foreign operations and any dependence of one or more of the registrant's industry segments upon such foreign operations shall be described unless it would be more appropriate for this matter to be discussed in connection with the description of one or more of the registrant's industry segments pursuant to paragraph (c) of this Item.

(3) If the registrant includes, or is required by Article 3 of Regulation S-X [17 CFR 210], to include, interim financial statements, discuss any facts relating to the information furnished pursuant to this paragraph (d) that, in the opinion of management, indicate that the three year financial data for foreign and domestic operations or export sales may not be indicative of current or future operations. Comparative information shall be included to the extent necessary to the discussion.

*Instructions to Item 101.1.* In determining what information about the industry 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.

2. The determination whether information about foreign and domestic operations and export sales is required in the document for a particular year shall be based upon an evaluation of interperiod comparability. For instance, interperiod comparability most likely would require that foreign and domestic operations and export sales that have been significant in the past and are expected to be significant in the future be regarded as reportable even though they are not significant in the current fiscal year.

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.

**Appendix A—Industry Segments**

The table set forth below is illustrative of the format that might be used for presenting the segment information required by paragraphs (b) and (c)(1)(i) of Items 101 regarding industry segments and classes of similar products or services.

**FINANCIAL INFORMATION RELATING TO INDUSTRY SEGMENTS AND CLASSES OF PRODUCTS OR SERVICES**

	Year		
	1	2	3
Sales to unaffiliated customers:			
Industry segment A:			
Class of product 1			
Class of product 2			
Industry segment B:			
Class of product 1			
Class of product 2			
Industry segment C			
Other industries			
Intersegment sales or transfers:			
Industry segment A			
Industry segment B			
Industry segment C			
Other industries			
Operating profit or loss:			
Industry segment A			
Industry segment B			
Industry segment C			
Other industries			
Identifiable assets:			
Industry segment A			
Industry segment B			
Industry segment C			
Other industries			

**Appendix B—Foreign and Domestic Operations and Export Sales**

The table set forth below is illustrative of the format that might be used for presenting the segment information required by paragraph (d) of Item 101 regarding foreign and domestic operations and export sales.

**FINANCIAL INFORMATION RELATING TO FOREIGN AND DOMESTIC OPERATIONS AND EXPORT SALES**

	Year		
	1	2	3
Sales to unaffiliated customers:			
United States <sup>1</sup>			
Geographic area A			
Geographic area B			
Sales or transfers between geographic areas:			
United States			
Geographic area A			
Geographic area B			
Operating profit or loss: <sup>3</sup>			
United States			
Geographic area A			

**FINANCIAL INFORMATION RELATING TO FOREIGN AND DOMESTIC OPERATIONS AND EXPORT SALES—Continued**

	Year		
	1	2	3
Geographic area B			
Identifiable assets:			
United States			
Geographic area A			
Geographic area B			
Export sales; United States <sup>2</sup>			

1 Or appropriate area of domestic operations.  
 \* Or some other reasonable measure of profitability as used in the financial statements.  
 3 Identify the geographic areas to which the sales are made, if appropriate.

**§ 229.102 (Item 102) Description of property.**

State briefly the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries. In addition, identify the industry segment(s) that use the properties described. If any such property is not held in fee or is held subject to any major encumbrance, so state and describe briefly how held.

*Instructions to Item 102.1.* What is required is such information as reasonably will inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities by the registrant. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and shall not be given.

2. In determining whether properties should be described, the registrant should take into account both quantitative and qualitative factors. See Instruction 1 to Item 101 of Regulation S-K (§ 229.101).

3. In the case of an extractive enterprise, material information shall be given as to production, reserves, locations, development and the nature of the registrant's interest. If individual properties are of major significance to an industry segment:

- A. More detailed information concerning these matters shall be furnished; and
- B. Appropriate maps shall be used to disclose location data of significant properties except in cases for which numerous maps would be required.

4. A. If reserve estimates are referred to in the document, the staff of the Office of Engineering, Division of Corporation Finance of the Commission, shall be consulted. That Office may request that a copy of the full report of the engineer or other expert who estimated the reserves be furnished as supplemental information and not as part of the filing. See Rule 418 of Regulation C (§ 230.418 of this chapter) and Rule 12b-4 of Regulation 12B (§ 240.12b-4 of this chapter) with respect to the submission to, and return by, the Commission of supplemental information.

B. If the estimates of reserves, or any estimated valuation thereof, are represented as being based on estimates prepared or reviewed by independent consultants, those

independent consultants shall be named in the document.

5. Estimates of oil or gas reserves other than proved or, in the case of other extractive reserves, estimates other than proved or probable reserves, and any estimated values of such reserves shall not be disclosed in any document publicly filed with the Commission, unless such information is required to be disclosed in the document by foreign or state law; provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge or consolidate with the registrant or otherwise to acquire the registrant's securities, such estimates may be included in documents relating to such acquisition.

6. The definitions in § 210.4-10(a) of Regulation S-X [17 CFR 210] shall apply to this Item with respect to oil and gas operations.

**§ 229.103 (Item 103) Legal proceedings.**

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 proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

*Instructions to Item 103.1.* If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal and factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described.

4. 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 also shall be described.

5. Notwithstanding the foregoing, an administrative or judicial proceeding (including, for purposes of A and B of this instruction, 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 primary for the purpose of protecting the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:

A. Such proceeding is material to the business or financial condition of the registrant;

B. 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

C. 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 \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

#### Subpart 229.200—Securities of the Registrant

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

(a) *Market information.* (1)(i) Identify the principal United States market or markets in which each class of the registrant's common equity is being traded. Where there is no established public trading market for a class of common equity, furnish a statement to that effect. For purposes of this Item the existence of limited or sporadic quotations should not of itself be deemed to constitute an "established public trading market." In the case of foreign registrants, also identify the principal established foreign public trading market, if any, for each class of the registrant's common equity.

(ii) If the principal United States market for such common equity is an exchange, state the high and low sales prices for the equity for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included, or are required to be included by Article 3 of Regulation S-X [17 CFR 210], as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for such equity.

(iii) If the principal United States market for such common equity is not an exchange, state the range of high and

low bid information for the equity for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included, or are required to be included by Article 3 of Regulation S-X, as regularly quoted in the automated quotation system of a registered securities association, or where the equity is not quoted in such a system, the range of reported high and low bid quotations, indicating the source of such quotations. Indicate, as applicable, that such over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions. Where there is an absence of an established public trading market, reference to quotations shall be qualified by appropriate explanation.

(iv) Where a foreign registrant has identified a principal established foreign trading market for its common equity pursuant to paragraph (a)(1) of this Item, also provide market price information comparable, to the extent practicable, to that required for the principal United States market, including the source of such information. Such prices shall be stated in the currency in which they are quoted. The registrant may translate such prices into United States currency at the currency exchange rate in effect on the date the price disclosed was reported on the foreign exchange. If the primary United States market for the registrant's common equity trades using American Depositary Receipts, the United States prices disclosed shall be on that basis.

(v) If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or a proxy or information statement filed pursuant to the Exchange Act, the document also shall include price information as of the latest practicable date, and, in the case of securities to be issued in connection with an acquisition, business combination or other reorganization, as of the date immediately prior to the public announcement of such transaction.

(2) If the information called for by this paragraph (a) is being presented in a registration statement on Form S-1 (§ 239.11 of this chapter) under the Securities Act or on Form 10 (§ 249.210 of this chapter) under the Exchange Act relating to a class of common equity for which at the time of filing there is no established United States public trading market, indicate the amount(s) of common equity (i) that is subject to outstanding options or warrants to purchase, or securities convertible into,

common equity of the registrant; (ii) that could be sold pursuant to Rule 144 under the Securities Act (§ 230.144 of this chapter) or that the registrant has agreed to register under the Securities Act for sale by security holders; or (iii) that is being, or has been publicly proposed to be, publicly offered by the registrant (unless such common equity is being offered pursuant to an employee benefit plan or dividend reinvestment plan), the offering of which could have a material effect on the market price of the registrant's common equity.

(b) *Holdings.* (1) Set forth the approximate number of holders of each class of common equity of the registrant as of the latest practicable date.

(2) If the information called for by this paragraph (b) is being presented in a registration statement filed pursuant to the Securities Act or a proxy statement or information statement filed pursuant to the Exchange Act that relates to an acquisition, business combination or other reorganization, indicate the effect of such transaction on the amount and percentage of present holdings of the registrant's common equity owned beneficially by (i) 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 common equity and (ii) each director and nominee and (iii) all directors and officers as a group, and the registrant's present commitments to such persons with respect to the issuance of shares of any class of its common equity.

(c) *Dividends.* (1) State the frequency and amount of any cash dividends declared on each class of its common equity by the registrant for the two most recent fiscal years and any subsequent interim period for which financial statements are required to be presented by § 210.3 of Regulation S-X. Where there are restrictions (including, where appropriate, restrictions on the ability of registrant's subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances) that currently materially limit the registrant's ability to pay such dividends or that the registrant reasonably believes are likely to limit materially the future payment of dividends on the common equity so state and either (i) describe briefly (where appropriate quantify) such restrictions, or (ii) cross reference to the specific discussion of such restrictions in the Management's Discussion and Analysis of financial condition and operating results prescribed by Item 303 of Regulation S-K (§ 229.303) and the description of such restrictions required

by Regulation S-X in the registrant's financial statements.

(2) 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.

**Instructions to Item 201.1.** Registrants, the common equity of which is listed for trading on more than one securities exchange registered under the Exchange Act, are required to indicate each such exchange pursuant to paragraph (a)(1)(i) of this Item; such registrants, however, need only report one set of price quotations pursuant to paragraph (a)(1)(ii) of this Item; where available, these shall be the prices as reported in the consolidated transaction reporting system and, where the prices are not so reported, the prices on the most significant (in terms of volume) securities exchange for such shares.

2. Market prices and dividends reported pursuant to this Item shall be adjusted to give retroactive effect to material changes resulting from stock dividends, stock splits and reverse stock splits.

3. The computation of the approximate number of holders of registrant's common equity may be based upon the number of record holders or also may include individual participants in security position listings. See Rule 17Ad-8 under the Exchange Act. The method of computation that is chosen shall be indicated.

4. If the registrant is a foreign issuer, describe briefly:

A. Any governmental laws, decrees or regulations in the country in which the registrant is organized that restrict the export or import of capital, including, but not limited to, foreign exchange controls, or that affect the remittance of dividends or other payments to nonresident holders of the registrant's common equity; and

B. All taxes, including withholding provisions, to which United States common equity holders are subject under existing laws and regulations of the foreign country in which the registrant is organized. Include a brief description of pertinent provisions of any reciprocal tax treaty between such foreign country and the United States regarding withholding. If there is no such treaty, so state.

**§ 229.202 (Item 202) Description of registrant's securities.**

Note.—If the securities being described have been accepted for listing on an exchange, the exchange may be identified. The document should not however, convey the impression that the registrant may apply

successfully for listing of the securities on an exchange or that, in the case of an underwritten offering, the underwriters may request the registrant to apply for such listing, unless there is reasonable assurance that the securities to be offered will be acceptable to a securities exchange for listing.

(a) **Capital Stock.** If capital stock is to be registered, state the title of the class and describe such of the matters listed in paragraphs (a) (1) through (5) as are relevant. A complete legal description of the securities need not be given.

(1) Outline briefly: (i) dividend rights; (ii) terms of conversion; (iii) sinking fund provisions; (iv) redemption provisions; (v) voting rights, including any provisions specifying the vote required by security holders to take action; (vi) any classification of the Board of Directors, and the impact of such classification where cumulative voting is permitted or required; (vii) liquidation rights; (viii) preemption rights; and (ix) liability to further calls or to assessment by the registrant and for liabilities of the registrant imposed on its stockholders under state statutes (e.g., to laborers, servants or employees of the registrant), unless such disclosure would be immaterial because the financial resources of the registrant or other factors make it improbable that liability under such state statutes would be imposed; (x) any restriction on alienability of the securities to be registered; and (xi) any provision discriminating against any existing or prospective holder of such securities as a result of such security holder owning a substantial amount of securities.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, describe briefly any restriction on the repurchase or redemption of shares by the registrant while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by, or amounts payable with respect to, the shares to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include the information regarding such other securities as will enable investors to understand such limitations or qualifications. No information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be

completed prior to or upon delivery by the registrant of the shares.

(5) **Debt Securities.** Describe briefly or cross-reference to a description in another part of the document, any provision of the registrant's charter or by-laws that would have an effect of delaying, deferring or preventing a change in control of the registrant and that would operate only with respect to an extraordinary corporate transaction involving the registrant (or any of its subsidiaries), such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation. Provisions and arrangements required by law or imposed by governmental or judicial authority need not be described or discussed pursuant to this paragraph (a)(5). Provisions or arrangements adopted by the registrant to effect, or further, compliance with laws or governmental or judicial mandate are not subject to the immediately preceding sentence where such compliance did not require the specific provisions or arrangements adopted.

(b) **Debt Securities.** If debt securities are to be registered, state the title of such securities, the principal amount being offered, and, if a series, the total amount authorized and the total amount outstanding as of the most recent practicable date; and describe such of the matter listed in paragraphs (b) (1) through (10) as are relevant. A complete legal description of the securities need not be given. For purposes solely of this Item, debt securities that differ from one another only as to the interest rate or maturity shall be regarded as securities of the same class. Outline briefly:

(1) Provisions with respect to maturity, interest, conversion, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the securities, together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities to other security holders or creditors of the registrant; where debt securities are designated as subordinated in accordance with Instruction 1 to this Item, set forth the aggregate amount of outstanding indebtedness as of the most recent practicable date that by the terms of such debt securities would be senior to such subordinated debt and describe briefly any limitation on the issuance of such additional senior indebtedness or state that there is no such limitation;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any asset ratio or the creation or maintenance of reserves;

(5) Provisions restricting the incurrence of additional debt or the issuance of additional securities; in the case of secured debt, whether the securities being registered are to be issued on the basis of unbonded bondable property, the deposit of cash or otherwise; as of the most recent practicable date, the approximate amount of unbonded bondable property available as a basis for the issuance of bonds; provisions permitting the withdrawal of cash deposited as a basis for the issuance of bonds; and provisions permitting the release or substitution of assets securing the issue; *Provided, however,* That provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain or the application of insurance moneys, and other similar provisions need not be described;

(6) The general type of event that constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture;

(7) Provisions relating to modification of the terms of the security or the rights of security holders;

(8) If the rights evidenced by the securities to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, the information regarding such other securities as will enable investors to understand the rights evidenced by the securities; to the extent not otherwise disclosed pursuant to this Item; no information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the registrant of the securities;

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in section 1232 of the Internal Revenue Code (26 U.S.C. 1232), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to section 1232; and

(10) The name of the trustee(s) and the nature of any material relationship with

the registrant or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(c) *Warrants and rights.* If the securities described are to be offered pursuant to warrants or rights state:

(1) The amount of securities called for by such warrants or rights;

(2) The period during which and the price at which the warrants or rights are exercisable;

(3) The amount of warrants or rights outstanding;

(4) Provisions for changes to or adjustments in the exercise price; and

(5) Any other material terms of such rights on warrants.

(d) *Other securities.* If securities other than capital stock, debt, warrants or rights are to be registered, include a brief description (comparable to that required in paragraphs (a), (b) and (c) of Item 202) of the rights evidenced thereby.

(e) *Market information for securities other than common equity.* If securities other than common equity are to be registered and there is an established public trading market for such securities (as that term is used in Item 201 of Regulation S-K (§ 229.201 of this chapter)) provide market information with respect to such securities comparable to that required by paragraph (a) of Item 201 of Regulation S-K (§ 229.201).

*Instructions to Item 202.1.* Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

A. In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and if convertible or redeemable, a statement to that effect;

B. In the case of debt, the rate of interest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1955 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible or callable, a statement to that effect; or

C. In the case of any other kind of security, appropriate information of comparable character.

2. If the registrant is a foreign registrant, include (to the extent not disclosed in the document pursuant to Item 201 of Regulation S-K (§ 229.201) or otherwise) in the description of the securities:

A. A brief description of any limitations on the right of nonresident or foreign owners to hold or vote such securities imposed by

foreign law or by the charter or other constituent document of the registrant, or if no such limitations are applicable, so state;

B. A brief description of any governmental laws, decrees or regulations in the country in which the registrant is organized affecting the remittance of dividends, interest and other payments to nonresident holders of the securities being registered;

C. A brief outline of all taxes, including withholding provisions, to which United States security holders are subject under existing laws and regulations of the foreign country in which the registrant is organized; and

B. A brief description of pertinent provisions of any reciprocal tax treaty between such foreign country and the United States regarding withholding or, if there is no such treaty, so state.

3. Section 305(a)(2) of the Trust Indenture Act of 1939, 15 U.S.C. 77aaa et seq., as amended ("Trust Indenture Act"), shall not be deemed to require the inclusion in a registration statement or in a prospectus of any information not required by this Item.

4. Where convertible securities or stock purchase warrants are being registered that are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall disclose:

A. Whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in a notice of the redemption or call;

B. The expiration or termination date of the warrants;

C. The kinds, frequency and timing of notice of the redemption or call, including the cities or newspapers in which notice will be published (where the securities provide for a class of newspapers or group of cities in which the publication may be made at the discretion of the registrant, the registrant should describe such provision); and

D. In the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption or call, for example, by reading the newspapers in which the notice of redemption or call may be published.

### Subpart 229.300—Financial Information

#### § 229.301 (Item 301) Selected financial data.

Furnish in comparative columnar form the selected financial data for the registrant referred to below, for

(a) Each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

*Instructions to Item 301. 1.* The purpose of the selected financial data shall be to supply in a convenient and readable format selected financial data which highlight certain

significant trends in the registrant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the table of financial data: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock as defined in § 210.5-02.28(a) of Regulation S-X [17 CFR 210]); and cash dividends declared per common share. Registrants may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross-reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where such matters might cause the data reflected herein not to be indicative of the registrant's future financial condition or results of operations.

3. Those registrants that are required to provide five year summary information in accordance with Statement of Financial Accounting Standard No. 33, "Financial Reporting and Changing Prices," may combine such information with the selected financial data appearing pursuant to this Item.

4. All references to the registrant in the table of selected financial data and in this Item shall mean the registrant and its subsidiaries consolidated.

5. If interim period financial statements are included, or are required to be included, by Article 3 of Regulation S-X, registrants should consider whether any or all of the selected financial data need to be updated for such interim periods to reflect a material change in the trends indicated; where such updating information is necessary, registrants shall provide the information on a comparative basis unless not necessary to an understanding of such updating information.

**§ 229.302 (Item 302) Supplementary financial information.**

(a) ~~Selected quarterly financial data.~~ Registrants specified in paragraph (a)(5) of this Item shall provide the information specified below.

(1) ~~Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), and net income (loss), for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements~~

are included or are required to be included by Article 3 of Regulation S-X [17 CFR 210].

(2) When the data supplied pursuant to this paragraph (a) vary from the amounts previously reported on the Form 10-Q (§ 249.308a of this chapter) filed for any quarter, such as would be the case when a pooling of interests occurs or where an error is corrected, reconcile the amounts given with those previously reported and describe the reason for the difference.

(3) Describe the effect of any disposals of segments of a business, and extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S-X, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

(4) 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 Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be followed by the reporting accountant with regard to the data required by this paragraph (a).

(5) This paragraph (a) applies to any registrant (except a foreign private registrant not required to report quarterly financial information on Form 10-Q) that meets both of the following tests:

(i) First test. The registrant:

(A) Has securities registered pursuant to section 12(b) of the Exchange Act (other than mutual life insurance companies); or

(B) Is an insurance company that is subject to the reporting requirements of section 15(d) of the Exchange Act and has securities which also meet the criteria set forth in paragraphs (C)(i) and (C)(2) immediately following; or

(C) Has securities registered pursuant to section 12(g) of the Exchange Act which also

(1) Are quoted on the National Association of Securities Dealers Automated Quotation System, and

(2) Meet the following criteria:

(i) ~~Three or more dealers stand willing to, and do in fact, make a market in such stock, including making regularly published bona fide bids and offers for such stock for their own accounts; or the stock is registered on a securities exchange that is exempted by the Commission from registration as a~~

national securities exchange pursuant to section 5 of the Exchange Act; for purposes of this paragraph, the insertion of quotations into the National Association of Securities Dealers Automated Quotation System by three or more dealers on at least 10 business days during the six month period immediately preceding the fiscal year for which the financial statements are required shall satisfy the requirement that three dealers be making a market; ~~(i) There continue to be 800 or more holders of record, as defined in Rule 12g5-1 (§ 240.12g5-1 of this chapter), under the Exchange Act, of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock;~~

~~(ii) The registrant continues to be a United States corporation;~~

~~(iv) There are 300,000 or more of such securities outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and~~

~~(v) In addition, the registrant shall meet two of the three following requirements:~~

~~(A) The shares described in paragraph (5)(i)(C)(2)(iv) of this Item continue to have a market value of at least \$2.5 million;~~

~~(B) The minimum representative bid price of such stock is at least \$5 per share; or~~

~~(C) The registrant continues to have at least \$2.5 million of capital, surplus, and undivided profits.~~

*Instructions to Paragraph (a)(5)(i)(C)(2)(v).*

1. ~~The computation required by paragraphs (v)(A) and (v)(B) shall be based on the average of the closing representative bid prices as reported by the National Association of Securities Dealers Automated Quotation System in accordance with Rule HAc1-2 under the Exchange Act (§ 240.11Ac1-2 of this chapter) for the 20 business days immediately preceding the fiscal year for which the financial statements are required.~~

2. ~~The computation required by paragraph (v)(C) shall be as at the last business day of the fiscal year immediately preceding the fiscal year for which the financial statements are required.~~

~~(ii) Second test. The registrant and its consolidated subsidiaries (A) have had a net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of at least \$250,000 for each of the last three fiscal years; or (B) had total assets of at least \$200,000,000 for the last fiscal year-end.~~

~~(b) Information on the effects of changing prices. Information on the effects of changing prices on business enterprises shall be presented by.~~

registrants subject to the reporting provisions of Statements of Financial Accounting Standards Nos. 33, 39, 40, 41, and 46, "Financial Reporting and Changing Prices," in accordance with the specific provisions of those Statements. Registered investment companies are excluded from these standards by Statement of Financial Accounting Standard No. 54 "Financial Reporting and Changing Prices: Investment Companies."

**§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.**

(a) *Full fiscal year*. Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a) (1), (2) and (3) with respect to liquidity, capital resources and results of operations and also shall provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the registrant's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole.

(1) *Liquidity*. Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action that the registrant has taken or proposes to take to remedy the deficiency. Also identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(2) *Capital resources*. (i) Describe the registrant's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments.

(ii) Describe any known material trends, favorable or unfavorable, in the registrant's capital resources. Indicate any expected material changes in the mix and relative cost of such resources. The discussion shall consider changes between equity, debt and any off-balance sheet financing arrangements.

(3) *Results of operations*. (i) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expenses that, in the registrant's judgment, should be described in order to understand the registrant's results of operations.

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

(iii) To the extent that the financial statements disclose material increases in net sales or revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of goods or services being sold or to the introduction of new products or services.

(iv) For the three most recent fiscal years of the registrant, or for those fiscal years beginning after December 25, 1979, or for those fiscal years in which the registrant has been engaged in business, whichever period is shortest, discuss the impact of inflation and changing prices on the registrant's net sales and revenues and on income from continuing operations:

*Instructions to Paragraph 303(a)*. 1. The registrant's discussion and analysis shall be of the financial statements and of other statistical data that the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion shall cover the three year period covered by the financial statements and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five year selected financial data appearing pursuant to Item 301 of Regulation S-K (§ 229.301) may be necessary.

2. The purpose of the discussion and analysis shall be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the registrant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided pursuant to this Item need only

include that which is available to the registrant without undue effort or expense and which does not clearly appear in the registrant's financial statements.

3. The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past, and (B) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes shall be described to the extent necessary to an understanding of the registrant's businesses as a whole; *Provided, however*, That if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Registrants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in this Item refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the registrant shall indicate those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition. Liquidity generally shall be discussed on both a long-term and short-term basis. The issue of liquidity shall be discussed in the context of the registrant's own business or businesses. For example a discussion of working capital may be appropriate for certain manufacturing, industrial or related operations but might be inappropriate for a bank or public utility.

6. Where financial statements presented or incorporated by reference in the registration statement are required by § 210.4-08(e)(3) of Regulation S-X [17 CFR Part 210] 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 shall include a discussion of the nature and extent of such restrictions and the impact such restrictions have had and are expected to have on the ability of the parent company to meet its cash obligations.

7. Registrants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will impact upon future operating results, such as known future increases in costs of labor or materials. This latter data may be required to be disclosed. Any forward-looking information supplied is expressly covered by the safe harbor rule for

projections. See Rule 175 under the Securities Act [17 CFR 230.175], Rule 3b-6 under the Exchange Act [17 CFR 240.3b-6] and Securities Act Release No. 6084 (June 25, 1979) (44 FR 38810).

8. Registrants that are required to provide narrative explanations of supplementary information disclosed in accordance with paragraph 37 of Statement of Financial Accounting Standards No. 33, "Financial Reporting and Changing Prices," (SFAS 33) may combine such explanations with the registrant's discussion and analysis required pursuant to this Item or may supply such information separately. If such statement is combined, the supplementary information required by SFAS 33 shall be located in reasonable proximity to the discussion and analysis. If such statement is not combined, the discussion of the impact of inflation otherwise required by this Item may be omitted but an appropriate cross reference to the explanation required by paragraph 37 of SFAS 33 shall be made. Foreign registrants need not comply with SFAS 33 but if, in its home country, a foreign registrant must satisfy requirements that are analogous to SFAS 33, then such analogous presentation shall be given.

9. Registrants that are not required to provide supplementary information in accordance with SFAS 33 (including foreign private registrants) may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 33 is encouraged, it is not required. All that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

10. All references to the registrant in the discussion and in this Item shall mean the registrant and its subsidiaries consolidated.

11. Foreign private registrants also shall discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors that have materially affected or could materially affect, directly or indirectly, their operations or investments by United States nationals.

(b) *Interim periods.* If interim period financial statements are included or are required to be included by Article 3 of Regulation S-X (17 CFR 210), a management's discussion and analysis of the financial condition and results of operations shall be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (b) (1) and (2) of this Item. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (a) of this Item, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(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 shall 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.* Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the registrant is required to or has elected to provide an income statement for the most recent fiscal quarter, such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the registrant has elected to provide an income statement for the twelve month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that twelve month period and the twelve month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Notwithstanding the above, if for purposes of a registration statement a registrant subject to paragraph (b) of § 210.3-06 of Regulation S-X provides a statement of income for the twelve month period ended as of the date of the most recent interim balance sheet provided in lieu of the interim income statements otherwise required, the discussion of material changes in that twelve month period will be in respect to the preceding fiscal year rather than the corresponding preceding period.

*Instructions to Paragraph (b) of Item 303.1.* If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to this paragraph (b) and the discussion of the full fiscal year's information shall be prepared pursuant to paragraph (a) of this Item. Such discussions may be combined.

2. In preparing the discussion and analysis required by this paragraph (b), the registrant may presume that users of the interim financial information have read or have access to the discussion and analysis required by paragraph (a) for the preceding fiscal year.

3. The discussion and analysis required by this paragraph (b) is required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes shall be described if they have not already been disclosed: *Provided, however,* That if the causes for a change in one line item also relate to other line items, no repetition is required. Registrants need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the financial statements. The information provided shall include that which is available to the registrant without undue effort or expense and which does not clearly appear in the registrant's condensed interim financial statements.

4. The registrant's discussion of material changes in results of operations shall 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.

5. The registrant shall discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operation.

6. Registrants are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Rule 175 under the Securities Act [17 CFR 230.175], Rule 3b-6 under the Exchange Act [17 CFR 249.3b-6] and Securities Act Release No. 6084 (June 25, 1979) (44 FR 38810).

**§ 229.304 (Item 304) Disagreements with accountants on accounting and financial disclosure.**

If, (a) within the twenty-four months prior to the date of the most recent financial statements, a Form 8-K under the Exchange Act [17 CFR 249.308] reporting a change of accountants has been filed, (b) included in such Form 8-K there was a reported disagreement on any matter of accounting principles or practices or financial statement disclosure, (c) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year there have been any transactions or events similar to those which involved the reported disagreement, and (d) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These

disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

### Subpart 229.400—Management and Certain Security Holders

#### § 229.401 Item 401. Directors and executive officers.

(a) *Identification of directors.* List the names and ages of all directors of the registrant and all persons nominated or chosen to become directors; indicate all positions and offices with the registrant held by each such person; state his term of office as director and any period(s) during which he has served as such; describe briefly any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected as a director or nominee.

*Instructions to Paragraph (a) of Item 401. 1.* Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No nominee or person chosen to become a director who has not consented to act as such shall be named in response to this Item. In this regard, with respect to proxy statements, see Rule 14a-4(d) under the Exchange Act (§ 240.14a-4(d) of this chapter).

3. If the information called for by this paragraph (a) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. With regard to proxy statements in connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

5. With regard to proxy statements in connection with action to be taken concerning the election of directors, if the solicitation is made by persons other than management, information shall be given as to nominees of the persons making the solicitation. In all other instances, information shall be given as to directors and persons nominated for election or chosen by management to become directors.

(b) *Identification of executive officers.* List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and describe briefly any arrangement or understanding between him and any other person(s) (naming

such person) pursuant to which he was or is to be selected as an officer.

*Instructions to Paragraph (b) of Item 401. 1.* Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No person chosen to become an executive officer who has not consented to act as such shall be named in response to this Item.

3. The information regarding executive officers called for by this paragraph (b) need not be furnished in proxy or information statements prepared in accordance with Schedule 14A under the Exchange Act (§ 240.14a-101 of this chapter) by those registrants relying on general instruction G of Form 10-K under the Exchange Act (§ 249.310 of this chapter). *Provided*, That such information is furnished in a separate item captioned "Executive officers of the registrant," and included in part I of the registrant's annual report on Form 10-K.

(c) *Identification of certain significant employees.* Where the registrant employs persons such as production managers, sales managers, or research scientists who are not executive officers but who make or are expected to make significant contributions to the business of the registrant, such persons shall be identified and their background disclosed to the same extent as in the case of executive officers. Such disclosure need not be made if the registrant was subject to section 13(a) or 15(d) of the Exchange Act or was exempt from section 13(a) by section 12(g)(2)(G) of such Act immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable.

(d) *Family relationships.* State the nature of any family relationship between any director, executive officer, or person nominated or chosen by the registrant to become a director or executive officer.

*Instruction to Paragraph 401(d).* The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(e) *Business experience.* (1) *Background.* Give a brief account of the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of this Item, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or person named in response to paragraph (c) of this Item has been employed by the registrant or a subsidiary of the registrant for less than

five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(2) *Dir. Directorships.* Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of such Act or any company registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., as amended, naming such company.

(f) *Inv. Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past five years and that are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the registrant:

(1) A petition under the Federal bankruptcy laws or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining him from, or otherwise limiting, the following activities:

(i) Acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any activity in connection with the purchase or sale of any security or in connection with any violation of Federal or State securities laws;

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in paragraph (f)(3)(i) of this Item, or to be associated with persons engaged in any such activity; or

(5) Such person was found by a court of competent jurisdiction in a civil action or by the Commission to have violated any Federal or State securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended, or vacated.

*Instructions to Paragraph (f) of Item 402. 1.* For purposes of computing the five year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this paragraph (f) has occurred and information in regard thereto is omitted on the grounds that it is not material, the registrant may furnish to the Commission, at time of filing (or at the time preliminary materials are filed pursuant to Rule 14a-6 or 14c-5 under the Exchange Act) (§§ 240.14a-6 and 240.14c-5 of this chapter), as supplemental information and not as part of the registration statement, report, or proxy or information statement, materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The registrant is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by this paragraph (f) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

**§ 229.402 (Item 402) Management remuneration and transactions.**

(a) *Remuneration.* Furnish the information required in the table below, in substantially the tabular form specified, concerning all remuneration (except remuneration for which disclosure is required by paragraph (b)(2) or (d) of this Item) paid or distributed through the latest practicable date to or accrued through such date for the account of, the following persons

and group for services in all capacities to the registrant and its subsidiaries during the registrant's last fiscal year, or, in specified instances, certain prior fiscal years.

(1) *Five executive officers or directors.* Each of the five most highly compensated executive officers or directors of the registrant as to whom

the total remuneration required to be disclosed in Columns C1 and C2 below would exceed \$50,000, naming each such person.

(2) *All officers and directors.* All officers and directors of the registrant as a group, stating the number of persons in the group without naming them.

(3) *Specified Tabular Format.*

**Remuneration Table**

(A)	(B)	(C)		(D)
		Cash and cash-equivalent forms of remuneration		
		(C1)	(C2)	
Name of individual or number of persons in group.	Capacities in which served.	Salaries, fees, (Directors' fees, commissions, and bonuses.	Securities or property, insurance benefits or reimbursement, personal benefits.	Aggregate of contingent forms of remuneration.

*Instructions to Paragraph (a) Item 402. 1. Foreign private issuers.* Foreign private issuers (other than North American issuers) may respond to all of Item 402 by indicating the aggregate payments or benefits paid to or accrued on behalf of all directors and executive officers as a group unless such registrants disclose to their security holders or otherwise make public the information specified in this Item for individually named directors and executive officers, in which case such information also shall be disclosed.

2. *Column A and B: Persons subject to paragraph (a).* A. This paragraph (a) of Item 402 applies to any individual who was an executive officer, officer, or director of the registrant at any time during the fiscal year. However, subject to the last sentence of Instruction 3B to paragraph (a) of Item 402, information need not be given for any portion of the period during which such individual was not an executive officer, officer, or director of the registrant, provided a statement to that effect is made. With respect to an individual who becomes for the first time an individual whose remuneration is to be reported in the table, it is not necessary to report remuneration that would have been reported in the table had the individual been included in prior years. For example, if a bonus was accrued for an individual and expensed for financial reporting purposes prior to the individual's becoming an officer of the amount accrued and expensed for such bonus need not be reported. This paragraph (a) of Item 402 applies to executive officers, other officers and directors.

B. Registrants shall exercise a measure of flexibility in determining which individuals shall be named in the remuneration table in order to avoid anomalous results and to assure that disclosure documents contain information on key policy-making members of management. Specifically, registrants may determine not to name a particular individual in the remuneration table when such individual otherwise might nominally be one of the five most highly remunerated executive officers or directors. The types of matters a registrant shall consider in exercising its discretion not to name an individual include:

(i) The distribution or accrual of an unusually large amount (such as a bonus or

commission), otherwise required to be reflected in Column C1 or Column C2, which is not part of a recurring arrangement and is unlikely to continue under the terms of the plan or any similar plan; and

(ii) The distribution or accrual of amounts relating to overseas assignments which may be attributed predominantly to such assignments. However, a registrant shall not apply the above standards mechanically; consideration shall be given to the question of whether an individual's level of executive responsibilities, viewed in conjunction with the individual's actual level of remuneration, would give rise to a conclusion that the individual may be among the five most highly compensated, key policy-making executive officers or directors. While the criteria set forth above may be used to determine which of the executive officers or directors shall be named in the table, the same standards shall not be used as a basis for deleting such amounts from the remuneration table in response to paragraph (a)(2) of this Item. Thus, while the above standards might allow a particular individual not to be one of those individually named, all relevant amounts shall be reflected in the table's group totals with no exclusions based on the above standards. Moreover, if an individual is named in the table, the full amount of that individual's remuneration shall be included in the remuneration table in accordance with the instructions to paragraph (a) of Item 402.

3. *Column C information.* Column C shall include remuneration for services rendered during the fiscal year distributed to or for the account of the specified individual or group, or which is accrued and the measurement of benefits thereunder and the distribution or unconditional vesting thereof are not subject to future events. See Instruction 3E to paragraph (a) of Item 402. Column C shall also include any amount actually distributed in the latest fiscal year which relates to services rendered in a prior fiscal year, less any amount relating to the same contract, agreement, plan, or arrangement previously included in the remuneration table for a prior fiscal year, and less any amount which would have been so included but for the fact that the individual was not, in the earlier period,

reflected in the remuneration table either as a named individual or a member of the group. However, if this calculation results in credit, any such credit shall be reflected in Column D and not Column C. See Instruction 4B(ii) to paragraph (a) of Item 402. Column C shall include cash or cash-equivalent amounts distributed or accrued and shall be segregated into two subcolumns; the first, C1, shall include the forms of remuneration described in Instruction 3A to paragraph (a) of Item 402; the second, C2, shall include the forms of remuneration described in Instructions 3B, C and D to paragraph (a) of Item 402.

**A. Salaries.** All cash remuneration distributed or accrued in the form of salaries, fees, directors' fees, commissions and bonuses shall be included in Column C1. Where the total amount of a bonus pool for the latest fiscal year under a bonus plan is known at the time remuneration information is filed with the Commission, but the amounts allocated to each participant will not be determined until after the information is filed, the registrant shall include a footnote indicating (i) that a bonus plan exists for the latest fiscal year, (ii) the individuals named in the table who are participants in the plan, and (iii) that amounts have not been allocated from the bonus plan to the individuals and thus are not included in the remuneration table. If the bonus pool participants are all officers and directors, the aggregate amount of the bonus accrual shall be reported in the group disclosure. In addition, registrants are required to disclose amounts subsequently allocated to the individuals named in the remuneration table for the next fiscal year.

**B. Securities or property.** The spread between the acquisition price, if any, and the fair market price of all securities or property acquired, under any contract, agreement, plan or arrangement (excluding remuneration for which disclosure is called for by paragraph 402(d)), for the benefit of any of the specified individuals or group, less any amount previously reported in the remuneration table for a prior fiscal year with respect to the same contract, agreement, plan or arrangement. The fair market price of any such securities or property shall be determined as of the date during the fiscal year that either of the following events occurs, or if the plan or arrangement contemplates that both such events may occur, the fair market price shall be determined as of the date during the fiscal year that the later event occurs:

(i) The recipient exercises an election (similar to the exercise of an option or right) in connection with the contract, agreement, plan or arrangement; or

(ii) The recipient becomes entitled without further contingencies to retain the securities or property.

The foregoing disclosure is required with respect to an exercise or entitlement realized within the last fiscal year, even though, as permitted by a plan, the exercise or entitlement occurs shortly after termination, in the same year, of employment of the participant who is otherwise subject to remuneration disclosure for that year.

**C. Life or health insurance; medical reimbursement plans.** The cost of premiums

paid by the registrant or any of its subsidiaries on life or health insurance policies insuring any such individual or group (unless the sole beneficiary under the policy is the registrant or its subsidiaries), and the costs of any medical reimbursement plans (which may be the benefits paid under any such plans) for the benefit of the specified individuals and the group shall be allocated to such individual and group and reflected in Column C2. Information need not be furnished pursuant to this Instruction 3C for any costs under group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

**D. Personal benefits.** The value of personal benefits which are not directly related to job performance, other than those provided to broad categories of employees and which do not discriminate in scope or terms of operation in favor of officers or directors, furnished by the registrant or its subsidiaries directly or through third parties to each of the specified individuals and the group, or benefits furnished by the registrant or its subsidiaries to other persons which indirectly benefit the specified individuals.

(i) **Valuation.** Such benefits shall be valued on the basis of the registrant's and subsidiaries aggregate actual incremental costs; however, if such aggregate costs are significantly less than the aggregate amounts the recipient would have had to pay to obtain the benefits, appropriate disclosure, including the aggregate value to the recipient, shall be made in a footnote to the table. The registrant may choose to disclose such aggregate value rather than aggregate incremental costs in the table, in which event such footnote disclosure is not required.

(ii) **Conditional exclusion of personal benefits.** If the registrant cannot determine without unreasonable effort or expense the specific amount of certain personal benefits, or the extent to which benefits are personal rather than business, the amount of such personal benefits may be omitted from the table, provided that, after reasonable inquiry, the registrant has concluded that the aggregate amounts of such personal benefits which cannot be specifically or precisely ascertained do not in any event exceed \$10,000 as to each individual or, in the case of a group, \$10,000 for each individual in the group and has concluded that the information set forth in the table is not rendered materially misleading by virtue of the omission of the value of such personal benefits.

(iii) **Footnote disclosure.** If as to an individual named in the table an amount representing personal benefits included in Column C2 exceeds 10 percent of the aggregate amount disclosed in Columns C1 and C2 or \$25,000, whichever is less, include a footnote to the table stating the dollar amount or percentage of Column C2 A represented by such personal benefits and briefly describe the kinds of such benefits.

**E. Certain remuneration which is subject to future events.** Remuneration for a fiscal year under plans of the types described in Instruction 4 to paragraph (a) of Item 402

(excluding remuneration for which disclosure is called for by paragraphs (d) or (b)(2) of Item 402) shall be included in Column C for such fiscal year, if, as of the end of such fiscal year, such remuneration was distributed to or for the account of the specified individuals or group, or was accrued and the measurement and the distribution or unconditional vesting thereof were not subject to future events. If a plan provides for remuneration some of which is and some of which is not subject to future events, the former is reportable in Column D and the latter is reportable in Column C. Remuneration conditioned on substantial future service is subject to future events under this standard. Similarly, if the amount or value of, or entitlement to, remuneration is dependent on future earning performance or market values, such remuneration is subject to future events under this standard. However, if dependence on future events does not represent a true contingency, remuneration shall be reported in Column C.

**4. Column D information.** Column D shall include remuneration of the specified individuals and group in whole or in part for services rendered during the fiscal year, including but not limited to the forms of remuneration described in paragraphs A through C of this Instruction 4, if such remuneration is properly expensed for financial reporting purposes, and the measurement of benefits thereunder or the distribution or unconditional vesting thereof is subject to future events, so that the remuneration is therefore not reportable in Column C. See Instruction 3E to Paragraph (a) of Item 402. Registrants need only report remuneration in Column D as it relates to the latest fiscal year and need not report amounts expensed in previous fiscal years.

**A. Pension or retirement plans; annuities; employment contracts; deferred compensation plans.** As to each of the specified individuals and groups, include as remuneration any amount expensed for financial reporting purposes by the registrant and its subsidiaries for the fiscal year with respect to contributions, payments, or accruals for the account of any such individual or group under any existing pension or retirement plans (except remuneration for which disclosure is required by paragraph (b)(2) of Item 402), annuity contracts, deferred compensation plans, or any other similar arrangements. Such remuneration shall be reflected in the amounts and for the fiscal year in which they are expensed under all such plans or arrangements, including plans qualified under the Internal Revenue Code.

**B. Incentive and compensation plans and arrangements.** (i) With respect to remuneration under incentive or compensation plans or arrangements (other than remuneration for which disclosure is called for by paragraph (d) of Item 402) pursuant to which the measure of benefits is based on objective standards or on securities (or an amount or value of securities) of the registrant or another person, granted, awarded or entered into at any time in connection with services to the registrant or its subsidiaries, include as remuneration as to

each of the specified individuals and group any amount, expended for financial reporting purposes by the registrant and its subsidiaries for the fiscal year with respect to any such specified individual or group attributable to an interest in any such plan or arrangement.

(ii) If the registrant has expensed amounts for financial reporting purposes and reported such amounts in the remuneration table and, in a subsequent year, in connection with the same plan or arrangement, credits its remuneration expense for financial reporting purposes, for any proper reason, such credit may be reflected as a reduction of the remuneration reported in Column D. If amounts credited pursuant to this Instruction are so reflected in the table, include a footnote briefly stating the amount of such credit and describing such treatment. In situations in which there are several plans and virtually everyone in the remuneration table is a participant in each plan, to the extent that negative entries in Column D for individuals and for the group are attributable to the same factors, the footnote disclosure required by this Instruction may be generic in nature. If negative entries reflect changes in several types of plans or other factors not common to all individuals and the group, and separate disclosure would result in lengthy narrative, it is sufficient to provide a general explanation of the circumstances giving rise to negative entries without a separate explanation of the components of each negative entry for individuals or the group. Excessive detail shall be avoided.

(iii) The financial reporting expense (or credit) for any form of performance or other contingent compensation granted in tandem with options or rights under plans for which disclosure is called for by paragraph (d) of Item 402 shall be excluded from Column D, and the information required by Instruction 12 to paragraph (d) of Item 402 shall be presented.

**C. Stock purchase plans; profit sharing and thrift plans.** Include the amount of any contribution, payment or accrual for the account of each of the specified individuals and the group under any stock purchase, profit sharing, thrift, or similar plans which has been expensed during the fiscal year by the registrant and its subsidiaries for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded.

**5. Transactions with third parties.** Paragraph (a) of Item 402, among other things, includes transactions between the registrant and a third party when the primary purpose of the transaction is to furnish remuneration to the individuals or group specified in that paragraph. Other transactions between the registrant and third parties in which persons specified in paragraph (a) of Item 402 have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interests of management and others in certain transactions, particularly paragraph (f) of Item 402. Paragraph (a) of Item 402 does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transactions shall be

disclosed pursuant to these other disclosure requirements, and not as a note to the remuneration table presented pursuant to paragraph (a) of Item 402.

**6. Other permitted disclosure.** The registrant may provide additional disclosure through one or more footnotes to the table, through additional lines or columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

**7. Definition of "plan."** The term "plan" as used in Item 402 includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal documents.

**(b) Proposed remuneration.** (1) Describe briefly all remuneration payments proposed to be made in the future pursuant to any on-going plan or arrangement to the individuals and group specified in paragraph (a) of Item 402. The description shall include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurement of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

(2) As to defined benefit and actuarial plans, include (in addition to describing such plans pursuant to paragraph (b)(1) of Item 402) a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any supplementary or excess pension award plans or arrangements) to persons in specified remuneration and years-of-service classifications. Amounts presented in the pension table shall be straight life annuity amounts notwithstanding the availability of joint survivorship provisions. In addition, the registrant shall (i) describe the remuneration covered by the plan, including the relationship of such covered remuneration reported in the table as required by paragraph (a) of Item 402, (ii) state the credited years of service under the plan for each of the individuals named in the table required by paragraph (a) of Item 402, and also their current remuneration covered by the plan if it differs substantially (by more than 10 percent for each individual) from that set forth in Column C1 of the paragraph (a) of Item 402 table, and (iii) indicate whether the benefit amounts listed in the table are subject to any deduction for Social Security or other offset amounts.

Example of Pension Table

Remuneration	Years of service				
	15	20	25	30	35
125,000	xxx	xxx	xxx	xxx	xxx
150,000	xxx	xxx	xxx	xxx	xxx
175,000	xxx	xxx	xxx	xxx	xxx
200,000	xxx	xxx	xxx	xxx	xxx
225,000	xxx	xxx	xxx	xxx	xxx

**Instructions to Paragraph (b) of Item 402.1.** Paragraph (b)(1) requires a brief description of any remuneration plan or arrangement which is operable for more than the latest fiscal year, whether or not remuneration under such plan has been reported or is reportable pursuant to paragraphs (a), (c) or (d) of Item 402.

2. Remuneration levels set forth in the paragraph (b)(2) pension table shall allow for reasonable increases in existing compensation levels; alternatively, registrants may present as the highest remuneration level in the pension table an amount equal to 120 percent of the highest amount of covered remuneration of any individual named in the table required by paragraph (a) of Item 402 for the fiscal year.

3. If the registrant has a defined benefit or actuarial pension plan or plans which is such that the use of the paragraph (b)(2) pension table is inappropriate to inform stockholders of the pension benefits that the paragraph (a) of Item 402 individuals may receive because the pension benefits are not determined primarily by final compensation (or average final compensation) and years of service (such as a plan where the annual benefit is determined by a summation of a certain amount or certain percentage of compensation for each year of the individual's entire career), the registrant shall describe the plan as required by paragraph (b)(2), together with the formula by which benefits are determined, and indicate the estimated annual benefits payable upon retirement at normal retirement age for the individuals specified in paragraph (a) of Item 402. For purposes of this Instruction, normal retirement age shall mean normal retirement age as defined under the plan or, if not so defined, the earliest time at which a participant may retire without any benefit reduction because of age.

4. Under paragraph (b), a plan of deferred compensation for services as a director must be disclosed. In addition, if such arrangement is not standard for all directors, the name of each director participating in such arrangement and the amount of such remuneration earned by each shall be indicated. Cross references to the remuneration table required by Paragraph (a) of Item 402 may be used for this purpose. See also paragraph (c)(2) of Item 402.

**(c) Remuneration of directors.** (1) **Standard arrangements.** Describe any standard arrangement, stating amounts, by which directors of the registrant are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments.

(2) *Other arrangements.* If a director of the registrant received remuneration for services as a director during the fiscal year in addition to or in lieu of that specified by any standard arrangement, state the name of the director and the amount of such remuneration earned by each; if this information is given as to an individual named in the table required by paragraph (a), of Item 402, a cross reference may be used.

(d) *Options, warrants, or rights.* Furnish the following information specified in paragraphs (d) (1) through (4) immediately following as to all stock appreciation rights and options to purchase securities from the registrant or any of its subsidiaries which were granted to or exercised or realized by each director or executive officer named in answer to paragraph (a)(1) of Item 402, naming each such individual, and all directors and officers of the registrant as a group, without naming them, during the registrant's last fiscal year (or, if applicable, the alternate period specified in either Instruction 5 or Instruction 6 to paragraph (d) of Item 402 and as to all options and stock appreciation rights held by such persons at the end of the last fiscal year (or of such alternate period):

(1) As to options granted during the specified period, state

(i) The title and aggregate amount of securities subject to options;

(ii) The average per share option exercise price; and

(iii) If the option exercise price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date shall be disclosed. The title and aggregate amount of such securities subject to options, if any, which are in tandem with stock appreciation rights should be set forth separately.

(2) As to the exercise or realization of options or stock appreciation rights held in tandem with options granted during the specified period or prior thereto, state the net value of securities (market value less any exercise price) or cash realized during the specified period.

(3) As to all unexercised options or stock appreciation rights in tandem therewith held as of the end of the specified period, state (i) the title and aggregate amount of underlying securities; and (ii) the aggregate potential (unrealized) value of such options or rights, as of the end of the specified period (market value less any exercise or base price). The title and aggregate amount of securities subject to options which are in tandem with stock appreciation rights, if any, shall be set forth separately.

(4) As to stock appreciation rights not in tandem with options, state:

(i) The number of rights granted during the specified period;

(ii) The average per share base price thereof;

(iii) The number of rights outstanding at the end of the specified period;

(iv) The net value of the shares (market value) or cash realized during the specified period upon exercise or realization of any such rights, granted during the specified period or prior thereto;

(v) The number of rights outstanding as of the end of the specified period; and

(vi) The potential (unrealized) value of all such rights outstanding as of the end of the specified period (market value less any base price).

*Instructions to Paragraph (d) of Item 402.*

The term "options" as used in this paragraph includes all options, warrants or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given. The term "stock appreciation right" means a right representing a share of the registrant or another person under which right the holder may in the future realize compensation measurable by reference to the future market price of such share and payable in cash, securities, or other property, where a change in the market value of the share is properly taken into account in the expensing of such compensation for financial reporting purposes for the fiscal year in which the change in market value occurs. Thus, this definition may include interests in certain plans, such as some phantom stock plans, which are not denominated as stock appreciation right plans. For the purpose of this paragraph, if reference is made to a number of options or stock appreciation rights, such number shall correspond to the number of securities to which the options or rights relate.

2. The extension, regranting or material amendment of options or stock appreciation rights shall be deemed the granting of options and stock appreciation rights within the meaning of this paragraph.

3. If the options of rights relate to more than one class of securities, the information shall be given separately for each such class.

4. The information called for by this paragraph may be furnished in the form of the table set forth in the Appendix to this Item.

5. If the information called for by this paragraph is required to be presented in a registration statement filed pursuant to the Securities Act on behalf of a registrant that is not subject to the reporting provisions of section 13(a) or section 15(d) of the Exchange Act, immediately prior to the filing of the registration statement, such information regarding options and stock appreciation rights shall be given for the period since the beginning of the registrant's last fiscal year through a date not more than 30 days prior to the date of filing of the registration statement, specifying such date. Such information may,

but need not, be reported separately for option and stock appreciation right transactions during the past fiscal year and such transactions since the close of the last fiscal year through such specified date, and such information regarding options and stock appreciation rights held shall be given as of the specified date.

6. With regard to any registrant, if the information called for by paragraph (d)(3) is required to be presented, rather than incorporated by reference in a registration statement filed pursuant to the Securities Act, the information required by such paragraph shall be reported for all options and stock appreciation rights in tandem therewith (regardless of who holds them) as of a date not more than 30 days prior to the date of filing of the registration statement. Instructions 1 through 5 to paragraph (d) do apply.

7. Except as provided below, a registrant reporting option and stock appreciation right information on a fiscal year basis in its registration statement filed pursuant to the Securities Act or its proxy material filed pursuant to the Exchange Act, shall, if the total market value on the granting dates of securities underlying all options or stock appreciation rights granted since the end of the last fiscal year exceeds \$50,000 for any executive officer or director named pursuant to paragraph (a) of Item 402, also present the following information as to such options and rights as of the most recent practicable date: (A) the title and aggregate amount of underlying securities; (B) the exercise or base price of such options or rights; and (C) if the exercise or base price was less than 100% of the market price of the underlying security on the date of the grant, such fact and the market price of the underlying security. Where the information called for by paragraph 402(d) is incorporated by reference, rather than presented, in a registration statement filed pursuant to the Securities Act, the registrant may, but need not, comply with this Instruction.

8. In calculating the potential (unrealized) value of outstanding rights or options, the value of an option or right shall be determined as though it had been exercised or realized on the valuation date, and without regard to the fact that actual realization of any or all benefits under the option or right may be subject to unsatisfied contingencies or conditions. All outstanding rights or options with exercise or base prices above the market price on the valuation date shall be disregarded in making this calculation; the total shall reflect only options or rights with positive unrealized values and shall not be reduced by negative unrealized values.

9. If securities rather than cash are received upon the exercise or realization of a stock appreciation right, the fair market value of said securities on the date of exercise or realization shall be reported pursuant to this paragraph.

10. With regard to paragraphs (d) (3) and (4) registrants also may state, at their option, that portion of the potential (unrealized) value reported which relates to options and/or rights that are not currently vested, exercisable or realizable.

11. The base price of a stock appreciation right is the amount used to define benefits which are available only to the extent that the market price of the underlying security exceeds such amount. For example, a stock appreciation right with a base price of \$10 (the market price on date of grant) provides for payment of a benefit equal to the amount by which the market price at time of exercise exceeds \$10. In the case of a phantom stock right providing for payment of the full value of a share, without reduction by or payment of any amount, the base price is zero.

12. If a performance unit or other contingent compensation right (other than an option or stock appreciation right) is in tandem with an option or stock appreciation right, the existence of such right shall be disclosed either with information about options pursuant to paragraphs (d) (1) through (3) (if such right is in tandem with an option or with a stock appreciation right which is itself in tandem with an option) or with information about stock appreciation rights pursuant to paragraph (d)(4) (if such right is in tandem only with a stock appreciation right which is not itself in tandem with an option). The value realized from such rights shall be included as value realized upon exercise or realization of options or stock appreciation rights, as the case may be, and shall not be reported pursuant to paragraph (a) or (c) of Item 402; and the potential (unrealized) value of such rights shall be taken into account in determining the potential (unrealized) value of options or stock appreciation rights, as the case may be. See Instructions 8 and 13 to this paragraph (d).

13. For purposes of this paragraph, an option shall be deemed in tandem with a stock appreciation right, and a performance unit or other contingent compensation right will be deemed in tandem with an option or stock appreciation right, and vice versa in each instance, if the benefits under one represent an alternative to or reduce the benefits available under the other. Where rights or options are in tandem with one another, a registrant shall present, as potential (unrealized) value, the maximum amount which may be realized under such rights and/or options, if all were exercised and/or realized on the valuation date, in the manner most beneficial to the holder (without counting more than one of any benefits which are alternative to one another).

*(e) Indebtedness of management.*

State as to each of the following persons who was indebted to the registrant or its subsidiaries at any time since the beginning of the last fiscal year of the registrant, (1) the largest aggregate amount of indebtedness outstanding at any time during such period, (2) the nature of the indebtedness and of the transaction in which it was incurred, (3) the amount thereof outstanding as of the latest practicable date, and (4) the rate of interest paid or charged thereon: (i) each director or officer of the registrant; (ii) each nominee for election as a director; and (iii) each associate of any such director, officer or nominee.

*Instructions to Paragraph (e) of Item 402.*

1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. This paragraph does not apply to any person whose aggregate indebtedness did not exceed \$25,000 or one percent of the registrant's total assets, whichever is less, at any time during the period specified. Exclude in the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms, for ordinary travel and expense advances and for other transactions in the ordinary course of business.

3. Notwithstanding Instruction 2 to paragraph (e), if the registrant or any of its subsidiaries is engaged primarily in the business of making loans, and loans to any of the specified persons in excess of \$25,000 or one percent of its total assets, whichever is less, were outstanding at any time during the period specified, such loans shall be disclosed. However, if the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T [12 CFR Part 220], such disclosure, may consist of a statement, if such is the case, that the loans to such persons (i) were made in the ordinary course of business, (ii) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (iii) did not involve more than normal risk of collectibility or present other unfavorable features.

4. If any indebtedness required to be described arose under section 16(b) of the Exchange Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the registrant or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transactions, including the prices and number of shares involved.

5. If the information called for by this paragraph is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, the information called for by this paragraph shall be presented for the last three fiscal years.

*(f) Transactions with management.*

Describe briefly any transaction since the beginning of the registrant's last fiscal year or any presently proposed transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating the person's relationship to the registrant, the nature of the person's interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own of record or beneficially more than five percent of any class of registrant's voting securities; and

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant.

*Instructions to Paragraph (f) of Item 402.*

1. No information need be given in response to this paragraph as to any remuneration or other transaction reported in response to any other paragraph of Item 402 or as to any remuneration or transaction with respect to which information may be committed pursuant to any other paragraphs of this Item 402.

2. No information need be given in answer to this paragraph as to any transactions where:

A. The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

C. The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed \$50,600; or

D. The interest of the specified person arises solely from the ownership of securities of the registrant and the specified person receives no extra or special benefit not shared on a pro rata basis.

3. It should be noted that this paragraph calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity which engages in a transaction with the registrant or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this paragraph where:

A. The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in paragraphs (f)(1) through (4) of this Item in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

B. The interest arises only from such person's position as a limited partner in a

partnership in which the person and all other persons specified in paragraph (f)(1) through (4) of this Item had an interest of less than 10 percent; or

C. The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the registrant or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the registrant or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. If the information prescribed by this Instruction is to be included in a registration statement filed on Form S-11 under the Securities Act (§ 239.18 of this chapter), disclose the aggregate depreciation claimed by the seller for Federal income tax purposes, if acquired by the seller within five years prior to the transaction. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

6. If the information called for by this paragraph is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, the period for which the information called for shall be reported is the previous three years.

7. Information shall be furnished in answer to this paragraph with respect to transactions not excluded above which involve remuneration from the registrant or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

8. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this paragraph. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in a particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this paragraph. The materiality of any interest or transaction is to be determined on the basis of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(g) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the registrant's last fiscal year or any currently proposed transactions, to which any pension, retirement, savings or similar plan provided by the registrant or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had, or is to have, a direct or indirect material interest, naming such person and stating his relationship to the registrant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

- (1) Any director or officer of the registrant;
- (2) Any nominee for election as a director;
- (3) Any security holder who is known to the registrant to own or record or beneficially more than five percent of the outstanding voting securities of the registrant;
- (4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant; or
- (5) The registrant or any of its subsidiaries.

*Instructions to Paragraph (g) of Item 402.1.* Instructions 2, §. 4 and 5 to paragraph (f) of Item 402 shall apply to this paragraph.

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this paragraph any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to this paragraph with respect to:

- A. Payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;
- B. Payment of remuneration for services not in excess of five percent of the aggregate remuneration received by the specified person during the registrant's last fiscal year from the registrant and its subsidiaries; or
- C. Any interest of the registrant or any of its subsidiaries which arises solely from its general interest in the success of the plan.

(h) *Transactions with promoters.*

Registrants, filing a registration statement on Form S-1 under the Securities Act (§ 239.11 of this chapter) or on Form 10 under the Exchange Act (§ 249.210 of this chapter), that have been organized within the past five years, shall:

- (1) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other

consideration therefor received or to be received by the registrant; and

(2) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and shall identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, registrants also shall state the cost thereof to the promoter.

(i) *Termination of employment.* Describe, unless previously disclosed by the registrant in a proxy or information statement filed pursuant to section 14 of the Exchange Act, any remunerative plan or arrangement, including payments to be received from the registrant, with any individual named in the paragraph (aj) of Item 402 remuneration table for the latest or the next preceding fiscal year, if such a plan or arrangement results or will result from the resignation, retirement or any other termination by such individual of employment with the registrant and its subsidiaries.

*Instructions to Paragraph (i) of Item 402.1.* No information need be given in response to this paragraph as to any remuneration or other transactions reported in response to any other paragraphs of Item 402.

2. No information need be given in answer to this paragraph as to any plan or arrangement where the amount involved in the transaction, including all periodic payments or installments, does not exceed \$50,000.

3. The term "previously disclosed" as used in this paragraph includes situations where the arrangements have been generally disclosed in prior proxy or information statements filed with the Commission, notwithstanding the fact that the precise amount to be received by a given individual has not been precisely indicated.

#### Appendix—Stock Options and Stock Appreciation Rights

The tables set forth below are illustrations of the presentation in tabular form of the information required by paragraph (d) of Item 402 of Regulation S-K and Instruction 3(c) to Item 9(d) of Schedule 14A under the Exchange Act (§ 240.14a-101 of this chapter) which also applies to Items 10(d) and 11(c) of Schedule 14A. Where the tables are being presented and Item 9, 10 or 11 of Schedule 14A is applicable to the disclosure, information shall be furnished for the five year period specified in Instruction 3(c) to Item 9(d) of Schedule 14A and the information in

Table I as to shares sold and the bracketed reference at the foot of the table to options granted to employees shall be added.

Other tabular presentations, including the combination of the tables into one, are of course acceptable if they include the necessary data. Tabular presentation may not be appropriate if only a very few options or stock appreciation rights have been granted.

Table I—Stock Options and Tandem Rights

The following tabulation shows, as to certain directors and officers of the

registrant and as to all directors and officers of the registrant as a group, the following information with respect to stock options and stock appreciation rights in tandem therewith (if any): (i) the title and aggregate amount of securities subject to options granted during the specified period, (ii) the average per share option exercise price thereof, (iii) the net value of shares (market value less any exercise price) or cash realized during the specified period upon the exercise or realization of such options or rights granted during the specified period or prior thereto, (iv) the

number of shares sold during the specified period of the same class as those so acquired, and (v) the title and aggregate amount of securities subject to all such options or rights outstanding as of the end of the specified period, and (vi) the potential (unrealized) value of such outstanding options and rights as of the end of the specified period (market value less any exercise or base price). The title and aggregate amount of securities subject to tandem options granted during the specified period and outstanding at the end thereof are separately shown.

	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted — to —:				
Number of options without tandem rights.....				
Number of options with tandem rights.....				
Average per share exercise price <sup>1</sup> .....	\$.....	\$.....	\$.....	\$.....
Exercised — to —:				
Net value realized in shares (market value less any exercise price) or cash.....	\$.....	\$.....	\$.....	\$.....
Sales — to —:				
Number of shares <sup>2</sup> .....				
Outstanding at —:				
Number of options without tandem rights.....				
Number of options with tandem rights.....				
Potential (unrealized) value—(market value less exercises or base price) <sup>3</sup> .....				
In addition, during the period employees were granted options and tandem rights for a total of _____ shares at an average option or base price per share of \$____.4				

<sup>1</sup>If the option price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date must be disclosed.  
<sup>2</sup>Sales by directors and officers who exercised options during the period from \_\_\_\_\_ to \_\_\_\_\_.  
<sup>3</sup>Of the potential (unrealized) value at the end of the period \_\_\_\_\_ percent relates to exercisable options and/or tandem rights, and \_\_\_\_\_ percent relates to unexercisable options and/or tandem rights.  
<sup>4</sup>The numbers of options or rights set forth above correspond to the numbers of shares to which they relate. All share figures have been adjusted in accordance with the terms of the options or rights to reflect the stock split in 19\_\_\_\_ and, where applicable, to give effect to share dividends.

Table II—Stock Appreciation Rights Not in Tandem With Options

The following tabulation shows, as to certain directors and officers of the registrant and as to all directors and officers of the registrant as a group, the following information with respect to stock appreciation rights (including

interests in certain phantom stock plans): (i) the number of such rights granted during the specified period, (ii) the average per share base price thereof, (iii) the net value of shares (market value) or cash realized during the specified period upon exercise or realization of any such rights granted during the specified period or prior

thereto, (iv) the number of such rights outstanding as of the end of the specified period, and (v) the potential (unrealized) value of all such rights outstanding as of the end of the specified period (market price less any base price).

	John Jones	James Smith	Richard Roe	All directors and officers as a group
Granted — to —:				
Number of rights.....				
Average base prices.....	\$.....	\$.....	\$.....	\$.....
Exercised or realized — to —:				
Net value realized in shares (market value) or cash.....	\$.....	\$.....	\$.....	\$.....
Outstanding at —:				
Number of rights.....				
Potential (unrealized) value (market value less any base price) <sup>1</sup> .....	\$.....	\$.....	\$.....	\$.....
In addition, during the period employees were granted rights relating to a total of _____ shares at an average base price of \$____ per share. <sup>2</sup>				

<sup>1</sup>Of the potential (unrealized) value at the end of period, \_\_\_\_\_ percent relates to exercisable rights, and \_\_\_\_\_ percent relates to unexercisable rights.  
<sup>2</sup>The numbers of rights set forth above correspond to the numbers of shares to which they relate. All stock appreciation rights figures have been adjusted in accordance with the terms of the rights to reflect the stock split in 19\_\_\_\_ and, where applicable, to give effect to share dividends.

§ 229.403 (Item 403) Security ownership of certain beneficial owners and management.

(a) *SecSecurity ownership of certain beneficial owners.* Furnish the following information, as of the most recent 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. 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 (§ 240.13d-3(d)(1) of this chapter).

(1) Title of class	(2) Name and address of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of class
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(b) *SecSecurity ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors' qualifying shares, beneficially owned by all directors and nominees, naming them, and directors and officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in Rule 13d-3(d)(1) under the Exchange Act.

(1) Title of class	(2) Name of beneficial owner	(3) Amount of nature of beneficial ownership	(4) Percent of class
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(c) *ChcChanges in control.* Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

*Instructions to Item 403.* 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries, plus securities

deemed outstanding pursuant to Rule 13d-3(d)(1) under the Exchange Act [17 CFR 240.13d-3(d)(1)].

2. For the purposes of this Item, beneficial ownership shall be determined in accordance with Rule 13d-3 under the Exchange Act (§ 240.13d-3 of this chapter). Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

3. The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a registrant may rely upon information set forth in such statements unless the registrant knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (a) of this Item, the registrant may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure shall be made to avoid confusion.

6. Paragraph (c) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

7. Where the holder(s) of voting securities reported pursuant to paragraph (a) hold more than five percent of any clads of voting securities of the registrant pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

**Subpart 229.500—Registration Statement and Prospectus Provisions**

§ 229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.

(a) *Facing page.* The facing page of every registration statement shall set forth the approximate date of proposed sale to the public and, where appropriate, the delaying amendment legend as set forth in Regulation C.

(b) *Cross-reference sheet.* Immediately following such facing page, there shall be included a cross reference sheet showing the location in the prospectus of the information required to be included in the prospectus in response to the items of the form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted from the prospectus, a statement to that effect shall be made in the cross reference sheet. The cross reference

sheet need not be included in the prospectus.

(c) *OutOutside front cover page of prospectus.* The following information (to the extent appropriate) shall appear on the outside front cover page of the prospectus with appropriate cross references to more detailed discussion elsewhere in the prospectus:

(1) Name of the registrant and, in the case of a foreign private registrant, an English translation of such name. Where the name of the registrant is the same as that of another well-known company and it appears likely that the registrant may be confused with the other company, or where the name indicates a line of business in which the registrant is not engaged or is engaged to only a limited extent, a statement may be necessary to prevent the confusion of the two companies or to remove a misleading inference that may be drawn from the name as to the nature of the registrant's business. In some circumstances, however, disclosure may not be sufficient, and a change of name may be the only way to preclude confusion of the companies or misleading inferences from registrant's name. Such disclosure or name change is not necessary in the case of an established registrant that over a period of years has changed the general character of its business and the investing public is aware generally of the change and the character of the registrant's present business;

(2) Title and amount of securities offered and a brief description of such securities (unless not necessary to indicate the material terms of the securities, as in the case of an issue of common stock with full voting rights and the dividend and liquidation rights usually associated with common stock);

(3) Where any of the securities to be registered are to be offered for the account of security holders, a statement to that effect;

(4) Cross reference, where applicable to the discussion in the prospectus prescribed by Item 503 of Regulation S-K (§ 229.503), of material risks in connection with the purchase of the securities, printed in bold-face roman type at least as high as ten-point modern type and at least two points leaded, add

(5) The following statement in capital letters printed in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON

**THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;**

(6) In the case of any preliminary prospectus that is circulated by registrants not subject to the reporting provisions of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of the registration statement, a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered, or a bona fide estimate of the principal amount of debt securities to be offered;

(7) Where securities are to be offered for cash, other than on a registration statement on Form S-8 (§ 239.161) of this chapter, the information called for by the following table, in substantially the tabular form indicated, as to all securities to be registered (estimated, if necessary):

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per unit.....			
Total.....			

(8) In the case of any prospectus to be used prior to the effective date of the registration statement, in red ink, the caption "Preliminary Prospectus," the date of its issuance, and the following statement printed in type as large as that generally in the body of such prospectus:

A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

(9) Any legend or information required by the law of any State in which the securities are to be offered; and

(10) The date of the prospectus.

*Instructions to Item 501.* 1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Only commissions paid by the registrant or selling security holders in cash are to be included in the table. Commissions paid by other persons, and other consideration to the underwriters, shall be set forth in a note to the table with a reference thereto in the second column of the table. Any finder's fee or similar payments shall be disclosed appropriately.

2. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained. In addition, if the securities are to be offered at the market, or if the offering price is to be determined by a formula related to market prices, indicate the market involved and the market price as of the latest practicable date.

3. If the securities are to be offered on a best efforts basis, set forth the termination date of the offering, any minimum required purchase and any arrangements to place the funds received in an escrow, trust, or similar arrangement. If no such arrangements have been made, so state. The following tabular presentation of the total maximum and minimum securities to be offered shall be combined with the table required above:

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Total minimum.....			
Total maximum.....			

4. Where an underwriter has received an over-allotment option, maximum-minimum information shall be presented in the price table, or in a note thereto, based on the purchase of all or none of the shares subject to the option. The terms of the option may be described in response to Item 508 of Regulation S-K (§ 229.508) rather than on the cover page of the prospectus.

5. The total of "other expenses of issuance and distribution" called for by Item 511 of Regulation S-K (§ 229.511), stated separately for the registrant and for the selling security holders, if any, shall be set forth in a note to the proceeds column of the distribution table.

**§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.**

The following information, to the extent applicable, shall appear on the inside front cover page of the prospectus (except that the information required by paragraphs (e) and (g) of this Item may be set forth on the outside back cover page).

(a) **Available information.** Registrants subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of the registration statement shall:

(1) State that the registrant is subject to the informational requirements of the Exchange Act and in accordance therewith files reports and other information with the Securities and Exchange Commission;

(2) State that reports (and where registrant is subject to sections 14(a) and 14(c) of the Exchange Act proxy and information statements) and other information filed by the registrant can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state

the current address of each such facility (see §§ 200.11(b) and 200.80(c)(1) of this chapter), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates; and

(3) **Name of national securities exchange** on which the registrant's securities are listed and state that reports (and where registrant is subject to sections 14(a) and 14(c) of the Exchange Act proxy and information statements), and other information concerning the registrant can be inspected at such exchanges.

(b) **Reports to security holders.** Where a registrant may not be required to deliver an annual report to security holders (or holders of American depository receipts) pursuant to section 14 of the Exchange Act or stock exchange requirements, describe briefly the nature and frequency of reports that will be given to such holders in such event, specifying whether or not such reports will contain financial information that has been examined and reported upon, with an opinion expressed "by", an independent public or certified public accountant, and, in the case of the reports of a foreign private registrant that will not contain financial information prepared in accordance with United States generally accepted accounting principles, state whether the report will include a reconciliation of such information with such accounting principles.

(c) **Incorporation by reference.** Where any document or part thereof is incorporated by reference in the registration statement but not delivered with the prospectus, include an undertaking to provide without charge to each person to whom a prospectus is delivered, upon written or oral request of such person a copy of any and all of the information that has been incorporated by reference in the registration statement (not including exhibits to the information, that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the registration statement incorporates), and the address (including title or department) and telephone number to which such a request is to be directed.

(d) **Stabilization.** (1) If the registrant or any of the underwriters knows or has reason to believe that there is an intention to over-allot or that the price of any security may be stabilized to facilitate the offering of the registered securities, set forth a statement in substantially the following form, subject to appropriate modification where

V circumstances require. Such statement shall be in capital letters, printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded:

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF (IDENTIFY EACH CLASS OF SECURITIES IN WHICH SUCH TRANSACTIONS MAY BE EFFECTED) AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH TRANSACTIONS MAY BE EFFECTED ON (IDENTIFY EACH EXCHANGE ON WHICH STABILIZING TRANSACTIONS MAY BE EFFECTED; IF NONE, OMIT THIS SENTENCE.) SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

(2) If the stabilizing began prior to the effective date of the registration statement, set forth the amount of securities bought, the prices at which bought and the period within which they were bought.

(3) If the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public after the expiration of the rights offering period, there shall be set forth, by supplement or otherwise, in the prospectus used in connection with such reoffering (i) the amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which such securities were bought, (ii) the amount of the offered securities subscribed for during such period, (iii) the amount of the offered securities subscribed for by the underwriters during such period, (iv) the amount of the offered securities sold during such period by the underwriters and the price, or range of prices, at which such securities were sold, and (v) the amount of the offered securities to be reoffered to the public and the public offering price.

(e) ~~Delivery of prospectuses by dealers.~~ The legend below shall be set forth inserting the expiration date of the period prescribed by section 4(3) of the Securities Act and Rule 174 thereunder (§ 230.174 of this chapter) except that this legend need not be included if, pursuant to Rule 174, dealers are not required to deliver a prospectus, or if the exemption provided by section 4(3) of the Securities Act is not applicable because of the provisions of section 24(d) of the Investment Company Act. If such expiration date is not known on the effective date of the registration statement it shall be included in the prospectus, copies of which are required to be filed pursuant to Rule 424(b) under the Securities Act (§ 230.424(b) of this chapter). The following legend shall be

printed in bold-face or italic type at least as large as eight-point modern type and at least two points leaded:

Until (insert date) all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

(f) **Enforceability of civil liabilities against foreign persons.** In the case of a foreign private registrant, a statement of how the enforcement by investors of civil liabilities under the Federal securities laws may be affected by the fact that the registrant is located in a foreign country, that certain of its officers and directors are residents of a foreign country, that certain underwriters or experts named in the registration statement are residents of a foreign country, and that all or a substantial portion of the assets of the registrant and of said persons are located outside the United States. Such disclosure need not be included on the inside front cover page of the prospectus, if it is included, under appropriate caption, elsewhere in the forepart of the prospectus.

(1) Such disclosure shall indicate:

(i) Whether investors will be able to effect service of process within the United States upon such persons;

(ii) Whether investors will be able to enforce, in United States courts, judgments against such persons predicated upon the civil liability provisions of the Federal securities laws;

(iii) Whether the appropriate foreign courts would enforce judgments of United States courts obtained in actions against such persons predicated upon the civil liability provisions of the Federal securities laws; and

(iv) Whether the appropriate foreign courts would enforce, in original actions, liabilities against such persons predicated solely upon the Federal securities laws.

(2) If any portions of such disclosures are stated to be based upon an opinion of counsel, such counsel shall be named in the prospectus and an appropriate manually signed consent to the use of such name and opinion shall be included as an exhibit to the registration statement.

(g) **Table of contents.** Include a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus and the page number on which each such section or subdivision begins.

§ 229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.

(a) **Summary.** Registrants should include a summary of the information contained in the prospectus where the length or complexity of the prospectus makes such a summary appropriate.

(b) **Address and telephone number.** Registrants shall include in the forepart of the prospectus the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(c) **Risk factors.** Registrants, where appropriate, shall set forth on the page immediately following the cover page of the prospectus (or following the summary, if included) under an appropriate caption, a discussion of the principal factors that make the offering speculative or one of high risk; these factors may be due, among other things, to such matters as an absence of an operating history of the registrant, an absence of profitable operations in recent periods, the financial position of the registrant, the nature of the business in which the registrant is engaged or proposes to engage, or, if common equity or securities convertible into or exercisable for common equity are being offered, the absence of a previous market for the registrant's common equity.

(d) **Ratio of earnings to fixed charges.** The ratio of earnings to fixed charges or the ratio of earnings to combined fixed charges and preferred stock dividends (the "ratio") should be disclosed pursuant to the following rules and definitions:

(1) (i) ~~F~~ (i) Furnish in registration statements filed under the Securities Act of 1933 (A) the ratio of earnings to fixed charges if debt securities are being registered; or (B) the ratio of earnings to combined fixed charges and preferred stock dividends if preferred stock is being registered. Disclosure of both ratios is permitted in registration statements relating to debt or preferred stock and either ratio or both ratios may be disclosed in other filings.

(ii) ~~The~~ The ratio shall be disclosed for the following periods:

(A) Each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessors, if less), and

(B) The latest interim period for which financial statements are presented.

(2) The ratio shall be computed using the amounts for the enterprise as a whole including (i) the registrant, (ii) its majority-owned subsidiaries, whether or not consolidated, (iii) its proportionate share of any fifty-percent-owned

persons, and (iv) any income received (but not undistributed amounts) from less-than-fifty-percent-owned persons.

(3) The term "earnings" shall be defined as pretax income from continuing operations with the following adjustments:

(i) Add to the pretax income the amount of fixed charges computed pursuant to paragraph (d)(4) of this section, except that interest capitalized during the period shall be excluded from the fixed charge amount.

(ii) Only the registrant's share in the income of majority-owned subsidiaries and the distributed income of less-than-fifty-percent-owned persons shall be included in earnings, except that a registrant may include the minority interest in the income of majority-owned subsidiaries that have fixed charges.

(iii) The full amount of losses of majority-owned subsidiaries shall be considered in the computation of earnings.

(iv) Where an investment in a less-than-fifty-percent-owned person accounted for under the equity method results in the recognition of a loss, such loss shall not be considered in the computation of the ratio except where the registrant has guaranteed or otherwise undertaken, directly or indirectly to service the debt of such person. In the latter case, the registrant's equity in the loss shall be included in earnings and the fixed charges shall include the interest expense related to the guaranteed debt.

(v) Registrants other than public utilities may add to earnings the amount of previously capitalized interest amortized during the period. In the case of a registrant which is a rate-regulated public utility, interest charges shall not be reduced by any allowance for funds used during construction. The "borrowed-funds" component of any such allowance shall be included in earnings.

(4)(i) The term "fixed charges" shall mean the total of (A) interest, whether expensed or capitalized; (B) amortization of debt expense and discount or premium relating to any indebtedness, whether expensed or capitalized; (C) such portion of rental expense as can be demonstrated to be representative of the interest factor in the particular case; and (D) preferred stock dividend requirements of majority-owned subsidiaries, excluding in all cases items which would be or are eliminated in consolidation.

(ii) If the registrant is a guarantor of debt of an unaffiliated person (such as a supplier), the amount of fixed charges

associated with such debt should not be included in the computation of the ratio unless the registrant has been required to satisfy the guarantee or it is probable that the registrant will be required to honor the guarantee and the amount can be reasonably estimated. A footnote to the ratio should disclose the existence of any such guarantee and the amount of the associated fixed charges and state whether or not such amount is included in the computation of the ratio.

(5) The term "preferred stock" shall include all types of preferred and preference stocks.

(6) For purposes of paragraph (4)(i)(D) above and computation of the combined ratio, the preferred stock dividend requirements shall be increased to an amount representing the pre-tax earnings which would be required to cover such dividend requirements. Therefore, the increased amount =

Preferred Stock Dividend Requirements

100%—Income Tax Rate

The tax rate shall be based on the relationship of the provision for income tax expense applicable to income from continuing operations to the amount of pre-tax income from continuing operations.

(7) If either ratio computation indicates a less than one-to-one coverage, state that earnings are inadequate to cover fixed charges and disclose the dollar amount of the coverage deficiency.

(8) If the level of the registrant's ratio is maintained by its parent, for example, in order to meet the minimum borrowing standards of agencies of various states, or if the registrant's parent is guaranteeing the registrant's debt securities or preferred stock, the parent's ratio as well as the registrant's ratio shall be disclosed.

(9) A pro forma ratio shall be presented in the prospectus of any registration statement filed to register debt or preferred stock to be used in a refinancing if the effect of the refinancing changes the historical ratio by ten percent or more.

(i) A "refinancing" is defined as the extinguishment of one or more specific issues of debt with the proceeds from the sale of additional debt, or the extinguishment of one or more specific issues of preferred stock with the proceeds from the sale of additional preferred stock.

(ii) The only adjustments which shall be made to the corresponding historical ratio are to give effect to the net increase or decrease in interest expense or preferred stock dividends resulting from (A) the proposed issuance of new

debt or preferred stock and (B) the corresponding retirement of any debt or preferred stock presently outstanding (but only for the period of time outstanding) which will be retired with the proceeds from the proposed offering. If only a portion of the proceeds will be used to retire presently outstanding debt or preferred stock, only a related portion of the interest or preferred dividend should be used in the pro forma adjustment.

(iii) The pro forma ratio, if applicable, shall be presented for only the most recent fiscal year and the latest interim period or, at the option of the registrant, the most recent twelve months.

#### § 229.504 (Item 504) Use of proceeds.

State the principal purposes for which the net proceeds to the registrant from the securities to be offered are intended to be used and the approximate amount intended to be used for each such purpose. Where registrant has no current specific plan for the proceeds, or a significant portion thereof, the registrant shall so state and discuss the principal reasons for the offering.

*Instructions to Item 504.* 1. Where less than all the securities to be offered may be sold and more than one use is listed for the proceeds, indicate the order of priority of such purposes and discuss the registrant's plans if substantially less than the maximum proceeds are obtained. Such discussion need not be included if underwriting arrangements with respect to such securities are such that, if any securities are sold to the public, it reasonably can be expected that the actual proceeds will not be substantially less than the aggregate proceeds to the registrant shown pursuant to Item 501 of Regulation S-K (§ 229.501).

2. Details of proposed expenditures need not be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment. Consideration should be given as to the need to include a discussion of certain matters addressed in the discussion and analysis of registrant's financial condition and results of operations, such as liquidity and capital expenditures.

3. If any material amounts of other funds are necessary to accomplish the specified purposes for which the proceeds are to be obtained, state the amounts and sources of such other funds needed for each such specified purpose and the sources thereof.

4. If any material part of the proceeds is to be used to discharge indebtedness, set forth the interest rate and maturity of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness other than short-term borrowings used for working capital.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, describe briefly and state the cost of the assets and, where such assets are to be acquired from affiliates of the registrant or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the registrant.

6. Where the registrant indicates that the proceeds may, or will, be used to finance acquisitions of other businesses, the identity of such businesses, if known, or, if not known, the nature of the businesses to be sought, the status of any negotiations with respect to the acquisition, and a brief description of such business shall be included. Where, however, pro forma financial statements reflecting such acquisition are not required by Regulation S-X to be included, in the registration statement, the possible terms of any transaction, the identification of the parties thereto or the nature of the business sought need not be disclosed, to the extent that the registrant reasonably determines that public disclosure of such information would jeopardize the acquisition. Where Regulation S-X (17 CFR 210) would require financial statements of the business to be acquired to be included, the description of the business to be acquired shall be more detailed.

7. The registrant may reserve the right to change the use of proceeds, provided that such reservation is due to certain contingencies that are discussed specifically and the alternatives to such use in that event are indicated.

**§ 229.505 (Item 505) Determination of offering price.**

(a) **Common equity.** Where common equity is being registered for which there is no established public trading market for purposes of paragraph (a) of Item 201 of Regulation S-K (§ 229.201(a)) or where there is a material disparity between the offering price of the common equity being registered and the market price of outstanding shares of the same class, describe the various factors considered in determining such offering price.

(b) **Warrants, rights and convertible securities.** Where warrants, rights or convertible securities exercisable for common equity for which there is no established public trading market for purposes of paragraph (a) of Item 201 of Regulation S-K (§ 229.201(a)) are being registered, describe the various factors considered in determining their exercise or conversion price.

**§ 229.506 (Item 506) Dilution.**

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:

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

(b) 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

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

**§ 229.507 (Item 507) Selling security holders.**

If any of the securities to be registered are to be offered for the account of security holders, name each such security holder, indicate the nature of any position, office, or other material relationship which the selling security holder has had within the past three years with the registrant or any of its predecessors or affiliates, and state the amount of securities of the class owned by such security holder prior to the offering, the amount to be offered for the security holder's account, the amount and (if one percent or more) the percentage of the class to be owned by such security holder after completion of the offering.

**§ 229.508 (Item 508) Plan of distribution.**

(a) **Underwriters and underwriting obligation.** If the securities are to be offered through underwriters, name the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship with the registrant and state the nature of the relationship. State briefly the nature of the obligation of the underwriter(s) to take the securities.

*Instruction to Paragraph 508(a).* All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or the type of "best efforts" arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to

the public; Conditions precedent to the underwriters' taking the securities, including "market-outs," need not be described except in the case of an agency or "best efforts" arrangement.

(b) **New underwriters.** Where securities being registered are those of a registrant that has not previously been required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, or where a prospectus is required to include reference on its cover page to material risks pursuant to Item 501 of Regulation S-K (§ 229.501), and any one or more of the managing underwriter(s) (or where there are no managing underwriters, a majority of the principal underwriters) has been organized, reactivated, or first registered as a broker-dealer within the past three years, these facts concerning such underwriter(s) shall be disclosed in the prospectus together with, where applicable, the disclosures that the principal business function of such underwriter(s) will be to sell the securities to be registered, or that the promoters of the registrant have a material relationship with such underwriter(s). Sufficient details shall be given to allow full appreciation of such underwriter(s) experience and its relationship with the registrant, promoters and their controlling persons.

(c) **Other distributions.** Outline briefly the plan of distribution of any securities to be registered that are to be offered otherwise than through underwriters.

(1) If any securities are to be offered pursuant to a dividend or interest reinvestment plan the terms of which provide for the purchase of some securities on the market, state whether the registrant or the participant pays fees, commissions, and expenses incurred in connection with the plan. If the participant will pay such fees, commissions and expenses, state the anticipated cost to participants by transaction or other convenient reference.

(2) If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement and the conditions under which the agreement may be terminated. If known, identify the broker(s) or dealer(s) which will participate in the offering and state the amount to be offered through each.

(3) If any of the securities being registered are to be offered otherwise than for cash, state briefly the general

purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and by whom they are to be borne. If the distribution is to be made pursuant to a plan of acquisition, reorganization, readjustment or succession, describe briefly the general effect of the plan and state when it became or is to become operative. As to any material amount of assets to be acquired under the plan, furnish information corresponding to that required by Instruction 5 of Item 504 of Regulation S-K (§ 229.504).

(d) Offerings on exchange. If the securities are to be offered on an exchange, indicate the exchange. If the registered securities are to be offered in connection with the writing of exchange-traded call options, describe briefly such transactions.

(e) Underwriters' compensation. To the extent not set forth on the cover page of the prospectus, describe the discounts and commissions to be allowed or paid to the underwriters, and all other items that would be deemed by the National Association of Securities Dealers to constitute underwriting compensation for purposes of the Association's Rule of Fair Practice.

(f) Underwriter's representative on board of directors. Describe any arrangement whereby the underwriter has the right to designate or nominate a member or members of the board of directors of the registrant. The registrant shall disclose the identity of any director so designated or nominated, and indicate whether or not a person so designated or nominated, or allowed to be designated or nominated by the underwriter is or may be a director, officer, partner, employee or affiliate of the underwriter.

(g) Indemnification of underwriters. If the underwriting agreement provides for indemnification by the registrant of the underwriters or their controlling persons against any liability arising under the Securities Act, furnish a brief description of such indemnification provisions.

(h) Dealers' compensation. State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other considerations to be received by any dealer in connection with the sale of the securities. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be sold.

(i) Finders. Identify any finder and, if applicable, describe the nature of any material relationship between such finder and the registrant, its officers, directors, principal stockholders, finders or promoters or the principal underwriter(s), or if there is a managing underwriter(s), the managing underwriter(s), (including, in each case, affiliates or associates thereof).

(j) Discretionary accounts. If the registrant was not, immediately prior to the filing of the registration statement, subject to the requirements of section 13(a) or 15(d) of the Exchange Act, identify any principal underwriter that intends to sell to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be sold. The response to this paragraph shall be contained in a pre-effective amendment which shall be circulated if the information is not available when the registration statement is filed.

§ 229.509 (Item 509) Interests of named experts and counsel.

If (a) any expert named in the registration statement as having prepared or certified any part thereof (or is named as having prepared or certified a report or valuation for use in connection with the registration statement), or (b) counsel for the registrant, underwriters or selling security holders named in the prospectus as having given an opinion upon the validity of the securities being registered or upon other legal matters in connection with the registration or offering of such securities, was employed for such purpose on a contingent basis, or at the time of such preparation, certification or opinion or at any time thereafter, through the date of effectiveness of the registration statement or that part of the registration statement to which such preparation, certification or opinion relates, had, or is to receive in connection with the offering, a substantial interest, direct or indirect, in the registrant or any of its parents or subsidiaries or was connected with the registrant or any of its parents or subsidiaries as a promoter, managing underwriter (or any principal underwriter, if there are no managing underwriters) voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

*Instructions to Item 509.* 1. The interest of an expert (other than an accountant) or counsel will not be deemed substantial and need not be disclosed if the interest, including the fair market value of all securities of the registrant owned, received and to be received, or subject to options,

warrants or rights received or to be received by the expert or counsel does not exceed \$50,000. For the purpose of this Instruction, the term "expert" or counsel includes the firm, corporation, partnership or other entity, if any, by which such expert or counsel is employed or of which he is a member or of counsel to and all attorneys in the case of counsel, and all nonclerical personnel in the case of named experts, participating in such matter on behalf of such firm, corporation, partnership or entity.

2. Accountants, providing a report on the financial statements, presented or incorporated by reference in the registration statement, should note § 210.2-01 of Regulation S-X (17 CFR 210) for the Commission's requirements regarding "Qualification of Accountants" which discusses disqualifying interests.

§ 229.510 (Item 510) Disclosure of Commission position on indemnification for Securities Act liabilities.

In addition to the disclosure prescribed by Item 702 of Regulation S-K (§ 229.702), if the undertaking required by paragraph (i) of Item 512 of Regulation S-K (§ 229.512) is not required to be included in the registration statement because acceleration of the effective date of the registration statement is not being requested, and if waivers have not been obtained comparable to those specified in paragraph (i), a brief description of the indemnification provisions relating to directors, officers and controlling persons of the registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the registrant against such liabilities where a director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter) shall be included in the prospectus, together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

§ 229.511 (Item 511) Other expenses of issuance and distribution.

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities to be registered, other than underwriting discounts and

commissions. If any of the securities to be registered are to be offered for the account of security holders, indicate the portion of such expenses to be borne by such security holder.

*Instruction to Item 511.* Insofar as practicable, registration fees, Federal taxes, States taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, and legal, accounting, and engineering fees shall be itemized separately. Include as a separate item any premium paid by the registrant or any selling security holder on any policy obtained in connection with the offering and sale of the securities being registered which insures or indemnifies directors or officers against any liabilities they may incur in connection with the registration, offering, or sale of such securities. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, identified as such, shall be given.

#### § 229.512 (Item 512) Undertakings.

Include each of the following undertakings that is applicable to the offering being registered.

(a) *Rule 1415 Offerings.* Include the following if the securities are registered pursuant to Rule 415 under the Securities Act (§ 230.415 of this chapter):

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement, including (but not limited to) any addition or deletion of a managing underwriter;

*Provided, however,* that paragraphs (a)(1)(f) and (a)(1)(ii) do not apply if the registration statement is on Form S-3 (§ 239.13 of this chapter) Form S-8 (§ 239.16b of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to section 13 or section 15(d) of the

Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

*Instruction 1.* For purposes of paragraph (a)(1)(iii), a post-effective amendment need not be filed to disclose the addition or deletion of a managing underwriter as a co-manager unless there no longer remains at least one managing underwriter who was named in the registration statement or a post-effective amendment thereto.

2. If only one underwriter is involved in an offering, that entity would be deemed to be the managing underwriter for purposes of this undertaking. If two or more underwriters perform substantially the functions described in Rule 405 (§ 230.405 of this chapter), each would be deemed to be a managing underwriter for the purposes of this undertaking and the relationship of one underwriter to another would be that of a co-manager.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) *Filings incorporating subsequent Exchange Act documents by reference.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement:

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) *Warrants and rights offerings.* Include the following, with appropriate modifications to suit the particular case, if the securities to be registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public:

The undersigned registrant hereby undertakes to supplement the prospectus, after the expiration of the subscription

period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

(d) *Competitive bids.* Include the following, with appropriate modifications to suit the particular case, if the securities to be registered are to be offered at competitive bidding:

The undersigned registrant hereby undertakes (1) to use its best efforts to distribute prior to the opening of bids, to prospective bidders, underwriters, and dealers, a reasonable number of copies of a prospectus which at that time meets the requirements of section 10(a) of the Act, and relating to the securities offered at competitive bidding, as contained in the registration statement, together with any supplements thereto, and (2) to file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters to the extent required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless no further public offering of such securities by the issuer and no reoffering of such securities by the purchasers is proposed to be made.

(e) *Incorporated annual and quarterly reports.* Include the following if the registration statement specifically incorporates by reference (other than by indirect incorporation by reference through a Form 10-K (§ 249.310 of this chapter) report) in the prospectus all or any part of the annual report to security holders meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Exchange Act (§§ 240.14a-3 and 240.14c-3 of this chapter):

The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required by Article 3 of Regulation S-X are not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

(f) *Employee plans on Form S-8.* Include the following if the registration

<sup>1</sup> Paragraph (a) reflects proposals made in Securities Act Release No. 6334 (Aug. 6, 1981).

statement is on a Form S-8 (§ 239.16b of this chapter):

(1) The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus to each employee to whom the prospectus is sent or given a copy of the registrant's annual report to stockholders for its last fiscal year, unless such employee otherwise has received a copy of such report, in which case the registrant shall state in the prospectus that it will promptly furnish, without charge, a copy of such report on written request of the employee. If the last fiscal year of the registrant has ended within 120 days prior to the use of the prospectus, the annual report of the registrant for the preceding fiscal year may be so delivered, but within such 120 day period the annual report for the last fiscal year will be furnished to each such employee.

(2) The undersigned registrant hereby undertakes to transmit or cause to be transmitted to all employees participating in the plan who do not otherwise receive such material as stockholders of the registrant, at the time and in the manner such material is sent to its stockholders, copies of all reports, proxy statements and other communications distributed to its stockholders generally.

(3) Where interests in a plan are registered herewith, the undersigned registrant and plan hereby undertake to transmit or cause to be transmitted promptly, without charge, to any participant in the plan who makes a written request, a copy of the then latest annual report of the plan filed pursuant to section 15(d) of the Securities Exchange Act of 1934 (Form 11-K (§ 249.311 of this chapter)). If such report is filed separately on Form 11-K, such form shall be delivered upon written request. If such report is filed as a part of the registrant's annual report on Form 10-K, that entire report (excluding exhibits) shall be delivered upon written request. If such report is filed as a part of the registrant's annual report to stockholders delivered pursuant to paragraph (1) or (2) of this undertaking, additional delivery shall not be required.

(g) *Equity offerings of nonreporting registrants.* Include the following if equity securities of a registrant that prior to the offering had no obligation to file reports with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act are being registered for sale in an underwritten offering:

The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names

as required by the underwriter to permit prompt delivery to each purchaser.

(h) *Registration on Form S-1 for S-15 of securities offered for resale.* Include the following if the securities are being registered on Form S-14 or S-15 (§§ 239.23 or 239.29 of this chapter) in connection with a transaction specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter).

(1) The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other Items of the applicable form.

(2) The registrant undertakes that every prospectus (i) that is filed pursuant to paragraph (1) immediately preceding, or (ii) that purports to meet the requirements of section 10(a)(3) of the Act and is used in connection with an offering of securities subject to Rule 415 (§ 230.415 of this chapter), will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(i) *Acceleration of effectiveness.* Include the following if any acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act (§ 230.461 of this chapter), and (1) any provision or arrangement exists whereby the registrant may indemnify a director, officer or controlling person of the registrant against liabilities arising under the Securities Act, or (2) the underwriting agreement contains a provision whereby the registrant indemnifies the underwriter or controlling persons of the underwriter against such liabilities and a director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter, and (3) the benefits of such

indemnification are not waived by such persons:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

#### Subpart 229.600—Exhibits

##### § 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* (1) Subject to Rule 411(c) (§ 230.411(c) of this chapter) under the Securities Act and Rule 12b-32 (§ 240.12b-32 of this chapter) under the Exchange Act regarding incorporation of exhibits by reference, the exhibits required by in the exhibit table shall be filed as indicated, as part of the registration statement or report. (2) Each registration statement or report shall contain an exhibit index, which shall precede immediately the exhibits filed with such registration statement. For convenient reference, each exhibit shall be listed in the exhibit index according to the number assigned to it in the exhibit table. The exhibit index shall indicate, by handwritten, typed, printed, or other legible form of notation in the manually signed original registration statement or report, the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located. For a description of each of the exhibits included in the exhibit table, see paragraph (b) of this Item. (3) This Item applies only to the forms specified in the exhibit table. With regard to forms not listed in that table, reference shall be made to the appropriate form

for the specific exhibit filing requirements applicable thereto.

*Instructions to Item 601.* 1. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (A) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commission, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement, or (B) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the registrant need not refile such exhibit as so amended; provided the registrant states in the amendment to the registration statement the basis provided by

this Instruction for not refiling such exhibit. Any such incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission.

2. In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the registrant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document a copy of which is filed. The Commission may at any time in its discretion require filing of copies of any documents so omitted.

3. Only copies, rather than originals, need be filed of each exhibit required except as otherwise specifically noted.

**Exhibit Table**

*Instructions to the Exhibit Table.* 1. The exhibit table indicates those documents that must be filed as exhibits to the respective forms listed.

2. The "X" designation indicates the documents which are required to be filed with each form even if filed previously with another document, *Provided, However,* that such previously filed documents may be incorporated by reference to satisfy the filing requirements.

3. The number used in the far left column of the table refers to the appropriate subsection in paragraph (b) where a description of the exhibit can be found. Whenever necessary, alphabetical or numerical subparts may be used.

**EXHIBIT TABLE**

	Securities Act forms						Exchange Act forms				
	S-1	S-2	S-3	S-8	S-11	S-14	S-15	10	8-K	10-Q	10-K
(1) Underwriting agreement.....	X	X	X		X	X			X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession.....	X	X	X		X	X	X	X	X	X	
(3) Articles of incorporation and by-laws.....	X				X	X		X			
(4) Instruments defining the rights of security holders, including indentures.....	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality.....	X	X	X	X	X	X	X				
(6) Opinion re discount on capital shares.....	X	X		X	X	X		X			
(7) Opinion re liquidation preference.....	X	X		X	X	X		X			
(8) Opinion re tax matters.....	X	X	X		X	X	X				
(9) Voting trust agreement.....	X				X	X		X			
(10) Material contracts.....	X	X			X	X	X	X			X
(11) Statement re computation of per share earnings.....	X	X			X	X		X		X	X
(12) Statements re computation of ratios.....	X	X	X		X	X	X	X		X	X
(13) Annual report to security holders, Form 10-Q or quarterly report to security holders.....		X					X	X			X
(14) Material foreign patents.....	X					X		X			
(15) Letter re unaudited interim financial information.....	X	X	X	X	X	X	X			X	
(16) Letter re change in certifying accountant.....									X		
(17) Letter re director resignation.....									X		
(18) Letter re change in accounting principles.....										X	X
(19) Previously unfiled documents.....										X	X
(20) Report furnished to security holders.....										X	X
(21) Other documents or statements to security holders.....									X		
(22) Subsidiaries of the registrant.....	X				X			X			X
(23) Published report regarding matters submitted to vote of security holders.....								X		X	X
(24) Consents of experts and counsel.....	X	X	X	X	X	X	X	X	X	X	X
(25) Power of attorney.....	X	X	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee.....	X	X	X	X	X	X	X	X	X	X	X
(27) Invitations for competitive bids.....	X	X	X		X	X	X				
(28) Additional exhibits.....	X	X	X	X	X	X	X	X	X	X	X

<sup>1</sup> If referred incorporated by reference into the text of the prospectus as permitted by the registration statement where incorporated by reference into a previously filed Securities Act registration statement.

(b) *Description of Exhibits.* Set forth below is a description of each document listed in the exhibit tables.

(1) *Underwriting agreement*—Each underwriting contract or agreement with a principal underwriter pursuant to which the securities being registered are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof. Such agreement may be filed as an exhibit to a report on Form 8-K (§ 249.308 of this chapter) which is incorporated by reference into a registration statement subsequent to its effectiveness.

(2) *Plan of acquisition, reorganization, arrangement, liquidation or succession*—Any material plan of acquisition, disposition, reorganization,

readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(3) *Articles of incorporation and by-laws*—The articles of incorporation and by-laws of the registrant or instruments

corresponding thereto as currently in effect and any amendments thereto. Whenever amendments to the articles or by-laws of the registrant are filed, there shall also be filed a complete copy of the articles or by-laws as amended. Where it is impracticable for the registrant to file a charter amendment authorizing new securities with the appropriate state authority prior to the effective date of the registration statement registering such securities, the registrant may file as an exhibit to the registration statement the form of amendment to be filed with the state authority; and in such a case, if material changes are made after the copy is filed, the registrant must also file the changed copy.

(4) *Instructions defining the rights of security holders, including indentures—*

(i) All instruments defining the rights of holders of the equity or debt securities being registered including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant.

(ii) Except as set forth in (iii) below, for filings on Forms S-1, S-11, and S-14 under the Securities Act (§§ 239.11, 239.18 and 239.23 of this chapter) and Forms 10 and 10-K under the Exchange Act (§§ 249.210 and 249.310 of this chapter) all instruments defining the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

(iii) Where the instrument defines the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed, there need not be filed (A) any instrument with respect to long-term debt not being registered if the total amount of securities authorized thereunder does not exceed 10 percent of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request; (B) any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered; or (C) copies of instruments evidencing scrip certificates for fractions of shares.

(iv) If any of the securities being registered are, or will be, issued under an indenture to be qualified under the Trust Indenture Act, the copy of such indenture which is filed as an exhibit shall include or be accompanied by (A) a reasonably itemized and informative table of contents; and (B) a cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939.

(v) With respect to Forms 8-K and 10-Q under the Exchange Act which are filed and which disclose, in the text of the Form 10-Q, the interim financial statements, or the footnotes thereto the creation of a new class of securities or indebtedness or the modification of existing rights of security holders, file all instruments defining the rights of holders of these securities or indebtedness. However, there need not

be filed any instrument with respect to long-term debt not being registered which meets the exclusion set forth above in paragraph (iii)(A).

*Instruction.* There need not be filed any instrument which defines the rights of participants (not as security holders) pursuant to an employee benefit plan.

(5) *Opinion re legality—*(i) An opinion of counsel as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

(ii) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA furnish either:

(A) An opinion of counsel which confirms compliance of the provisions of the written documents constituting the plan with the requirements of ERISA pertaining to such provisions; or

(B) A copy of the Internal Revenue Service determination letter that the plan is qualified under section 401 of the Internal Revenue Code; or

(iii) If the securities being registered are issued under a plan which is subject to the requirements of ERISA and the plan has been amended subsequent to the filing of (ii) (A) or (B) above, furnish either:

(A) An opinion of counsel which confirms compliance of the amended provisions of the plan with the requirements of ERISA pertaining to such provisions; or

(B) A copy of the Internal Revenue Service determination letter that the amended plan is qualified under section 401 of the Internal Revenue Code.

(6) *Opinion re discount on capital shares—*If any discount on capital shares is shown as a deduction from capital shares on the most recent balance sheet being filed for the registrant, there shall be filed a statement of the circumstances under which such discount arose and an opinion of counsel as to the legality of the issuance of the shares to which such discount relates. The opinion shall set forth, or specifically refer to, any applicable constitutional and statutory provisions and shall cite any decisions which in the opinion of counsel are controlling.

(7) *Opinion re liquidation preference—*If the registrant has any shares the preference of which upon involuntary liquidation exceeds the par or stated value thereof, there shall be filed an opinion of counsel as to whether there are any restrictions upon surplus by reason of such excess and also as to any remedies available to security holders before or after payment of any

dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall set forth, or specifically refer to, any applicable constitutional and statutory provisions and shall cite any decisions which, in the opinion of counsel, are controlling.

(8) *Opinion re tax matters—*For filings on Form S-11 under the Securities Act or those to which Securities Act Industry Guide 5 applies, an opinion of counsel or, in lieu thereof, a revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to the shareholders as described in the filing when such tax matters are material to the transaction for which the registration statement is being filed. This exhibit otherwise need only be filed with the other applicable registration forms where the tax consequences are material to an investor and a representation as to tax consequences is set forth in the filing. If a tax opinion is set forth in full in the filing, an indication that such is the case may be made in lieu of filing the otherwise required exhibit. Such tax opinions may be conditioned or may be qualified, so long as such conditions and qualifications are adequately described in the filing.

(9) *Voting trust agreement—*Any voting trust agreements and amendments thereto.

(10) *Material contracts—*(i) Every contract not made in the ordinary course of business which is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or report or was entered into not more than two years before such filing. Only contracts need be filed as to which the registrant or subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

(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 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 of 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 management contract or any remunerative 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 five most highly compensated executive officers of the registrant participates shall be deemed material and shall be filed; and any other management contract or any remunerative plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.

(B) Notwithstanding paragraph (iii)(A) above, the following management contracts or remunerative plans, contracts or arrangements need not be filed:

(1) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(4) Any remunerative plan, contract or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(5) Any remunerative plan, contract or arrangement if the registrant is a foreign private issuer that furnishes remunerative information on an aggregate basis as permitted by Instruction 1 to paragraph (a) of Item 402 (§229.402).

(3) Any remunerative plan, contract, or arrangement if the registrant is a wholly owned subsidiary of a company that has a class of securities registered pursuant to section 12 or files reports pursuant to section 15(d) of the Exchange Act and is filing a report on Form 10-K or registering debt instruments or preferred stock which are not voting securities on Form S-2.

*Instruction:* With the exception of management contracts, in order to comply with paragraph (iii) above, registrants need only file copies of the various remunerative plans and need not file each individual director's or executive officer's personal agreement under the plans unless there are particular provisions in such personal agreements whose disclosure in an exhibit is necessary to an investor's understanding of that individual's remuneration under the plan.

(11) *Statement re computation of per share earnings*—A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report. (See Securities Act Release No. 5133 (February 18, 1971) [38 FR 4483]).

(12) *Statements re computation of ratios*—A statement setting forth in reasonable detail the computation of any ratio of earnings to fixed charges, any ratio of earnings to combined fixed charges and preferred stock dividends or any other ratios which appear in the registration statement or report. See Item 503(d) of Regulation S-K (§ 229.503(d)).

(13) *Annual report to security holders, Form 10-Q or quarterly report to security holders*—The registrant's annual report to security holders for its last fiscal year, its Form 10-Q (if specifically incorporated by reference in the prospectus) or its quarterly report to security holders, if all or a portion thereof is incorporated by reference in the filing. Such report, except for those portions thereof which are expressly incorporated by reference in the filing, is to be furnished for the information of the Commission and is not to be deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy. See Rule 411(b) (§ 230.411(b) of this chapter).

(14) *Material/foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If the filing is a registration statement and if a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring,

developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(15) *Letter re unaudited interim financial information*—A letter, where applicable, from the independent accountant which acknowledges awareness of the use in a registration statement of a report on unaudited interim financial information which is pursuant to Rule 436(c) under the Securities Act (§ 230.436(c) of this chapter) is not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of that Act. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10-Q which is incorporated by reference into the registration statement.

(16) *Letter re change in certifying accountant*—A letter from the registrant's former independent accountant regarding its concurrence or disagreement with the statements made by the registrant in the current report concerning the resignation or dismissal as the registrant's principal accountant.

(17) *Letter re director resignation*—Any letter from a former director which sets forth a description of a disagreement with the registrant that led to the director's resignation or refusal to stand for re-election and which requests that the matter be disclosed.

(18) *Letter re change in accounting principles*—Unless previously filed, a letter from the registrant's independent accountant indicating whether any change in accounting principles or practices followed by the registrant, or any change in the method of applying any such accounting principles or practices, which affected the financial statements being filed with the Commission in the report or which is reasonably certain to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable under the circumstances. No such letter need be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board that creates a new accounting principle, that expresses a preference for an accounting principle, or that rejects a specific accounting principle.

(19) *Previously unfiled documents*—(i) Any unfiled document, which was executed or in effect during the reporting period, shall be filed if such document would have been required to be filed as

an exhibit to a registration statement on Form 10.

(ii) Any amendment or modification to a document which was previously filed with the Commission as an exhibit to Form 10, 10-K or 10-Q. Such amendment or modification need not be filed where such previously filed exhibit would not be currently required.

(20) *Report furnished to security holders*—If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of Form 10-Q, the information called for may be incorporated by reference to such published document or statement provided copies thereof are included as an exhibit to the registration statement or to Part I of the Form 10-Q report.

(21) *Other documents or statements to security holders*—If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of this form the information called for may be incorporated by reference to such published document or statement provided copies thereof are filed as an exhibit to the report on this form.

(22) *Subsidiaries of the registrant*—(i) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. This list may be incorporated by reference from a document which includes a complete and accurate list.

(ii) The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of "significant subsidiary" in Rule 1-02(v) (17 CFR 210.1-02(v)) of Regulation S-X.) The names of consolidated wholly-owned multiple subsidiaries carrying on the same line of business, such as chain stores or small loan companies, may be omitted, provided the name of the immediate parent, the line of business, the number of omitted subsidiaries operating in the United States and the number operating in foreign countries are given. This instruction shall not apply, however, to banks, insurance companies, savings and loan associations or to any subsidiary subject to regulation by another Federal agency.

(23) *Published report regarding matters submitted to vote of security holders*—Published reports containing all of the information called for by Item 4 of Part II of Form 10-Q or Item 4 of Part I of Form 10-K which is referred to therein in lieu of providing disclosure in Form 10-Q or 10-K, which are required to be filed as exhibits by Rule 12b-23(a)(3) under the Exchange Act (§ 240.12b-23(a)(3) of this chapter).

(24) *Consents of experts and counsel*—(A) Securities Act filings—All written consents required to be filed shall be dated and manually signed. Where the consent of an expert or counsel is contained in his report or opinion or elsewhere in the registration statement or document filed therewith, a reference shall be made in the index to the report, the part of the registration statement or document or opinion, containing the consent.

(ii) Exchange Act reports—where the filing of a written consent is required with respect to material incorporated by reference in a previously filed registration statement under the Securities Act, such consent may be filed as exhibit to the material incorporated by reference. Such consents shall be dated\* and manually signed.

(25) *Power of attorney*—If any name is signed to the registration statement or report pursuant to a power of attorney, manually signed copies of such power of attorney shall be filed where the power of attorney is contained elsewhere in the registration statement or documents filed therewith a reference shall be made in the index to the part of the registration statement or document containing such power of attorney. In addition, if the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed.

(26) *Statement of eligibility of trustee*—A statement of eligibility and qualification of each person designated to act as trustee under an indenture to be qualified under the Trust Indenture Act of 1939. Such statement of eligibility shall be bound separately from the other exhibits.

(27) *Invitations for competitive bids*—If the registration statement covers securities to be offered at competitive bidding, any form of communication which is an invitation for competitive bid which will be sent or given to any person shall be filed.

(28) *Additional exhibits*—(i) Any additional exhibits which the registrant may wish to file shall be so marked as

to indicate clearly the subject matters to which they refer, (ii) Any document (except for an exhibit) or part thereof which is incorporated by reference in the filing and is not otherwise required to be filed by this Item or is not a Commission filed document incorporated by reference in a Securities Act registration statement.

§ 229.700 Miscellaneous.

§ 229.701 (Item 701) Recent sales of unregistered 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.

*Instructions*. 1. Information required by this Item 701 need not be set forth as to notes, drafts, bills of exchange, or bankers' acceptances which mature not later than one year from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

§ 229.702 (Item 702) Indemnification of directors and officers.

State the general effect of any statute, charter provisions, by-laws, contract or other arrangements under which any controlling persons, director or officer of the registrant is insured or indemnified in any manner against liability which he may incur in his capacity as such.

**Subpart 229.800—List of Industry Guides****§ 229.801 Securities Act industry guides.**

(a) Guide 1. Disclosure of principal sources of electric and gas revenues.

(b) Guide 2. Disclosure of oil and gas operations.

(c) Guide 3. Statistical disclosure by bank holding companies.

(d) Guide 4. Prospectuses relating to interests in oil and gas programs.

(e) Guide 5. Preparation of registration statements relating to interests in real estate limited partnerships.

**§ 229.802 Exchange Act industry guides.**

(a) Guide 1. Disclosure of principal sources of electric and gas revenues.

(b) Guide 2. Disclosure of oil and gas operations.

(c) Guide 3. Statistical disclosure by bank holding companies.

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

8. By adding paragraph (a)(14) to § 230.134 to read as follows:

**§ 230.134 Communications not deemed a prospectus.**

(a) \* \* \* \*

(14)(i) With respect to any class of debt securities, any class of convertible debt securities or any class of preferred stock, the security rating or ratings assigned to the class of securities by any nationally recognized statistical rating organization and the name or names of the nationally recognized statistical rating organization(s) which assigned such rating(s).

(ii) For the purpose of paragraph 14(a)(i) of this section, the term "nationally recognized statistical rating organization" shall have the same meaning as used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (17 CFR 240.14c3-1(c)(2)(vi)(F)).

9. By adding paragraph (c) to § 230.135 to read as follows:

**§ 230.135 Notice of certain proposed offerings.**

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in the case of a rights offering of a security listed or subject to unlisted trading privileges on a national securities exchange or quoted on the NASDAQ inter-dealer quotation system information with respect to the interest rate, conversion ratio and subscription price may be disseminated through the

facilities of the exchange, the consolidated transaction reporting system, the NASDAQ system or the Dow Jones broad tape, provided such information is already disclosed in a registration statement on file with the Commission.

10. By revising § 230.138 to read as follows:

**§ 230.138 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.**

(a) Where a registrant which meets all of the conditions for the use of Form S-2 (§ 239.12 of this chapter) has filed or proposes to file a registration statement under the Act relating solely to a nonconvertible debt security or to a nonconvertible, nonparticipating preferred stock, publication or distribution in the regular course of its business by a dealer of information, opinions or recommendations relating solely to common stock or to debt or preferred stock convertible into common stock of such issuer shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act, even though such dealer is or will be a member of the underwriting syndicate or dealer group in connection with the distribution of the security to which such registration statement relates.

(b) Where a registrant which meets all of the conditions for the use of Form S-2 (§ 239.12 of this chapter) has filed or proposes to file a registration statement under the Act relating solely to common stock or to debt or preferred stock convertible into common stock, the publication or distribution in the regular course of its business by a dealer of information, opinions or recommendations relating solely to a nonconvertible debt security, or to a nonconvertible nonparticipating preferred stock shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act, even though such dealer is or will be a member of the underwriting syndicate or dealer group in connection with the distribution of the security to which such registration statement relates.

11. By revising paragraphs (b)(1)(i) and (2) and (c)(3) of § 230.175 to read as follows:

**§ 230.175 Liability for certain statements by issuers.**

(b) \* \* \*

(1) \* \* \*

(1) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K; Or, if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S-K (§ 229.302 of this chapter), supplementary financial information, and disclosed in a document filed with the Commission, in part I of a quarterly report on Form 10-Q or in an annual report to shareholders meeting the requirements of Rules 14a-3 (b) and (c) or 14c-3(a) and (b) under the Securities Exchange Act of 1934.

(c) \* \* \*

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S-K (17 CFR 229.300); or

12. By adding § 230.176 to read as follows:

§ 230.176 Circumstances affecting the determination of what constitutes reasonable investigation and reasonable grounds for belief under section 11 of the Securities Act.

In determining whether or not the conduct of a person constitutes a reasonable investigation or a reasonable ground for belief meeting the standard set forth in section 11(c), relevant circumstances include, with respect to a person other than the issuer.

(a) The type of issuer;

(b) The type of security;

(c) The type of person;

(d) The office held when the person is an officer;

(e) The presence or absence of another relationship to the issuer when the person is a director or proposed director.

(f) Reasonable reliance on officers, employees, and others whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular person with respect to the issuer and the filing);

(g) When the person is an underwriter, the type of underwriting arrangement, the role of the particular person as an underwriter and the availability of information with respect to the registrant; and

(h) Whether, with respect to a fact or document incorporated by reference, the particular person had any responsibility for the fact or document at the time of the filing from which it was incorporated.

13. By removing §§ 230.406, 230.407, 230.412, 230.422, 230.425, 230.425a, 230.426, 230.430, 230.431, 230.432, 230.434, 230.434c, 230.435, 230.445, 230.446, 230.447 and 230.462.

14. By redesignating § 230.485 as § 230.406, § 230.433 as § 230.430, § 230.434a as 230.431, § 230.434b as § 230.432, § 230.415 as § 230.445, § 230.428 as § 230.446, § 230.471(b) as § 230.447, § 230.434d as § 230.482, and § 230.465 as § 230.485.

15. By amending Regulation C (§§ 230.400-230.494) by revising §§ 230.400-230.406, 230.411, 230.413-230.414, 230.421, 230.423, 230.427, 230.430-230.432, 230.436, 230.439, 230.445-230.446, 230.455, 230.457, 230.460-230.461, 230.464, 230.470-230.473, 230.477, 230.479, 230.482 and 230.485; and by adding §§ 230.412, 230.415, 230.418, and 230.280-230.494 to read as follows:

#### Regulation C—Registration

##### § 230.400 Application of §§ 230.400 to 230.494, inclusive.

Sections 230.400 to 230.494 shall govern every registration of securities under the Act, except that any provision in a form, or an item of Regulation S-K (17 CFR 229.001 *et seq.*) referred to in such form, covering the same subject matter as any such rule shall be controlling unless otherwise specifically provided in §§ 230.400 to 230.494.

#### General Requirements

##### § 230.401 Requirements as to proper form.

(a) The form and contents of a registration statement and prospectus shall conform to the applicable rules and forms as in effect on the initial filing date of such registration statement and prospectus.

(b) If an amendment to a registration statement and prospectus is filed for the purpose of meeting the requirements of section 10(a)(3) of the Act or pursuant to

the provisions of section 24(e) or 24(f) of the Investment Company Act of 1940, the form and contents of such an amendment shall conform to the applicable rules and forms as in effect on the filing date of such amendment.

(c) The form and contents of an amendment to a registration statement and prospectus other than an amendment described in paragraph (b) of this section shall conform to the applicable rules and forms as in effect on the filing date of the latest amendment described in paragraph (b) of this section or, if no such amendment has been filed, on the initial filing date of the registration statement and prospectus.

(d) The form and contents of a prospectus forming part of a registration statement which is the subject of a stop order entered under section 8(d) of the Act, if used after the date such stop order ceases to be effective, shall conform to the applicable rules and forms as in effect on the date such stop order ceases to be effective.

(e) A prospectus filed as part of an amendment to an effective registration statement, or other amendment to such registration statement, on any form may be prepared in accordance with the requirements of any other form which would then be appropriate for the registration of securities to which the prospectus or other amendment relates, provided that all of the other requirements of such other form and applicable rules (including any required undertakings) are met.

(f) Notwithstanding the provisions of this section, a registrant (1) shall comply with the rules and forms as in effect at a date different from those specified in paragraphs (a), (b), (c) and (d) of this section if the rules or forms or amendments thereto specifically so provide; and (2) may comply voluntarily with the rules and forms as in effect at dates subsequent to those specified in paragraphs (a), (b), (c) and (d) of this section, provided that all of the requirements of the particular rules and forms in effect at such dates (including any required undertakings) are met.

(g) A registration statement or any amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

##### § 230.402 Number of copies; binding; signatures.

(a) Three copies of the complete registration statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the Commission. Each copy shall be bound,

in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. At least one such copy of every registration shall be manually signed by the persons specified in section 6(a) of the Act. Unsigned copies shall be conformed.

(b) Ten additional copies of the registration statement, similarly bound, shall be furnished for use in the examination of the registration statement, public inspection, copying and other purposes. Where a registration statement incorporates into the prospectus documents which are required to be delivered with the prospectus in lieu of prospectus presentation, the ten additional copies of the registration statement shall be accompanied by ten copies of such documents. No other exhibits are required to accompany such additional copies.

##### § 230.403 Requirements as to paper, printing, language and pagination.

(a) Registration statements, applications and reports shall be filed on good quality, unglazed, white paper approximately 8 1/2 by 11 inches or approximately 8 1/2 by 13 inches in size, insofar as practicable. However, tables, charts, maps, and financial statements may be on larger paper if folded to that size, and the prospectus may be on smaller paper if the registrant so desires.

(b) The registration statement and, insofar as practicable, all papers and documents filed as a part thereof shall be printed, lithographed, mimeographed or typewritten. However, the statement or any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(c) The registration statement proper shall be in the English language. If any exhibit or other paper or document filed as part of the registration statement is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

(d) The manually signed original (or in the case of duplicate originals, one duplicate original) of all registrations, applications, statements, reports or other documents filed under the Act shall be numbered sequentially (in

addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

**§ 230.404 Preparation of registration statement**

(a) A registration statement shall consist of the facing sheet of the applicable form; cross reference sheet; a prospectus containing the information called for by Part I of such form; the information, list of exhibits, undertakings and signatures required to be set forth in Part II of such form; financial statements and schedules; exhibits; any other information or documents filed as part of the registration statement; and all documents or information incorporated by reference in the foregoing (whether or not required to be filed).

(b) All general instructions, instructions to items of the form, and instructions as to financial statements, exhibits, or prospectuses are to be omitted from the registration statement in all cases.

(c) The prospectus shall contain the information called for by all of the items of Part I of the applicable form, except that unless otherwise specified, no reference need be made to inapplicable items, and negative answers to any item in Part I may be omitted. A copy of the prospectus may be filed as a part of the registration statement in lieu of furnishing the information in item-and-answer form. Wherever a copy of the prospectus is filed in lieu of information in item-and-answer form, the text of the items of the form is to be omitted from the registration statement, as well as from the prospectus, except to the extent provided in paragraph (d) of this rule.

(d) Where any items of a form call for information not required to be included in the prospectus, generally Part II of such form, the text of such items, including the numbers and captions thereof, together with the answers thereto shall be filed with the prospectus under cover of the facing sheet of the form as a part of the registration statement. However, the text of such items may be omitted provided the answers are so prepared as to indicate the coverage of the item without the necessity of reference to the text of the item. If any such item is inapplicable, or the answer thereto is in the negative, a statement to that effect shall be made. Any financial statements

not required to be included in the prospectus shall also be filed as a part of the registration statement proper, unless incorporated by reference pursuant to Rule 411 (§ 230.411).

**§ 230.405 Definitions of terms.**

Unless the context otherwise requires, all terms used in §§ 230.400 to 230.494, inclusive, or in the forms for registration have the same meanings as in the Act and in the general rules and regulations. In addition, the following definitions apply, unless the context otherwise requires:

**Affiliate.** An "affiliate" of, or person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

**Amount.** The term "amount," when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

**Associate.** The term "associate," when used to indicate a relationship with any person, means (1) a corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

**Business development company.** The term "business development company" refers to a company which has elected to be regulated as a business development company under sections 55 through 65 of the Investment Company Act of 1940.

**Certified.** The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

**Charter.** The term "charter" includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, affecting (either with or without filing with any governmental agency) the organization or creation of

an incorporated or unincorporated person.

**Common equity.** The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

**Commission.** The term "Commission" means the Securities and Exchange Commission.

**Control.** The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

**Director.** The term "director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

**Dividend or interest reinvestment plan.** The term "dividend or interest reinvestment plan" means a plan which is offered solely to the existing security holders of the registrant, which allows such persons to reinvest dividends or interest paid to them on securities issued by the registrant, and also may allow additional cash amounts to be contributed by the participants in the plan, provided the securities to be registered are newly issued, or are purchased for the account of plan participants, at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of purchase.

**Employee.** The term "employee" does not include a director, trustee, or officer.

**Employee benefit plan.** The term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive add, pension or similar plan solely for employees, directors, trustees or officers.

**Equity security.** The term "equity security" means any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to

subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

**Executive officer.** The term "executive officer," when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant.

**Fiscal year.** The term "fiscal year" means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

**Foreign government.** The term "foreign government" means the government of any foreign country or of any political subdivision of a foreign country.

**Foreign issuer.** The term "foreign issuer" means any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.

**Foreign private issuer.** The term "foreign private issuer" means any foreign issuer other than a foreign government.

**Majority-owned subsidiary.** The term "majority-owned subsidiary" means a subsidiary more than 50 percent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.

**Managing underwriter.** The term "managing underwriter" includes an underwriter (or underwriters) who, by contract or otherwise, deals with the registrant; organizes the selling effort; receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

**Material.** The term "material," when used to qualify a requirement for the furnishing of information as to any

subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.

**North American issuer.** The term "North American issuer" means any foreign private issuer incorporated or organized under the laws of Canada or Mexico or any political subdivision thereof.

**Officer.** The term "officer" means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

**Parent.** A "parent" of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

**Predecessor.** The term "predecessor" means a person the major portion of the business and assets of which another person acquired in a single succession, or in a series of related successions in each of which the acquiring person acquired the major portion of the business and assets of the acquired person.

**Principal underwriter.** The term "principal underwriter" means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter, the term "issuer" having the meaning given in sections 2(4) and 2(11) of the Act.

**Promoter.** (1) The term "promoter" includes—

(i) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or

(ii) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(2) All persons coming within the definition of "promoter" in paragraph (1) of this definition may be referred to as "founders" or "organizers" or by

another term provided that such term is reasonably descriptive of those persons' activities with respect to the issuer.

**Prospectus.** Unless otherwise specified or the context otherwise requires, the term "prospectus" means a prospectus meeting the requirements of section 10(a) of the Act.

**Registrant.** The term "registrant" means the issuer of the securities for which the registration statement is filed.

**Share.** The term "share" means a share of stock in a corporation or unit of interest in an unincorporated person.

**Significant subsidiary.** The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions.

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for purposes of determining whether the past or future acquisition of another company in a business combination accounted for as a pooling of interests is significant for purposes of applying § 210.3-08 or reporting on Form 8-K, this condition is also met when the number of common shares exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

*Computational note.* For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five

fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

**Subsidiary.** A "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries. (See also "majority owned subsidiary," "significant subsidiary," "totally held subsidiary," and "wholly owned subsidiary.")

**Succession.** The term "succession" means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business unless followed by the direct acquisition of its assets. The terms "succeed" and "successor" have meanings correlative to the foregoing.

**Totally held subsidiary.** The term "totally held subsidiary" means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

**Voting securities.** The term "voting securities" means securities the holders of which are presently entitled to vote for the election of directors.

**Wholly owned subsidiary.** The term "wholly owned subsidiary" means a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent's other wholly owned subsidiaries.

#### § 230.406 Contracts in general.

Public disclosure will not be made of the provisions of any material contract or portion thereof if the Commission determines that such disclosure would impair the value of the contract and is not necessary for the protection of investors. Except for requests made on or in connection with filings on form S-8 or on Form S-3 relating to a dividend or interest reinvestment plan, in any case where the registrant desires the Commission to make such a determination, the procedure set forth below shall be followed:

(a) The registrant shall omit from the registration statement as originally filed the portion of the contract which it desires to keep undisclosed, or, if the registrant desires to keep the entire

contract undisclosed, any copy of the contract.

(b) The registrant shall file with the registration statement, but not bound as part thereof, (1) three copies of the contract or portion thereof which it desires to keep undisclosed, clearly marked "Confidential Treatment," and (2) an application for an order making the above described determination. The copies of the confidential portion and the application filed in accordance with this paragraph shall be enclosed in a separate envelope marked "Confidential Treatment" and addressed to The Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Such application shall set forth the consideration relied upon for obtaining such order and shall include the length of time for which nondisclosure is requested and justification for the time period selected. In addition, the registrant shall state whether or not the registrant is willing to permit the disclosure of the material contract or portion thereof to other government agencies. (Such permission is one factor which will be considered by the Commission in ruling on the application.) Pending the granting or denial by the Commission of the application, the terms and existence of the contract or portion thereof will be kept undisclosed.

(c) If the Commission determines that the application shall be granted an order to that effect will be entered. Prior to any determination denying the application, confirmed telegraphic notice of an opportunity for hearing at a specified time within 10 days after the dispatch of such notice will be sent to the agent for service. After such hearing an order granting or denying the application will be entered.

(d) If the Commission denies the application, confirmed telegraphic notice of the order of denial will be sent to the agent for service. In such case, within 10 days after the dispatch of such notice, the registrant shall have the right to withdraw the registration statement in accordance with the terms of Rule 477 (§ 230.477) but without the necessity of stating any grounds for the withdrawal or of obtaining the further assent of the Commission. In the event of such withdrawal, the contract or portion thereof filed confidentially will be returned to the registrant.

(e) If the registration statement is not withdrawn pursuant to paragraph (d) of this section the contract or portion thereof filed confidentially will be made available for public inspection as part of the registration statement, and the registrant shall amend the registration statement to include all information

required to be set forth in regard to such contract or portion thereof.

#### § 230.407 [Reserved]

#### § 230.411 Incorporation by reference.

(a) **Prospectus.** Except as provided by this section or unless otherwise provided in the appropriate form, information shall not be incorporated by reference in a prospectus. Where a summary or outline of the provisions of any document is required in the prospectus, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its entirety by such reference.

(b) **Information not required in a prospectus.** Except for exhibits covered by Paragraph (c) of this section, information may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in a prospectus subject to the following provisions:

(1) Non-financial information may be incorporated by reference to any document;

(2) Financial information may be incorporated by reference to any document, provided any financial statement so incorporated meets the requirements of the forms on which the statement is filed. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the information incorporated by reference includes the entire period for which the comparative data is given;

(3) Information contained in any part of the registration statement, including the prospectus, may be incorporated by reference in answer, or partial answer, to any item that calls for information not required to be included in the prospectus; and

(4) Unless the information is incorporated by reference to a document which complies with the time limitations of Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter), then the document, or part thereof, containing the incorporated information is required to be filed as an exhibit.

(c) **Exhibits.** Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant

shall file with the reference a statement containing the text of such modification and the date thereof.

(d) *General.* Any incorporation by reference of information pursuant to this section shall be subject to the provisions of Rule 24 of the Commission's Rules of Practice restricting incorporation by reference of documents which incorporate by reference other information. Information incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. If the information is incorporated by reference to a previously filed document, the file number of such document shall be included. Where only certain pages of a document are incorporated by reference and filed with the statement, the document from which the information is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the registration statement where the information is required. Information shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

**§ 230.412 Modified or superseded documents.**

(a) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the registration statement or the prospectus to the extent that a statement contained in the prospectus or in any other subsequently filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

(b) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment

Company Act of 1940, or the rules and regulations thereunder.

(c) Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purpose of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

**§ 230.413 Registration of additional securities.**

Except as provided in sections 24(e)(1) and 24(f) of the Investment Company Act of 1940, the registration of additional securities of the same class as other securities for which a registration statement is already in effect shall be effected through a separate registration statement relating to the additional securities.

**§ 230.414 Registration by certain successor issuers.**

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

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

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

(c) The succession was approved by security holders of the predecessor issuer at a meeting for which proxies were solicited pursuant to section 14(a) of the Securities Exchange Act of 1934 or section 20(a) of the Investment Company Act of 1940 or information was furnished to security holders pursuant to section 14(c) of the Securities Exchange Act of 1934; and

(d) The successor issuer has filed an amendment to the registration statement of the predecessor issuer expressly adopting such statements as its own registration statement for all purposes of

the Act and the Securities Exchange Act of 1934 and setting forth any additional information necessary to reflect any material changes made in connection with or resulting from the succession, or necessary to keep the registration statement from being misleading in any material respect, and such amendment has become effective.

**§ 230.415 Delayed or continuous offering and sale of securities.**

(a) Securities may be registered for an offering to be made on a continuous or delayed basis in the future, provided that—

(1) The registration statement pertains to:

(i) Securities in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of the registration statement by or on behalf of the registrant, a subsidiary of the registrant or a person of which the registrant is a subsidiary; or

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

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

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

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

(vi) Securities which are pledged as collateral; or

(viii) Securities which are registered on Form S-12 [17 CFR 239.19] or Form C-3 [17 CFR 239.5].

(2) The registrant furnishes the undertakings required by Item 512(a) of Regulation S-K.

(3) In the case of a registration statement pertaining to an at the market offering of equity securities by or on behalf of the registrant: (i) The registrant must meet the registrant requirements and the applicable transaction requirements of Form S-3 (17 CFR 239.13); (ii) where voting stock is registered, the amount of securities registered for such purposes must not exceed 10% of the aggregate market value of the registrant's outstanding voting stock held by non-affiliates of the registrant (calculated as of a date within 60 days prior to the date of filing); (iii) the securities must be sold through an

underwriter or underwriters, acting as principal(s) or as agent(s) for the registrant; and (iv) the underwriter or underwriters must be named in the prospectus which is part of the registration statement. As used in this paragraph, the term "at the market offering" means an offering of securities into an existing trading market for outstanding shares of the same class at other than a fixed price on or through the facilities of a national securities exchange or to or through a market maker otherwise than on an exchange.

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

(c) This section shall be effective until December 10, 1982.

#### § 230.418 Supplemental information.

(a) The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, the registration statement, the distribution of the securities, market activities and underwriters' activities. Such information includes, but is not limited to, the following items which the registrant should be prepared to furnish promptly upon request:

(i) Any reports or memoranda which have been prepared for external use by the registrant or a principal underwriter, as defined in Rule 405 (§ 230.405), in connection with the proposed offering;

(ii) A statement as to the actual or proposed use and distribution of the reports or memoranda specified in paragraph (a)(1)(i) of this section, identifying each class of persons who have received or will receive such reports or memoranda and the number of copies distributed to each such class;

(2) In the case of a registration statement relating to a business combination as defined in Rule 145(a) (17 CFR 230.145(a)), exchange offer, tender offer or similar transaction, any feasibility studies, management analyses, fairness opinions or similar reports prepared by or for any of the parties to the subject transaction in connection with such transaction;

(3) Except in the case of a registrant eligible to use Form S-2 or Form S-3 (§§ 239.12 or 239.13 of this chapter), any engineering, management or similar reports or memoranda relating to broad aspects of the business, operations or

products of the registrant, which have been prepared within the past twelve months for or by the registrant, any affiliate of the registrant or any principal underwriter, as defined in Rule 405 (§ 230.405), of the securities being registered except for:

(i) Reports solely comprised of recommendations to buy, sell or hold the securities of the registrant, unless such recommendations have changed within the past six months; and

(ii) Any information contained in documents already filed with the Commission.

(4) Where there is a registration of an "offering at the market," as defined in Rule 10b-7 under the Securities Exchange Act of 1934 (17 CFR 240.10b-7), of more than 10 percent of the securities outstanding, where the offering includes securities owned by officers, directors or affiliates of the registrant and where there is no underwriting agreement, information (i) concerning contractual arrangements between selling security holders of a limited group or of several groups of related shareholders to comply with the anti-manipulation rules until the offering by all members of the group is completed and to inform the exchange, brokers and selling security holders when the distribution by the members of the group is over; or (ii) concerning the registrant's efforts to notify members of a large group of unrelated sellers of the applicable Commission rules and regulations;

(5) Where the registrant recently has introduced a new product or has begun to do business in a new industry segment or has made public its intentions to introduce a new product or to do business in a new industry segment, and this action requires the investment of a material amount of the assets of the registrant or otherwise is material, copies of any studies prepared for the registrant by outside persons or any internal studies, documents, reports or memoranda the contents of which were material to the decision to develop the product or to do business in the new segment including, but not limited to, documents relating to financial requirements and engineering, competitive, environmental and other considerations, but excluding technical documents;

(6) Where reserve estimates are referred to in a document, a copy of the full report of the engineer or other expert who estimated the reserves; and

(7) With respect to the extent of the distribution of a preliminary prospectus, information concerning:

(i) The date of the preliminary prospectus distributed;

(ii) The dates or approximate dates of distribution;

(iii) The number of prospective underwriters and dealers to whom the preliminary prospectus was furnished;

(iv) The number of prospectuses so distributed;

(v) The number of prospectuses distributed to others, identifying them in general terms; and

(vi) The steps taken by such underwriters and dealers to comply with the provisions of Rule 15c2-8 under the Securities Exchange Act of 1934 (§ 240.15c2-8 of this chapter).

(b) Supplemental information described in paragraph (a) of this section shall not be required to be filed with or deemed part of the registration statement. The information shall be returned to the registrant upon request, provided that:

(1) Such request is made at the time such information is furnished to the staff;

(2) The return of such information is consistent with the protection of investors; and

(3) The return of such information is consistent with the provisions of the Freedom of Information Act [5 U.S.C. 552].

#### Form and Contents of Prospectuses

##### § 230.421 Presentation of information in prospectuses.

(a) The information required in a prospectus need not follow the order of the items or other requirements in the form. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in a prospectus in tabular form it shall be given in substantially the tabular form specified in the item.

(b) The information set forth in a prospectus should be presented in a clear, concise and understandable fashion. All information contained in a prospectus shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in a prospectus shall be divided into reasonably short paragraphs or sections.

(c) All information required to be included in a prospectus shall be clearly understandable without the necessity of referring to the particular form or to the general rules and regulations. Except as

to financial statements and information required in a tabular form, the information set forth in a prospectus may be expressed in condensed or summarized form. In lieu of repeating information in the form of notes to financial statements, references may be made to other parts of the prospectus where such information is set forth.

**§ 230.422 [Reserved]**

**§ 230.423 Date of prospectuses.**

Except for a form of preliminary prospectus used after the effective date of the registration statement and prior to the opening of bids as permitted by Rule 445(c) (§ 230.445(c)), each prospectus used after the effective date of the registration statement shall be dated approximately as of such effective date; provided, however, that a revised or amended prospectus used thereafter need only bear the approximate date of its issuance. Each supplement to a prospectus shall be dated separately the approximate date of its issuance.

**§ 230.427 Contents of prospectus used after nine months.**

There may be omitted from any prospectus used more than 9 months after the effective date of the registration statement any information previously required to be contained in the prospectus insofar as later information covering the same subjects, including the latest available certified financial statement, as of a date not more than 16 months prior to the use of the prospectus is contained therein.

**§ 230.428 [Reserved]**

**§ 230.430 Prospectus for use prior to effective date.**

A form of prospectus filed as a part of the registration statement shall be deemed to meet the requirements of section 10 of the Act for the purpose of section 5(b)(1) thereof prior to the effective date of the registration statement, provided such form of prospectus contains substantially the information required by the Act and the rules and regulations thereunder to be included in a prospectus meeting the requirements of section 10(a) of the Act for the securities being registered, or contains substantially that information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price. Every such form of prospectus shall be deemed to have been filed as a part of the registration

statement for the purpose of section 7 of the Act.

**§ 230.431 Summary prospectuses.**

(a) A summary prospectus prepared and filed as a part of a registration statement in accordance with this rule shall be deemed to be a prospectus permitted under section 10(b) of the Act for the purpose of section 5(b)(1) of the Act if the form used for registration of the securities to be offered provides for the use of a summary prospectus and, if the issuer is not a registered open-end investment company, the following conditions are met:

(1)(i) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories; or

(ii) If the registrant is a foreign private issuer, such registrant files the same reports with the Commission under section 13(a) or 15(d) of the Securities Exchange Act of 1934 as a domestic registrant pursuant to paragraph (a)(3) of this section;

(2) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 or has a class of equity securities registered pursuant to section 12(g) of that Act or is required to file reports pursuant to section 15(d) of that Act;

(3) The registrant: (i) Has been subject to the requirements of section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) of that Act for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement; and (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) under the Securities Exchange Act of 1934 (§ 240.12b-25 of this chapter) with respect to a report or portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that Rule; and

(4) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries has, since the end of its last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934: (i) failed to pay any dividend or

sinking fund installment on preferred stock; or (ii) defaulted on any installment or installments on indebtedness for borrowed money, or on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(b) A summary prospectus shall contain the information specified in the instructions as to summary prospectuses in the form used for registration of the securities to be offered. Such prospectus may include any other information the substance of which is contained in the registration statement except as otherwise specifically provided in the instructions as to summary prospectuses in the form used for registration. It shall not include any information the substance of which is not contained in the registration statement except that a summary prospectus may contain any information specified in Rule 134(a) (§ 230.134(a)). No reference need be made to inapplicable terms and negative answers to any item of the form may be omitted.

(c) All information included in a summary prospectus, other than the statement required by paragraph (e) of this section, may be expressed in such condensed or summarized form as may be appropriate in the light of the circumstances under which the prospectuses to be used. The information need not follow the numerical sequence of the items of the form used for registration. Every summary prospectus shall be dated approximately as of the date of its first use.

(d) When used prior to the effective date of the registration statement, a summary prospectus shall be captioned a "Preliminary Summary Prospectus" and shall comply with the applicable requirements relating to a preliminary prospectus.

(e) A statement to the following effect shall be prominently set forth in conspicuous print at the beginning or at the end of every summary prospectus:

"Copies of a more complete prospectus may be obtained from" (Insert name(s), address(es) and telephone number(s)).

Copies of a summary prospectus filed with the Commission pursuant to paragraph (g) of this section may omit the names of persons from whom the complete prospectus may be obtained.

(f) Any summary prospectus published in a newspaper, magazine or other periodical need only be set in type at least as large as 7 point modern type.

Nothing in this rule shall prevent the use of reprints of a summary prospectus published in a newspaper, magazine, or other periodical, if such reprints are clearly legible.

(g) Eight copies of every proposed summary prospectus shall be filed as a part of the registration statement, or as an amendment thereto, at least 5 days (exclusive of Saturdays, Sundays and holidays) prior to the use thereof, or prior to the release for publication by any newspaper, magazine or other person, whichever is earlier. The Commission may, however, in its discretion, authorize such use or publication prior to the expiration of the 5-day period upon a written request for such authorization. Within 7 days after the first use or publication thereof, 5 additional copies shall be filed in the exact form in which it was used or published.

**§ 230.432 Additional information required to be included in prospectuses relating to tender offers.**

Notwithstanding the provisions of any form for the registration of securities under the Act, any prospectus relating to securities to be offered in connection with a tender offer for, or a request or invitation for tenders of, securities which is subject to section 14(d) of the Securities Exchange Act of 1934 shall include all of the information, not otherwise required to be included therein, required by Rule 14d-6(c)(1) (§ 240.14d-6(c)(1) of this chapter) to be included in all such tender offers, requests or invitations, published or sent or given to the holders of such securities.

**Written Consents**

**§ 230.435 [Reserved]**

**§ 230.436 Consents required in special cases.**

(a) If any portion of the report or opinion of an expert or counsel is quoted or summarized as such in the registration statement or in a prospectus, the written consent of the expert or counsel shall be filed as an exhibit to the registration statement and shall expressly state that the expert or counsel consents to such quotation or summarization.

(b) If it is stated that any information contained in the registration statement has been reviewed or passed upon by any persons and that such information is set forth in the registration statement upon the authority of or in reliance upon such persons as experts, the written consents of such persons shall be filed as exhibits to the registration statement.

(c) Notwithstanding the provisions of paragraph (b) of this section, a report on unaudited interim financial information (as defined in paragraph (d) of this section) by an independent accountant who has conducted a review of such interim financial information shall not be considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Act.

(d) The term "report on unaudited interim financial information" shall mean a report which consists of the following: (1) a statement that the review of interim financial information was made in accordance with established professional standards for such reviews; (2) an identification of the interim financial information reviewed; (3) a description of the procedures for a review of interim financial information; (4) a statement that a review of interim financial information is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is an expression of opinion regarding the financial statements taken as a whole, and, accordingly, no such opinion is expressed; and (5) a statement about whether the accountant is aware of any material modifications that should be made to the accompanying financial information so that it conforms with generally accepted accounting principles.

(e) Where a counsel is named as having acted for the underwriters or selling security holders, no consent will be required by reason of his being named as having acted in such capacity.

(f) Where the opinion of one counsel relies upon the opinion of another counsel, the consent of the counsel whose prepared opinion is relied upon need not be furnished.

(g)(1) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the security rating assigned to a class of debt securities, a class of convertible debt securities, or a class of preferred stock by a nationally recognized statistical rating organization shall not be considered a part of a registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Act.

(2) For the purpose of paragraph (g)(1) of this section, the term "nationally recognized statistical rating organization" shall have the same meaning as used in Rule 15c3-1(c)(2)(vi)(F) [17 CFR 240.15c3-1(c)(2)(vi)(F)].

**§ 230.439 Consent to use of material incorporated by reference.**

If the Act or the rules and regulations of the Commission require the filing of a written consent to the use of any material in connection with the registration statement, such consent shall be filed as an exhibit to the registration statement even though the material is incorporated therein by reference. Where the filing of a written consent is required with respect to material incorporated in the registration statement by reference, which is to be filed subsequent to the effective date of the registration statement, such consent shall be filed as an amendment to the registration statement no later than the date on which such material is filed with the Commission, unless express consent to incorporation by reference is contained in the material to be incorporated by reference.

**Competitive Bids.**

**§ 230.445 Competitive bidding registration statement.**

(a) Any order declaring a registration statement, covering securities to be offered at competitive bidding, effective shall be deemed to declare an amendment thereto, filed to reflect the results of the bidding, the terms of the reoffering and related materials, effective in accordance with paragraph (b) of this section.

(b) An amendment to such a registration statement filed to reflect the results of the bidding, the terms of the reoffering and related materials (which may make such other changes in the registration statement as the registrant deems appropriate) shall become effective at the time such amendment is filed with the Commission at its principal office or any regional or branch office, unless the Commission has notified the registrant that it has instituted proceedings under section 8 of the Act. The amendment shall be accompanied by the consent of a managing underwriter, acting on behalf of all principal underwriters of the securities offered at competitive bidding, to the filing thereof.

(c) A prospectus relating to the securities offered at competitive bidding, when used prior to the opening of bids, need not contain information dependent upon the determination of the offering price of such securities or the acceptance of the bid, in order to meet the requirements of section 10(a) of the Act. A prospectus relating to such securities, when used after the opening of bids, shall not be deemed to meet the requirements of section 10(a) of the Act unless (1) an amendment to the

registration statement has been filed to reflect the results of the bidding, the terms of the reoffering and related materials, if required, and (2) such prospectus reflects the information contained in the registration statement, as amended, to the extent required by the applicable form.

(d) A registrant may register securities to be offered at competitive bidding and securities not to be so offered pursuant to a single joint registration statement only if all information (including offering data, etc.) required by the applicable form with respect to the securities not to be so offered is included in the registration statement prior to the initial effectiveness thereof. If such information is not so included, the Commission will not accelerate such effectiveness unless an amendment to the registration statement is first filed so as to make it cover only the securities to be offered at competitive bidding. The registrant may, however, either initially or after such amendment, register the securities not to be offered at competitive bidding pursuant to a separate registration statement. An appropriate composite form of prospectus may in any event be used for all securities registered.

**§ 230.446 Invitations for competitive bids.**

Any information or documents contained in a registration statement may be omitted from any communication which is only an invitation for competitive bids for securities with respect to which a registration statement has been filed, provided (a) the terms of the bidding require that each bid shall be for the purchase of the entire amount of one or more of the issues; and (b) the communication states that prior to the acceptance of any bid the bidder will be furnished a copy of a prospectus which meets the requirements of section 10(a) of the Act at that time.

**§ 230.447 Authorization of agent for service for filing amendments.**

A registration statement filed in connection with the registration of securities to be offered at competitive bidding may expressly confer authorization upon the agent for service named in the registration statement to amend the registration statement in accordance with the undertaking to file an amendment to the registration statement reflecting the results of the bidding, the terms of the reoffering and related matters, not later than the first use, authorized by the registrant after the opening of bids. The authorization shall be substantially in the following form:

Each person whose signature appears below hereby authorizes the agent for service named in the registration statement to execute in the name of each such person, and to file, an amendment to the registration statement pursuant to the above undertaking, which amendment may make such other changes in the registration statement as the registrant deems appropriate.

**Filings; Fees; Effective Date**

**§ 230.455 Place of filing.**

All registration statements and other papers filed with the Commission shall be filed at its principal office, except for statements on Form S-18 (§ 239.28 of this Chapter) and except as otherwise provided in Rule 445 (§ 230.445). Registration statements on Form S-18 may be filed with the Commission either at its principal office or at the Commission's regional offices as specified in General Instruction B to Form S-18. Such material may be filed by delivery to the Commission through the mails or otherwise.

**§ 230.457 Computation of fee.**

(a) If a filing fee based on a bona fide estimate of the maximum offering price, computed in accordance with this rule where applicable, has been paid, no additional filing fee shall be required as a result of changes in the proposed offering price. If the number of shares or other units of securities, or the principal amount of debt securities to be offered is increased by an amendment filed prior to the effective date of the registration statement, an additional filing fee, computed on the basis of the offering price of the additional securities, shall be paid. There will be no refund once the statement is filed.

(b) Where securities are to be offered at prices computed upon the basis of fluctuating market prices, the registration fee is to be calculated upon the basis of the price at which securities of the same class were sold, or upon the average of the bid and asked prices of such securities on a specified date within fifteen days prior to the date of filing of the registration statement.

(c) Where securities are to be offered at varying prices based upon fluctuating values of underlying assets, the registration fee is to be calculated upon the basis of the market value of such assets as of a specified date within fifteen days prior to the date of filing, in accordance with the method to be used in calculating the daily offering price.

(d) Where securities are to be offered to existing security holders and the portion, if any, not taken by such security holders is to be reoffered to the general public, the registration fee is to be calculated upon the basis of the

proposed offering price to such security holders or the proposed reoffering price to the general public, whichever is higher.

(e) Where securities are to be offered in exchange for other securities (except where such exchange results from the exercise of a conversion privilege) or in a reclassification or recapitalization which involves the substitution of a security for another security, a merger, a consolidation, or a similar plan of acquisition, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities to be received by the registrant or cancelled in the exchange or transaction as established by the price at which securities of the same class were sold, or by the average of the bid and asked prices of such securities as of a specified date within 15 days prior to the date of filing.

(2) If there is no market for the securities to be received by the registrant or cancelled in the exchange or transaction, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership, or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash is to be received by the registrant in connection with the exchange or transaction, the amount thereof shall be added to the value of the securities to be received by the registrant or cancelled as computed in accordance with (e) (1) or (2) of this section. If any cash is to be paid by the registrant in connection with the exchange or transaction, the amount thereof shall be deducted from the value of the securities to be received by the registrant in exchange as computed in accordance with (e) (1) or (2) of this section.

(4) Securities to be offered directly or indirectly for certificates of deposit shall be deemed to be offered for the securities represented by the certificates of deposit.

(f) Where securities are to be offered pursuant to warrants or other rights to purchase such securities and the holders of such warrants or rights may be deemed to be underwriters, as defined in section 2(11) of the Act, with respect to the warrants or rights or the securities subject thereto, the registration fee is to be calculated upon the basis of the price at which the warrants or rights or securities subject thereto are to be offered to the public. If such offering

price cannot be determined at the time of filing the registration statement, the registration fee is to be calculated upon the basis of the highest of the following: (1) the price at which the warrants or rights may be exercised, if known at the time of filing the registration statement; (2) the offering price of securities of the same class included in the registration statement; or (3) the price at which securities of the same class were sold, or the average of the bid and asked prices of such securities, on a specified date within 15 days prior to the date of filing the registration statement. If the fee is to be calculated upon the basis of the price at which the warrants or rights may be exercised and they are exercisable over a period of time at progressively higher prices, the fee shall be calculated on the basis of the highest price at which they may be exercised. If the warrants or rights are to be registered for distribution in the same registration statement as the securities to be offered pursuant thereto, no separate registration fee shall be required.

(g) Where securities are to be offered to employees pursuant to an employee stock purchase, savings, or similar plan, the aggregate offering price and the amount of the registration fee shall be computed only with respect to the aggregate contributions of employees, except that if employees may choose the medium in which the employer's contributions are to be invested the aggregate offering price shall include the employer's contributions. Where stock is to be offered to employees pursuant to an employee stock option plan, the aggregate offering price and the amount of the fee shall be computed upon the basis of the price at which the option may be exercised or, if such price is not known, upon the basis of the price at which stock of the same class was sold, or the average of the bid and asked prices of such stock, on a specified date within 15 days prior to the date of filing the registration statement. Where securities are to be offered to employees pursuant to a bonus plan or similar non-contributory plan, the aggregate offering price and amount of the fee shall be computed on the basis of the price at which such securities of the same class were sold, or the average bid and asked prices of such securities, on a specified date within 15 days prior to the date of filing the registration statement. If there is no market for the securities to be offered, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used.

(h) Where convertible securities and the securities into which conversion is offered are registered at the same time, the registration fee is to be calculated on the basis of the proposed offering price of the convertible securities alone, except that if any additional consideration is to be received in connection with the exercise of the conversion privilege the maximum amount which may be received shall be added to the proposed offering price of the convertible securities.

(i) Where securities are sold prior to the registration thereof and are subsequently registered for the purpose of making an offer of rescission of such sale or sales, the registration fee is to be calculated on the basis of the amount at which such securities were sold, except that where securities repurchased pursuant to such offer of rescission are to be reoffered to the general public at a price in excess of such amount the registration fee is to be calculated on the basis of the proposed reoffering price.

(j) Notwithstanding the other provisions of this rule, the proposed maximum aggregate offering price of American Depositary Receipts registered on Form S-12 (§ 239.19 of this chapter) shall, for the purpose of calculating the registration fee, be computed upon the basis of the maximum aggregate fees or charges to be imposed in connection with the issuance of such receipts.

(k) Notwithstanding the other provisions of this rule, the proposed maximum aggregate offering price of any put or call option which is traded on an exchange and registered by such exchange or a facility thereof or which is traded over the counter shall, for the purpose of calculating the registration fee, be computed upon the basis of the maximum aggregate fees or charges to be imposed by such registrant in connection with the issuance of such option.

(l) Notwithstanding the other provisions of this rule, where the securities to be registered include (1) any note, draft, bill of exchange, or bankers' acceptance which meets all the conditions of section 3(a)(3) hereof, and (2) any note, draft, bill of exchange or bankers' acceptance which has a maturity at the time of issuance of not exceeding nine months exclusive of days of grace, or any renewal thereof the maturity date of which is likewise limited, but which otherwise does not meet the conditions of section 3(a)(3), the registration fee shall be calculated by taking one-fiftieth of 1 per centum of the maximum principal amount of only

those securities not meeting the conditions of section 3(a)(3).

(m) Where the securities to be offered are guarantees of other securities which are being registered concurrently, no separate fee for the guarantees shall be payable.

#### § 230.460 Distribution of preliminary prospectus.

(a) Pursuant to the statutory requirement that the Commission in ruling upon requests for acceleration of the effective date of a registration statement shall have due regard to the adequacy of the information respecting the issuer theretofore available to the public, the Commission may consider whether the persons making the offering have taken reasonable steps to make the information contained in the registration statement conveniently available to underwriters and dealers who it is reasonably anticipated will be invited to participate in the distribution of the security to be offered or sold.

(b) As a minimum, reasonable steps to make the information conveniently available would involve the distribution, to each underwriter and dealer who it is reasonably anticipated will be invited to participate in the distribution of the security, a reasonable time in advance of the anticipated effective date of the registration statement, of as many copies of the proposed form of preliminary prospectus permitted by Rule 430 (§ 230.430) as appears to be reasonable to secure adequate distribution of the preliminary prospectus.

(c) The granting of acceleration will not be conditioned upon

(1) The distribution of a preliminary prospectus in any state where such distribution would be illegal; or

(2) The distribution of a preliminary prospectus (i) in the case of a registration statement relating solely to securities to be offered at competitive bidding, provided the undertaking in Item 512(d)(1) of Regulation S-K (§ 229.512(d)(2) of this chapter) is included in the registration statement and distribution of prospectuses pursuant to such undertaking is made prior to the publication or distribution of the invitation for bids, or (ii) in the case of a registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust if any other security of the same class is currently being offered or sold, pursuant to an effective registration statement by the issuer or by or through an underwriter, or (iii) in

the case of an offering of subscription rights unless it is contemplated that the distribution will be made through dealers and the underwriters intend to make the offering during the stockholders' subscription period, in which case copies of the preliminary prospectus must be distributed to dealers prior to the effective date of the registration statement in the same fashion as is required in the case of other offerings through underwriters, or (iv) in the case of a registration statement pertaining to a security to be offered pursuant to an exchange offer or transaction described in Rule 145 (§ 230.145).

#### §230.461 Acceleration of effective date.

(a) Requests for acceleration of the effective date of a registration statement shall be made in writing by the registrant and the managing underwriters of the proposed issue, or, if there are no managing underwriters, by the principal underwriters of the proposed issue, and shall state the date upon which it is desired that the registration statement shall become effective. If, by reason of the expected arrangement in connection with the offering, it is to be requested that the registration statement shall become effective at a particular hour of the day, the Commission must be advised to that effect not later than the second business day before the day which it is desired that the registration statement shall become effective. A person's request for acceleration will be considered confirmation of such person's awareness of the person's obligations under the Act. Not later than the time of filing the last amendment prior to the effective date of the registration statement, the registrant shall inform the Commission as to whether or not the amount of compensation to be allowed or paid to the underwriters and any other arrangements among the registrant, the underwriters and other broker dealers participating in the distribution, as described in the registration statement, have been reviewed to the extent required by the National Association of Securities Dealers, Inc. and such Association has issued a statement expressing no objections to the compensation and other arrangements.

(b) Having due regard to the adequacy of information respecting the registrant theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the registrant issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors, as provided in section 8(a)

of the Act, it is the general policy of the Commission, upon request, as provided in paragraph (a) of this section, to permit acceleration of the effective date of the registration statement as soon as possible after the filing of appropriate amendments, if any. In determining the date on which a registration statement shall become effective, the following are included in the situations in which the Commission considers that the statutory standards of section 8(a) may not be met and may refuse to accelerate the effective date:

(1) Where there has not been a bona fide effort to make the prospectus reasonably concise and readable, so as to facilitate an understanding of the information required or permitted to be contained in the prospectus,

(2) Where the form of preliminary prospectus, which has been distributed by the issuer or underwriter, is found to be inaccurate or inadequate in any material respect, until the Commission has received satisfactory assurance that appropriate correcting material has been sent to all underwriters and dealers who received such preliminary prospectus or prospectuses in quantity sufficient for their information and the information of others to whom the inaccurate or inadequate material was sent.

(3) Where the Commission is currently making an investigation of the issuer, a person controlling the issuer, or one of the underwriters, if any, of the securities to be offered, pursuant to any of the Acts administered by the Commission.

(4) Where one or more of the underwriters, although firmly committed to purchase securities covered by the registration statement, is subject to and does not meet the financial responsibility requirements of Rule 15c3-1 under the Securities Exchange Act of 1934 (§ 240.15c3-1 of this chapter). For the purposes of this paragraph underwriters will be deemed to be firmly committed even though the obligation to purchase is subject to the usual conditions as to receipt of opinions of counsel, accountants, etc., the accuracy of warranties or representations, the happening of calamities or the occurrence of other events the determination of which is not expressed to be in the sole or absolute discretion of the underwriters.

(5) Where there have been transactions in securities of the registrant by persons connected with or proposed to be connected with the offering which may have artificially affected or may artificially affect the market price of the security being offered.

(6) Where the amount of compensation to be allowed or paid to the underwriters and any other arrangements among the registrant, the underwriters and other broker dealers participating in the distribution, as described in the registration statement, if required to be reviewed by the National Association of Securities Dealers, Inc. (NASD), have been reviewed by the NASD and the NASD has not issued a statement expressing no objections to the compensation and other arrangements.

(7) Where, in the case of a significant secondary offering at the market, the registrant, selling security holders and underwriters have not taken sufficient measures to insure compliance with Rules 10b-2, 10b-6, and 10b-7 under the Securities Exchange Act of 1934 (§§ 240.10b-2, 240.10b-6 and 240.10b-7 of this chapter).

(c) Insurance against liabilities arising under the Act, whether the cost of insurance is borne by the registrant, the insured or some other person, will not be considered a bar to acceleration, unless the registrant is a registered investment company or a business development company and the cost of such insurance is borne by other than an insured officer or director of the registrant. In the case of such a registrant, the Commission may refuse to accelerate the effective date of the registration statement when the registrant is organized or administered pursuant to any instrument (including a contract for insurance against liabilities arising under the Act) that protects or purports to protect any director or officer of the company against any liability to the company or its security holders to which he or she would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his or her office.

#### §230.462 [Reserved]

#### §230.464 Effective date of post-effective amendments on Form S-8 or on Form S-3 for registration statements relating to a dividend or interest reinvestment plan.

*Provided*, That the issuer continues to meet the requirements for filing on Form S-8 (§ 239.16b of this chapter) or on Form S-3 (§ 239.13 of this chapter) for a registration statement relating to dividend or interest reinvestment plan at the time of filing of each post-effective amendment on such Form with the Commission:

(a) The post-effective amendment shall become effective upon filing with the Commission; and

(b) With respect to securities sold on or after the filing date pursuant to a prospectus which forms a part of a Form S-8 registration statement or a Form S-3 registration statement relating to a dividend or interest reinvestment plan and which has been amended to include or incorporate new full year financial statements or to comply with the provisions of section 10(a)(3) of the act, the effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

#### § 230.465 [Reserved]

#### Amendments; Withdrawals

#### § 230.470 Formal requirements for amendments.

Except for telegraphic amendments filed pursuant to Rule 473 (§ 230.473), amendments to a registration statement shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

#### § 230.471 Signatures to amendments.

Except as provided in Rule 447 (§ 230.447) and in Rule 478 (§ 230.478), every amendment to a registration statement shall be signed by the persons specified in section 6(a) of the Act. At least one copy of every amendment filed with the Commission shall be signed. Unsigned copies shall be conformed.

#### § 230.472 Filing of amendments; number of copies.

(a) Except for telegraphic amendments filed pursuant to Rule 473 (§ 230.473), there shall be filed with the Commission three complete, unmarked copies of every amendment, including exhibits and all other papers and documents filed as part of the amendment, and eight additional copies of such amendment at least five of which shall be marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes effected in the registration statement by the amendment. Where the amendment to the registration statement incorporates into the prospectus documents which are Required to be delivered with the prospectus in lieu of prospectus presentation, the eight additional copies shall be accompanied by eight copies of such documents. No other exhibits are required to accompany such additional copies.

(b) Every amendment which relates to a prospectus shall include copies of the

prospectus as amended. Each such copy of the amended prospectus shall be accompanied by a copy of the cross reference sheet required by Item 501 of Regulation S-K (§ 229.501 of this chapter) or Rule 481(a) (§230.481(a)) if the amendment of the prospectus resulted in any change in the accuracy of the cross reference sheet previously filed. Notwithstanding the foregoing provisions of this paragraph, only copies of the changed pages of the prospectus, and the cross reference sheet if amended, need be included in an amendment filed pursuant to an undertaking referred to in Item 512(d) of Regulation S-K (§ 229.512(d) of this chapter).

(c) Every amendment of a financial statement which is not included in the prospectus shall include copies of the financial statement as amended. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statement in the registration statement or prospectus and to being named as having certified such financial statement.

#### § 230.473 Delaying amendments.

(a) An amendment in the following form filed with a registration statement, or as an amendment to a registration statement which has not become effective, shall be deemed, for the purpose of section 8(a) of the Act, to be filed on such date or dates as may be necessary to delay the effective date of such registration statement (1) until the registrant shall file a further amendment which specifically states as provided in paragraph (b) of this section that such registration statement shall thereafter become effective in accordance with section 8(a) of the Act, or (2) until the registration statement shall become effective on such date as the Commission, acting pursuant to section 8(a), may determine:

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission acting pursuant to said section 8(a), may determine.

(b) An amendment which for the purpose of paragraph (a)(1) of this section specifically states that a registration statement shall thereafter become effective in accordance with section 8(a) of the Act, shall be in the following form:

This registration statement shall hereafter become effective in accordance with the provisions of section 8(a) of the Securities Act of 1933.

(c) An amendment pursuant to paragraph (a) of this section which is filed with a registration statement shall be set forth on the facing page thereof following the calculation of the registration fee. Any such amendment filed after the filing of the registration statement, any amendment altering the proposed date of public sale of the securities being registered, or any amendment filed pursuant to paragraph (b) of this section may be made by telegram or letter. Each such telegraphic amendment shall be confirmed in writing within a reasonable time by the filing of a signed copy of the amendment. Such confirmation shall not be deemed an amendment.

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form S-8 or on Form S-3 relating to a dividend or interest reinvestment plan.

#### § 230.475a Pre-effective amendments on Form S-8 and certain pre-effective amendments on Form S-3 deemed filed with consent of Commission.

Amendments to a registration statement on Form S-8 or to a registration statement on Form S-3 relating to a dividend or interest reinvestment plan filed prior to the effectiveness of such registration statement shall be deemed to have been filed with the consent of the Commission and shall accordingly be treated as part of the registration statement.

#### § 230.477 Withdrawal of registration statement or amendment

(a) Except as provided in paragraph (b) of this section, any registration statement or any amendment or exhibit thereto may be withdrawn upon application if the Commission, finding such withdrawal consistent with the public interest and the protection of investors, consents thereto.

(b) Any application for withdrawal of a registration statement filed on Form S-8 or on Form S-3 relating to a dividend or interest reinvestment plan, and/or any pre-effective amendment thereto, will be deemed granted upon filing if such filing is made prior to the effective date.

(c) The application for withdrawal under either paragraphs (a) or (b) of this section, shall be signed and shall state fully the grounds upon which made. The fee paid upon the filing of the registration statement will not be returned to the registrant. The papers

comprising the registration statement or amendment thereto shall not be removed from the files of the Commission but an order with the date of the granting of such withdrawal shall be included in the file for the registration statement in the following manner: "Withdrawn upon the request of the registrant, the Commission consenting thereto."

**§ 230.479 Procedure with respect to abandoned registration statements and post-effective amendments.**

When a registration statement, or a post-effective amendment to such a statement, has been on file with the Commission for a period of nine months and has not become effective the Commission may, in its discretion, proceed in the following manner to determine whether such registration statement or amendment has been abandoned by the registrant. If the registration statement has been amended, otherwise than for the purpose of delaying the effective date thereof, or if the post-effective amendment has been amended, the nine-month period shall be computed from the date of the latest such amendment.

(a) A notice will be sent to the registrant, and to the agent for service named in the registration statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for the registrant and the agent for service reflected in the registration statement. Such notice will inform the registrant and the agent for service that the registration statement or amendment is out of date and must be either amended to comply with the applicable requirements of the Act and the rules and regulations thereunder or be withdrawn within 30 days after the date of such notice.

(b) If the registrant or the agent for service fails to respond to such notice by filing a substantive amendment or withdrawing the registration statement and does not furnish a satisfactory explanation as to why it has not done so within such 30 days, the Commission may, where consistent with the public interest and the protection of investors, enter an order declaring the registration statement or amendment abandoned.

(c) When such an order is entered by the Commission the papers comprising the registration statement or amendment will not be removed from the files of the Commission but an order shall be included in the file for the registration statement in the following manner: "Declared abandoned by order dated \_\_\_\_\_."

**Investment Companies; Business Development Companies**

Note.—The rules which comprise this section of Regulation C (§§ 230.480 to 230.485) are applicable only to investment companies and business development companies. However, the rules comprising the rest of Regulation C (§§ 230.400 to 230.479 and §§ 230.490 to 230.494) are, unless the context specifically indicates otherwise, also applicable to such companies. See § 230.400.

**§ 230.480 Title Of securities.**

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, wherever the title of securities is required to be stated there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and, if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1950 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

**§ 230.481 Information required in prospectus.**

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a company that has elected to be regulated as a business development company under sections 55 through 65 of that Act which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, the following provisions apply:

(a) The facing page of every registration statement shall set forth the approximate date of proposed sale to the public. Every registration statement shall include, immediately following the facing page, a cross reference sheet showing the location in the prospectus of the information required to be included in the prospectus in response

to the items of the form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted from the prospectus, a statement to that effect shall be made in the cross reference sheet.

(b) The outside front cover page of any prospectus relating to such registration statement shall contain:

(1) The following statement in capital letters printed in boldface roman type at least as large as ten-point modern type and at least two points leaded:

**"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS, ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;" AND**

(2) In the case of any prospectus to be used prior to the effective date of the registration statement, in red ink, the caption "Preliminary Prospectus," the date of its issuance, and the following statement printed in type as large as that generally in the body of such prospectus:

"A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

(c) The forepart, or the outside back cover, of any prospectus relating to such registration statement shall include a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus and the page number on which each section or subdivision begins.

(d) The inside front cover page of any prospectus relating to such registration statement shall contain:

(1) If the registrant or any of the underwriters knows or has reason to believe that there is an intention to over allot or that the price of any security may be stabilized to facilitate the offering of the registered securities, a statement in substantially the following form, subject to appropriate modification where circumstances require. Such statement shall be in capital letters, printed in boldface roman type as least as large as ten-point

modern type and at least two points leaded:

"IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF [IDENTIFY EACH CLASS OF SECURITIES IN WHICH SUCH TRANSACTIONS MAY BE EFFECTED] AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET SUCH TRANSACTIONS MAY BE EFFECTED ON [IDENTIFY EACH EXCHANGE ON WHICH STABILIZING TRANSACTIONS MAY BE EFFECTED. IF NONE, OMIT THIS SENTENCE.] SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME;" AND

(2) If the stabilizing began prior to the effective date of the registration statement, disclosure of the amount of securities bought, the prices at which bought and the period within which they were bought.

(e) If the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public after expiration of the rights offering period, there shall be set forth in the inside front cover, or elsewhere, in the prospectus used in connection with the reoffering

(1) The amount of securities bought in stabilization activities during the rights offering period and the price, or range of prices, at which such securities were bought;

(2) The amount of the offered securities subscribed for during such period,

(3) like amount of the offered securities subscribed for by the underwriters during such period,

(4) The amount of the offered securities sold during such period by the underwriters and the price, or range of prices, at which such securities were sold, and

(5) The amount of the offered securities to be reoffered to the public and the public offering price.

(f)(1) (1) The inside front cover page or the back cover page of any prospectus relating to such registration statement shall contain the statement in paragraph (f)(2) of this section, inserting the expiration date of the period prescribed by section 4(3) of the Act and Rule 174 (17 CFR 230.174) thereunder, except that this statement need not be included if, pursuant to Rule 174, dealers are not required to deliver a prospectus, or if the exemption provided by section 4(3) of the Act is not applicable because of the provisions of section 24(d) of the Investment Company Act of 1940. If such expiration date is not known on the effective date of the registration statement, it shall be included in the prospectus copies of which are required

to be filed pursuant to Rule 424(b) (§ 230.424(b)).

(2) The following statement required by paragraph (f)(1) of this section shall be printed in boldface type or italic type at least as large as eight point Modern type and at least two points leaded:

Until——(insert date) all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

**§ 230.482 Advertising by an investment company as satisfying requirements of section 10.**

(a) An advertisement, other than one excepted from the definition of prospectus by section 2(10) of the Act and rule 134 thereunder, shall be deemed to be a prospectus under section 10(b) of the Act for the purpose of section 5(b)(1) of the Act if

(1) It is with respect to an investment company registered under the Investment Company Act of 1940, or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act,

(2) It appears in a bona fide newspaper or magazine or is used on radio or television,

(3) It contains only information the substance of which is included in the section 10(a) prospectus,

(4) It states, conspicuously, from whom a prospectus containing more complete information may be obtained and that an investor should read that prospectus carefully before investing, and

(5) It contains the statement required by Rule 481(b)(2) (§ 230.481(b)(2)) when used prior to effectiveness of the company's registration statement.

(b) An advertisement made pursuant to paragraph (a) of this section need not contain the statement required by Rule 481(b)(1) (§ 230.481(b)(1)).

(c) An advertisement made pursuant to paragraph (a) of this section need not be filed as part of the registration statement filed under the Act.

Note.—Such advertisement must, however, be otherwise filed in accordance with the requirements of Rule 424 (17 CFR 230.424).

(d) In the case of an investment company which holds itself out to be a "money market" fund or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in 13 months or less, any quotation of such company's yield contained in such advertisement is

based on the method of computation prescribed in Item 17 (and the instructions thereto) of Form N-1, set forth in §§ 239.15 and 274.11 of this chapter, and identifies [the date of the last day in] the period used in computing that quotation.

**§ 230.483 Exhibits for certain registration statements.**

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, the following provisions apply:

(a) Such registration statement shall contain an exhibit index, which should immediately precede the exhibits filed with such registration statement. The exhibit index shall indicate by handwritten, typed, printed or other legible form of notation in the manually signed original registration statement the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located.

(b) If any name is signed to the registration statement pursuant to a power of attorney, copies of such powers of attorney shall be filed as an exhibit to the registration statement. In addition, if the name of any officer signing on behalf of the registrant, or attesting the registrant's seal, is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed as an exhibit to the registration statement.

(c) All written consents are required to be filed as an exhibit to the registration statement, together with a list thereof. Such consents shall be dated and manually signed. Where the consent of an expert or counsel is contained in his report or opinion, a reference shall be made in the list to the report or opinion containing the consent.

(d) The registrant—

(1) May file such exhibits as it may desire in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer;

(2) In any case where two or more indentures, contracts, franchises, or other

documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Commission may at any time in its discretion require filing of copies of any documents so omitted; and

(3) If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (i) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commission, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement, or (ii) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, need not refile such exhibit as so amended; provided the registrant states in the amendment to the registration statement the basis provided by this rule for not refile such exhibit. Any such incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission.

**§ 230.484 Undertaking required in certain registration statements.**

If a registration statement is prepared on a form available solely to investment companies registered under the Investment Company Act of 1940, or a business development company which is selling or proposing to sell its securities pursuant to a registration statement which has been filed under the Act, if (a) any acceleration is requested of the effective date of the registration statement pursuant to Rule 461 (§ 230.461), and (b)(1) any provision or arrangement exists whereby the registrant may indemnify a director, officer or controlling person of the registrant against liabilities arising under the Act, or (2) the underwriting agreement contains provisions by which indemnification against such liabilities is given by the registrant to the underwriter or controlling persons of the underwriter and the director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is an underwriter, and (3) the benefits of such indemnification are not

waived by such persons; the registration statement shall include a brief description of the indemnification provisions and an undertaking in substantially the following form:

Insofar as indemnification for liability arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

**§ 230.485 Effective date of post-effective amendments filed by certain registered investment companies.**

(a) Except as otherwise provided in the section, a post-effective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) or the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], shall become effective on the sixtieth day after the filing thereof, unless the Commission, having due regard to the public interest and the protection of investors, declares such amendment effective on an earlier date.

(b) Except as otherwise provided in this section, a post-effective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], shall become effective on the date upon which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than twenty days after the date on which the amendment is filed, provided that the following conditions are met:

(1) It is filed for no purpose other than one or more of the following:

(i) Increasing the number or amount of securities proposed to be offered

pursuant to section 24(e)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(e)(1));

(ii) Registering an indefinite number or amount of securities pursuant to section 24(f) of the Investment Company Act of 1940 [15 U.S.C. 80a-24(f)] and Rule 24f-2 thereunder [17 CFR 270.24f-2]; and

(iii) Bringing the financial statements and other information up to date pursuant to section 10(a)(3) of the Act, and in conjunction therewith, making such other non-material changes as the registrant deems appropriate;

(2) Any prospectus filed as a part of such amendment does not include disclosure relating to any of the following events to the extent that such events have occurred since the effective date of the registrant's registration statement or the effective date of its most recent post-effective amendment thereto which included a prospectus, whichever is later, unless such events are disclosed in a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective:

(i) Termination of an investment advisory contract;

(ii) A change in the registrant's investment objectives, in any of its policies listed in section 8(b)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a-8(b)(1)], or in any other investment policy which the registrant deems fundamental or which, pursuant to section 13 of the Investment Company Act of 1940 [15 U.S.C. 80a-13], is changeable only by shareholder vote;

(iii) Suspension of sales or redemptions of securities issued by the registrant;

(iv) Resignation of any of the registrant's directors, unless the registrant represents that such director did not resign due to disagreement with the registrant on any matter relating to the registrant's operations, policies or practices;

(v) A change in the registrant's independent public accountant, unless the registrant represents that there were no disagreements with the former accountant on any matter of accounting principles or practices or financial statement disclosures; or

(vi) If registrant is a unit investment trust the assets of which do not consist solely of securities issued by a management investment company, any substitution by the depositor or trustee of the trust of securities held by the trust with a value of 5% or more of the trust's net assets; and

(3) The registrant represents that no material event requiring disclosure in

the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the latest of the following three dates: (i) The effective date of the registrant's registration statement; (ii) the effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or (iii) the filing date of a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective; and

(4) Such amendment recites on the facing sheet thereof that the registrant proposes that the amendment will become effective pursuant to paragraph (b) of this section.

(c) No amendment shall become effective pursuant to paragraph (a) of this section if, prior to the effective date of such amendment, it should appear to the Commission that the amendment may be incomplete or inaccurate in any material respect, and the Commission furnishes to the registrant written notice that the effective date of the amendment is to be suspended. Following such action by the Commission, the registrant may file with the Commission at any time a petition for review of the suspension. The Commission will order a hearing on the matter if a request for such a hearing is included in the petition. If the Commission has suspended the effective date of an amendment, the amendment shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d)(1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment which includes a prospectus shall not become effective pursuant to paragraph (a) of this section if a subsequent post-effective amendment relating to such prospectus is filed before such amendment becomes effective.

(2) A post-effective amendment which includes a prospectus shall become effective pursuant to paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment relating to such prospectus. *Provided*, That such subsequent amendment is filed pursuant to paragraph (b) of this section. *And provided further*, That such subsequent amendment designates as its effective date the date on which the prior post-effective amendment shall become effective pursuant to paragraph (a). If another post-effective amendment relating to the same prospectus is filed pursuant to paragraph (a) of this section before the prior amendments filed pursuant to paragraphs (a) and (b) of this section have become effective, neither the prior amendment filed

pursuant to paragraph (a) of this section or the amendment filed pursuant to paragraph (b) of this section shall become effective pursuant to this section.

(e) The representations of the registrant referred to in paragraphs (b)(2)(iv), (b)(2)(v) and (b)(3) of this section shall be made by certification on the signature page of the post-effective amendment that such amendment meets all of the requirements for effectiveness pursuant to paragraph (b) of this section. If counsel prepared or reviewed the post-effective amendment filed pursuant to paragraph (b) of this section, such counsel shall furnish to the Commission at the time the amendment is filed a written representation that the amendment does not contain disclosures which would render it ineligible to become effective pursuant to paragraph (b) of this section.

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

§§ 239.12, 239.17, 239.25, 239.26 and 239.27 [Removed]

16. By removing §§ 239.12, 239.17, 239.25, 239.26 and 239.27.

17. By revising Form S-1 in § 239.11 to read as follows: (Form S-1 does not appear in the Code of Federal Regulations):

**§ 239.11 Form S-1. registration statement under the Securities Act of 1933.**

\* \* \* \* \*

Securities and Exchange Commission

*Form S-1.—Registration Statement Under the Securities Act of 1933*

(Exact name of registrant as specified in its charter)

(State of other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public: \_\_\_\_\_

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under

the Securities Act of 1933 check the following box.

**Calculation of Registration Fee**

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
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**Form S-1.—General Instructions**

*I. Eligibility Requirements for Use of Form S-1*

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political sub-divisions thereof.

*II. Application of General Rules and Regulations*

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.494) thereunder. That Regulation contains general requirements regarding the preparation and filing of the registration statement.

B. Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the nonfinancial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.

*III. Exchange Offers*

If any of the securities being registered are to be offered in exchange for securities of any other issuer the prospectus shall also include the information which would be required by Item 11 if the securities of such other issuer were registered on this Form. There shall also be included the information concerning such securities of such other issuer which would be called for by Item 9 if such securities were being registered. In connection with this instruction, reference is made to Rule 409.

**Part I. Information Required in Prospectus**

Item 1. *Forepart of the Registration Statement and Outside Front Cover Page of Prospectus.* Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (§ 229.501 of this chapter).

Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.* Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (§ 229.502 of this chapter).

Item 3. *Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.* Furnish the information required by Item 503 of Regulation S-K (§ 229.503 of this chapter).

Item 4. *Use of Proceeds.* Furnish the information required by Item 504 of Regulation S-K (§ 229.504 of this chapter).

Item 5. *Determination of Offering Price.* Furnish the information required by Item 505 of Regulation S-K (§ 229.505 of this chapter).

Item 6. *Dilution.* Furnish the information required by Item 506 of Regulation S-K (§ 229.506 of this chapter).

Item 7. *Selling Security Holders.* Furnish the information required by Item 507 of Regulation S-K (§ 229.507 of this chapter).

Item 8. *Plan of Distribution.* Furnish the information required by Item 508 of Regulation S-K (§ 229.508 of this chapter).

Item 9. *Description of Securities to be Registered.* Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter).

Item 10. *Interests of Named Experts and Counsel.* Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

Item 11. *Information With Respect to the Registrant.* Furnish the following information with respect to the registrant:

(a) Information required by Item 101 of Regulation S-K (§ 229.101 of this chapter), description of business;

(b) Information required by Item 102 of Regulation S-K (§ 229.102 of this chapter), description of property;

(c) Information required by Item 103 of Regulation S-K (§ 229.103 of this chapter), legal proceedings;

(d) Where common equity securities are being offered, information required by Item 201 of Regulation S-K (§ 229.201 of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

(e) Financial statements meeting the requirements of Regulation S-X (17 CFR Part 210) (Schedules required under Regulation S-X shall be filed as "Financial Statement Schedules" pursuant to Item 15, Exhibits and Financial Statement Schedules, of this Form), as well as any information required by Rules 3-07 and 3-08 of Regulation S-X;

(f) Information required by Item 301 of Regulation S-K (§ 229.301 of this chapter), selected financial data;

(g) Information required by Item 302 of Regulation S-K (§ 229.302 of this chapter), supplementary financial information;

(h) Information required by Item 303 of Regulation S-K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations;

(i) Information required by Item 304 of Regulation S-K (§ 229.304 of this chapter), disagreements with accountants on accounting and financial disclosure;

(j) Information required by Item 401 of Regulation S-K (§ 229.401 of this chapter), directors and executive officers;

(k) Information required by Item 402 of Regulation S-K (§ 229.402 of this chapter), management remuneration and transactions; and

(l) Information required by Item 403 of Regulation S-K (§ 229.403 of this chapter), security ownership of certain beneficial owners and management.

Item 12. *Disclosure of Commission Position on Indemnification for Securities Act*

*Liabilities.* Furnish the information required by Item 510 of Regulation S-K (§ 229.510 of this chapter).

#### Part II. Information not Required in Prospectus

Item 13. *Other Expenses of Issuance and Distribution.* Furnish the information required by Item 511 of Regulation S-K (§ 229.511 of this chapter).

Item 14. *Indemnification of Directors and Officers.* Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

Item 15. *Recent Sales of Unregistered Securities.* Furnish the information required by Item 701 of Regulation S-K (§ 229.701 of this chapter).

Item 16. *Exhibits and Financial Statement Schedules.* (a) Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

(b) Furnish the financial statement schedules required by Regulation S-X (17 CFR Part 210) and item 11(a)(5) of this Form. These schedules shall be lettered or numbered in the manner described for exhibits in paragraph (a).

Item 17. *Undertakings.* Furnish the undertakings required by Item 512 of Regulation S-K (§ 229.512 of this chapter).

#### Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_.

(Registrant) \_\_\_\_\_  
By (Signature and Title) \_\_\_\_\_

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Date) \_\_\_\_\_

*Instructions.* 1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

#### Instructions as to Summary Prospectuses

1. A summary prospectus used pursuant to Rule 431 (§ 230.431 of this chapter), shall at the time of its use contain such of the information specified below as is then included in the registration statement. All other information and documents contained in the registration statement may be omitted.

(a) As to Item 1, the aggregate offering price to the public, the aggregate underwriting discounts and commissions and the offering price per unit to the public;

(b) As to Item 4, a brief statement of the principal purposes for which the proceeds are to be used;

(c) As to Item 7, a statement as to the amount of the offering, if any, to be made for the account of security holders;

(d) As to Item 8, the name of the managing underwriter or underwriters and a brief statement as to the nature of the underwriter's obligation to take the securities; if any securities to be registered are to be offered otherwise than through underwriters, a brief statement as to the manner of distribution; and, if securities are to be offered otherwise than for cash, a brief statement as to the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and by whom they are to be borne;

(e) As to Item 9, a brief statement as to dividend rights, voting rights, conversion rights, interest, maturity;

(f) As to Item 11, a brief statement of the general character of the business done and intended to be done, the selected financial data (Item 301 of Regulation S-K (§ 229.301 of this chapter)) and a brief statement of the nature and present status of any material pending legal proceedings; and

(g) A tabular presentation of notes payable, long term debt, deferred credits, minority interests, if material, and the equity section of the latest balance sheet filed, as may be appropriate.

2. The summary prospectus shall not contain a summary or condensation of any other required financial information except as provided above.

3. Where securities being registered are to be offered in exchange for securities of any other issuer, the summary prospectus also shall contain that information as to Items 9 and 11 specified in paragraphs (e) and (f) above which would be required if the securities of such other issuer were registered on this Form.

4. The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Commission may also require the inclusion of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for the protection of investors.

18. By adding § 239.12 to read as follows (Form S-2 does not appear in the Code of Federal Regulations):

§ 239.12 Form S-2, for registration under the Securities Act of 1933 of securities of certain issuers.

This form may be used for registration of securities under the Securities Act of 1933 which are offered or to be offered in any transaction other than an exchange offer for securities of another person by any registrant which meets the following conditions:

(a) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories;

(b) The registrant has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act;

(c) The registrant: (1) has been subject to the requirements of section 12 of 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to section 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (2) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§ 240.12b-25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that Rule; and

(d) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (1) failed to pay any dividend or sinking fund installment on preferred stock; or (2) defaulted (i) on any installment or installments on indebtedness for borrowed money, or (ii) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(e) A foreign private issuer which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in (a) relating to

organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (c) of this section.

(f) If a registrant is a successor registrant it shall be deemed to have met conditions in paragraphs (a), (b), (c) and (d) of this section if (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor of forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(g) If a registrant is a majority-owned subsidiary which does not itself meet the conditions of the eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

Securities and Exchange Commission

*Form S-2 - Registration Statement Under the Securities Act of 1933*

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public: \_\_\_\_\_  
If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If the registrant elects to deliver its latest annual report to security holders, or a

complete and legible facsimile thereof, pursuant to Item 11(a)(1) of this Form, check the following box.

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
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Form S-2.—General Instructions

*1. Eligibility Requirements for Use of Form S-2.*

Any registrant which meets the following conditions may use this Form for registration of securities under the Securities Act of 1933 ("Securities Act") which are offered or to be offered in any transaction other than an exchange offer for securities of another person:

A. The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories.

B. The registrant has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act.

C. The registrant: (1) has been subject to the requirements of section 12 of 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to section 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (2) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§ 240.12b-25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that Rule.

D. Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (a) failed to pay any dividend or sinking fund installment on preferred stock; or (b) defaulted (i) on any installment or installments on indebtedness for borrowed money, or (ii) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(E) A foreign private issuer which satisfies all of the above provisions of these registrant

eligibility requirements except the provisions in I.A. relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to I.C. above.

(F) If a registrant is a successor registrant it shall be deemed to have met conditions A., B., C., and D. above if: (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(G) If a registrant is a majority-owned subsidiary which does not itself meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

#### VI. Application General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

B. Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable in the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.

#### Part I. Information Required in Prospectus

Item 1. *Forepart of the Registration Statement and Outside Front Cover Page of Prospectus.* Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (§ 229.501 of this chapter).

Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.* Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (§ 229.502 of this chapter).

Item 3. *Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.* Furnish the information required by Item 503 of Regulation S-K (§ 229.503 of this chapter).

Item 4. *Use of Proceeds.* Furnish the information required by Item 504 of Regulation S-K (§ 229.504 of this chapter).

Item 5. *Determination of Offering Price.* Furnish the information required by Item 505 of Regulation S-K (§ 229.505 of this chapter).

Item 6. *Dilution.* Furnish the information required by Item 506 of Regulation S-K (§ 229.506 of this chapter).

Item 7. *Selling Security Holders.* Furnish the information required by Item 507 of Regulation S-K (§ 229.507 of this chapter).

Item 8. *Plan of Distribution.* Furnish the information required by Item 508 of Regulation S-K (§ 229.508 of this chapter).

Item 9. *Description of Securities to be Registered.* Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter).

Item 10. *Interests of Named Experts and Counsel.* Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

Item 11. *Information with Respect to the Registrant.* Furnish the information required by either paragraph (a) or paragraph (b) of this item. *However,* if the financial statements in the registrant's latest annual report to security holders do not reflect: (1) restated financial statements if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements, or where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses considered in the aggregate meet the test of a significant subsidiary; or (2) any financial information required because of a material disposition of assets outside the normal course of business, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) below.

(a) If the registrant elects to deliver this prospectus together with its latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a-3 or Rule 14c-3, or a complete and legible facsimile of its latest annual report to security holders:

(1) Indicate that the prospectus is accompanied by the registrant's latest annual report to security holders.

(2) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10-Q (§ 239.308 of this chapter) as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest report to security holders and more than forty-five days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) Including such information in the prospectus; or

(ii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest Form 10-Q; or

(iii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest quarterly report which was delivered to its shareholders and which included the required financial information.

(3) If not reflected in the registrant's latest annual report to security holders, provide the

information required by Rules 3-07 and 3-08 of Regulation S-X (17 CFR Part 210) where the registrant has effected or is about to effect a transaction for which such information is required.

(4) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which were not described in a Form 10-Q or quarterly report delivered with the prospectus in accordance with paragraph (a)(2)(ii) or (iii) of this item.

*Instruction.* Where the registrant elects to deliver its annual report to security holders, Form 10-Q or quarterly report together with the prospectus, each document must be delivered with the preliminary prospectus, but need not be redelivered with the final prospectus if the recipient has already been given the document along with the preliminary prospectus.

(b) If the registrant does not elect to deliver its latest annual report to security holders:

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year as required by Rule 14a-3 to be included in annual reports to security-holders. The description also should take into account changes in its business which have occurred between the end of the last fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by Rule 14a-3(b)(1) to be included in annual reports to security holders as well as: (i) The interim financial information required by Rule 10-01 of Regulation S-X for a filing on Form 10-Q; (ii) any information required by Rules 3-07 and 3-08 of Regulation S-X; and (iii) any financial information required because of a material disposition of assets outside the normal course of business. The financial statements shall be restated if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements, or where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, meet the test of a significant subsidiary.

(3) Furnish information relating to industry segments, classes or similar products or services, foreign and domestic operations, and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S-K (§ 229.101 of this chapter).

(4) Where common equity securities are being offered, furnish information required by Item 201 of Regulation S-K (§ 229.201 of this chapter), market price and dividends on the registrant's common stock and related stockholder matters.

(5) Furnish selected financial data required by Item 301 of Regulations S-K (§ 229.301 of this chapter).

(6) Furnish supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter).

(7) Furnish management's discussion and analysis of the registrant's financial condition and results of operations required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

(8) Furnish information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulations S-K (§ 229.304 of this chapter).

Item 12. *Incorporation of Certain Information by Reference.* (a) The documents listed in (1), (2), and, if applicable, the portions of the documents listed in (3) and (4) below shall be specifically incorporated by reference into the prospectus, by means of a statement to that effect in the prospectus listing all such documents.

(1) The registrant's latest Form 10-K (§ 249.310 of this chapter) filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains certified financial statements for the registrant's latest fiscal year for which a Form 10-K was required to have been filed.

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (1) above.

(3) If the registrant elects to deliver its latest annual report to security holders, pursuant to Item 11(a)(1) of this Form:

(i) description of business furnished in accordance with the provisions of Rule 14a-3(b)(5) under the Exchange Act (§ 240.14a-3(b)(5) of this chapter);

(ii) financial statements and information furnished in accordance with the provisions of Rule 14a-3(b)(1);

(iii) information relating to industry segments, classes of similar products or services, foreign and domestic operations, and export sales furnished as required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S-K (§ 229.101 of this chapter);

(iv) where common equity securities are being offered, market price and dividends on the registrant's common equity and related stockholder matters furnished as required by Item 201 of Regulation S-K (§ 229.201 of this chapter);

(v) selected financial data furnished as required by Item 301 of Regulation S-K (§ 229.301 of this chapter);

(vi) supplementary financial information furnished as required by Item 302 of Regulation S-K (§ 229.302 of this chapter);

(vii) management's discussion and analysis of financial condition and results of operations furnished as required by Item 303 of Regulation S-K (§ 229.303 of this chapter); and

(viii) information concerning disagreements with accountants on accounting and financial disclosure furnished as required by Item 304 of Regulation S-K (§ 229.304 of this chapter).

(4) If the registrant elects, pursuant to Item 11(a)(2)(iii) of this Form, to provide a copy of its latest quarterly report which was delivered to shareholders, the financial information equivalent to that required to be presented in Part I of Form 10-Q.

*Instruction.* Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to use of material incorporated by reference.

(b) The registrant may also state, if it so chooses, that specifically described portions

of documents which are incorporated by reference are not a part of the registration statement. In such case, the description of portions which are not incorporated by reference or which are excluded shall be made with clarity and in reasonable detail.

Item 13. *Disclosure of Commission Position on Indemnification for Securities Act Liabilities.* Furnish the information required by Item 510 of Regulation S-K (§ 229.510 of this chapter).

#### Part H. Information Not Required in Prospectus

Item 14. *Other Expenses of Issuance and Distribution.* Furnish the information required by Item 511 of Regulation S-K (§ 229.511 of this chapter).

Item 15. *Indemnification of Directors and Officers.* Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

Item 16. *Exhibits.* Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

Item 17. *Undertakings.* Furnish the undertakings required by item 312 of Regulation S-K (§ 229.512 of this chapter).

#### Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-2 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_.

(Registrant) \_\_\_\_\_

By (Signature and Title) \_\_\_\_\_

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) \_\_\_\_\_

(Title) \_\_\_\_\_

(Date) \_\_\_\_\_

*Instructions.* 1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

#### Instructions as to Summary Prospectuses

1. A summary prospectus used pursuant to Rule 431 (17 CFR (§ 230.431 of this chapter) shall at the time of its use contain such of the information specified below as is then included in the registration statement. All other information and documents contained in the registration statement may be omitted.

(a) As to Item 1, the aggregate offering price to the public, the aggregate underwriting discounts and commissions and the offering price per unit to the public,

(b) As to Item 4, a brief statement of the principal purposes for which the proceeds are to be used;

(c) As to Item 7, a statement as to the amount of the offering, if any, to be made for the account of security holders;

(d) As to Item 8, the name of the managing underwriter or underwriters and a brief statement as to the nature of the underwriter's obligation to take the securities; if any securities to be registered are to be offered otherwise than through underwriters, a brief statement as to the manner of distribution;

(e) As to Item 9, a brief statement as to dividend rights, voting rights, conversion rights, interest, maturity.

(f) As to Item 11, a brief statement of the general character of the business done and intended to be done and the selected financial data Item 301 of Regulation S-K (§ 229.301 of this chapter); and

(g) A tabular presentation of notes payable, long term debt, deferred credits, minority interests, if material, and the equity section of the latest balance sheet filed, as may be appropriate.

2. The summary prospectus shall not contain a summary or condensation of any other required financial information except as provided above.

3. The Commission may, upon the request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution thereof of appropriate information of comparable character. The Commission may also require the inclusion of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for the protection of investors.

19. By adding § 239.13 to read as follows (Form S-3 does not appear in the Code of Federal Regulations).

§ 239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

This form may be used by any registrant which meets the requirements of paragraph (a) of this section ("Registrant Requirements") for the registration of securities under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in paragraph (b) of this section ("Transaction Requirements"), provided that the requirements applicable to the

specified transaction are met. With respect to majority-owned subsidiaries, see paragraph (c) below.

(a) *Registrant requirements.* All registrants must meet the following conditions in order to use this Form S-3 for registration under the Securities Act of securities offered in the transactions specified in (b) of this section:

(1) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories.

(2) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act;

(3) The registrant: (i) has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§ 240.12b-25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule; and

(4) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of the last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (i) failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted (A) on any installment or installments on indebtedness or borrowed money, or (B) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(5) A foreign private issuer which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in (a)(1) relating to

organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to (a)(3) of this section.

(6) If the registrant is a successor registrant, it shall be deemed to have met conditions in paragraph (a) (1), (2), (3), and (4) of this section if: (i) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (ii) if all predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(b) *Transaction Requirements.* Security offerings meeting and of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) *Primary and Secondary Offerings By Certain Registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; provided that the aggregate market value of the voting stock held by non-affiliates of the registrant is \$150 million or more, or alternatively, the aggregate market value of the voting stock held by non-affiliates of the registrant is \$100 million or more and the registrant has had an annual trading volume of such stock of 3 million shares or more.

*Instructions.* The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. Annual trading volume shall be the volume of shares traded in any continuous twelve month period ended within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

(2) *Primary Offerings of Certain Debt and Non-convertible Preferred Securities.* Non-convertible debt and preferred securities to be offered for cash by or on behalf of a registrant,

provided such securities are "investment grade securities," as defined below. A non-convertible debt or preferred security is an "investment grade security" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (§ 240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

(3) *Transactions Involving Secondary Offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if securities of the same class are listed and registered on a national securities exchange or are quoted on the automated quotation system of a national securities association. In addition, Form S-3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 (§ 239.16b of this chapter).

(4) *Rights offerings, dividend or interest reinvestment plans, and conversions or warrants.* Securities to be offered (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach, or (b) pursuant to a dividend or interest reinvestment plan, or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer; provided the issuer has sent to all record holders of such rights, or to all participants in such plans, or to all record holders of such convertible securities or transferable warrants, respectively, material containing the information required by Rule 14a-3(b) (§ 249.14a-3(b) of this chapter) under the Exchange Act and Items 401, 402, and 403 of Regulation S-K (§§ 249.401-249.403 of this chapter) within the twelve calendar months immediately preceding the filing of the registration statement, except that the information required by Items 401, 402 and 403 of Regulation S-K need only be provided to

holders of rights exercisable for common stock, holders of securities convertible into common stock, participants in plans which may invest in common stock, or in securities convertible into common stock or warrants exercisable for common stock, respectively.

(c) *Majority-owned Subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

(1) the registrant-subsi- dary itself meets the Registrant Requirements and the applicable Transaction Requirement;

(2) the parent of the registrant-subsi- dary meets the Registrant Requirements and the conditions of Transaction Requirement in paragraph (b)(1) of this section. (Primary Offerings of Certain Debt and Non-convertible Preferred Securities) are met; or

(3) the parent of the registrant-subsi- dary meets the Registrant Requirements and the applicable Transaction Requirement and fully guarantees the securities being registered as to principal and interest. Note: In such an instance, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as the guaranteed securities.

(d) *Rights Offerings by Foreign Private Issuers.*

A Foreign private issuer meeting eligibility requirements in paragraphs (a)(2), (a)(3) and (a)(4) of this section may use Form S-3 to register securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach. In complying with Item 11 of this Form, the registrant shall describe those material changes that have occurred since the end of the latest fiscal year for which certified financial statements were included in the registrant's latest filing on Form 20-F (17 CFR 249.220f). In complying with Item 12 of this Form, the registrant shall incorporate by reference its latest filing on Form 20-F. The registrant also shall:

(1) ~~Fur~~Furnish with the prospectus (or have furnished previously) to all its shareholders resident in the United States, including those holding under American Depository Receipts or similar arrangements, a copy of its latest annual report to security holders, if in the English language. Such annual reports or prospectus shall contain the registrant's undertaking to send promptly to any such United States holder, upon written request, a copy of the registrant's latest filing on Form 20-F; or

(2) ~~Fur~~Furnish with the prospectus a copy of its latest filing on Form 20-F.

Securities and Exchange Commission

*Form S-3.—Registration Statement Under the Securities Act of 1933*

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Approximate date of commencement of proposed sale to the public \_\_\_\_\_.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plan, check the following box.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum aggregate price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Form S-3—General Instructions

*I. Eligibility Requirements for Use of Form S-3*

This instruction sets forth registrant requirements and transaction requirements for the use of Form S-3. Any registrant which meets the Requirements of I.A. below ("Registrant Requirements") may use this Form for the registration of securities under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in I.B. below ("Transaction Requirement") provided that the requirements applicable to the specified transaction are met. With respect to majority-owned subsidiaries, see Instruction I.C. below.

A. *Registrant Requirements.* All registrants must meet the following conditions in order to use this Form S-3

of securities offered in the transactions specified in I.B. below:

1. The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories.

2. The registrant has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or a class of equity securities registered pursuant to Section 12(g) of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act.

3. The registrant: (a) has been subject to the requirements of Section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§ 240.12b-25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule.

4. Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of the last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act: (a) failed to pay any dividend or sinking fund installment on preferred stock; or (b) defaulted (i) on any installment or installments on indebtedness for borrowed money, or (ii) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

5. A foreign private issuer which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in I.a.1. relating to organization and principal business shall be deemed to have met these registrant eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to I.a.3. above.

6. If the registrant is a successor registrant, it shall be deemed to have met conditions 1., 2., 3., and 4. above if: (a) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor, or (b) if all predecessors met the

conditions at the time of succession and the registrant has continued to do so since the succession.

(B) *Transaction Requirements.* Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

1. *Primary And/Secondary Offerings By Certain Registrants.* Securities to be offered for cash by or on behalf of a registrant, or outstanding securities to be offered for cash for the account of any person other than the registrant, including securities acquired by standby underwriters in connection with the call or redemption by the registrant of warrants or a class of convertible securities; *provided* that the aggregate market value of the voting stock held by non-affiliates of the registrant is \$150 million or more, or alternatively, the aggregate market value of the voting stock held by non-affiliates of the registrant is \$100 million or more and the registrant has had an annual trading volume of such stock of 3 million shares or more.

*Instructions.* The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, as of a date within 60 days prior to the date of filing. Annual trading volume shall be the volume of shares traded in any continuous twelve month period ended within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

2. *Primary Offerings of Certain Debt and Non-convertible Preferred Securities.* Non-convertible debt and preferred securities to be offered for cash by or on behalf of a registrant, provided such securities are "investment grade securities," as defined below. A non-convertible debt or preferred security is an "investment grade security" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (§ 240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories which signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

3. *Transactions Involving Secondary Offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if securities of the same class are listed and registered on a national securities exchange or are quoted on the automated quotation system of a national securities association. In addition, Form S-3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 (§ 239.16b of this chapter).

4. *Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions or*

*Warrants.* Securities to be offered: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered; if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer; *provided* the issuer has sent to all record holders of such rights, or to all participants in such plans, or to all record holders of such convertible securities or transferable warrants, respectively, material containing the information required by Rule 14a-3(b) (§ 249.14a-3(b) of this chapter) under the Exchange Act and Items 401, 402, and 403 of Regulation S-K (§§ 249.401-249.403 of this chapter) within the twelve calendar months immediately preceding the filing of the registration statement, except that the information required by Items 401, 402 and 403 of Regulation S-K need only be provided to holders of rights exercisable for common stock, holders of securities convertible into common stock, participants in plans which may invest in common stock, or in securities convertible into common stock or warrants exercisable for common stock, respectively.

C. *Majority-owned Subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

1. the registrant-subsi-dary itself meets the Registrant Requirements and the applicable Transaction Requirement;
2. the parent of the registrant-subsi-dary meets the Registrant Requirements and the conditions of Transaction Requirement B.2. (Primary Offerings of Certain Debt and Non-convertible Preferred Securities) are met; or
3. the parent of the registrant-subsi-dary meets the Registrant Requirements and the applicable Transaction Requirement and fully guarantees the securities being registered as to principal and interest.

*Note.*—In such an instance, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

D. *Rights Offerings by Foreign Private Issuers.* A Foreign private issuer meeting eligibility requirements A.2., A.3. and A.4. may use Form S-3 to register securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach. In complying with Item 11 of this Form, the registrant shall describe those material changes that have occurred since the end of the latest fiscal year for which certified financial statements were included in the registrant's latest filing on Form 20-F (17 CFR 249.220f). In complying with Item 12 of this Form, the registrant shall incorporate by reference its latest filing on Form 20-F. The registrant also shall:

1. Finnish with the prospectus (or have furnished previously) to all its shareholders

resident in the United States, including those holding under American Depository Receipts or similar arrangements, a copy of its latest annual report to security holders, if in the English language. Such annual reports or prospectus shall contain the registrant's undertaking to send promptly to any such United States holder, upon written request, a copy of the registrant's latest filing on Form 20-F; or

2. Furnish with the prospectus a copy of its latest filing on Form 20-F.

## II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

B. Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K, and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate. Notwithstanding Item 501 and 502 of Regulation S-K, no table of contents and cross-reference sheet are required to be included in the prospectus or registration statement prepared on this form. In addition to the information expressly required to be included in a registration statement on this Form S-3, registrants also may provide such other information as they deem appropriate.

## III. Dividend or Interest Reinvestment Plans: Filing and Effectiveness of Registration Statement: Requests for Confidential Treatment

Original registration statements on this Form S-3 solely with respect to securities offered pursuant to dividend or interest reinvestment plans will become effective automatically on the twentieth day after the date of filing (Rule 458, § 230.456 of this chapter), pursuant to the provisions of Section 8(a) of the Act (Rule 459, § 230.459 of this chapter). Pre-effective amendments to such a registration statement may be filed prior to effectiveness, and such amendments will be deemed to have been filed with the consent of the Commission (Rule 475a, § 230.475(a) of this chapter). Accordingly, the filing of a pre-effective amendment to such a registration statement will not commence a new twenty-day period. Post-effective amendments to such a registration statement on this Form shall become effective upon the date of filing (Rule 404, § 230.464 of this chapter). Delaying amendments are not permitted in connection with either original filings or amendments on such a registration statement (Rule 473(d), § 230.473(d) of this chapter), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this Form become public upon filing with the Commission. As a result, requests for confidential treatment made under Rule 406 (§ 230.406 of this chapter)

must be processed with the Commission staff prior to the filing of such a registration statement. The number of copies of the registration statement and of each amendment required by Rules 402 and 472 (§§ 230.402 and 230.472 of this chapter) shall be filed with the Commission; *provided, however,* that the number of additional copies referred to in Rule 402(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three, one of which shall be marked clearly and precisely to indicate changes.

#### Part I. Information Required in Prospectus

**Item 1. Forepart of the Registration Statement and Outside Front Cover Page of Prospectus.** Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (§ 229.501 of this chapter).

**Item 2. Inside Front and Outside Back Cover Pages of Prospectus.** Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (§ 229.502 of this chapter).

**Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.** Furnish the information required by Item 503 of Regulation S-K (§ 229.503 of this chapter).

**Item 4. Use of Proceeds.** Furnish the information required by Item 504 of Regulation S-K (§ 229.504 of this chapter).

**Item 5. Determination of Offering Price.** Furnish the information required by Item 505 of Regulation S-K (§ 229.505 of this chapter).

**Item 6. Dilution.** Furnish the information required by Item 506 of Regulation S-K (§ 229.506 of this chapter).

**Item 7. Selling Security Holders.** Furnish the information required by Item 507 of Regulation S-K (§ 229.507 of this chapter).

**Item 8. Plan of Distribution.** Furnish the information required by Item 508 of Regulation S-K (§ 229.508 of this chapter).

**Item 9. Description of Securities to be Registered.** Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter), unless capital stock is to be registered and securities of the same class are registered pursuant to Section 12 of the Exchange Act.

**Item 10. Interests of Named Experts and Counsel.** Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

**Item 11. Material Changes.** (a) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which have not been described in a report on Form 10-Q (§ 249.308a of this chapter) or Form 8-K (§ 249.308 of this chapter) filed under the Exchange Act.

(b) Include in the prospectus, if not incorporated by reference therein from the reports filed under the Exchange Act specified in Item 12(a), a proxy or information statement filed pursuant to Section 14 of the Exchange Act, or a prospectus previously filed pursuant to Rule 424(c) under the

Securities Act: (i) information required by Rules 3-07 and 3-08 of Regulation S-X (17 CFR Part 210) where the registrant has effected or is about to effect a transaction for which such information is required; (ii) restated financial statements prepared in accordance with Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (iii) restated financial statements prepared in accordance with Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, meet the test of a significant subsidiary; or (iv) any financial information required because of a material disposition of assets outside the normal course of business.

**Item 12. Incorporation of Certain Information by Reference.** (a) The documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus, by means of a statement to that effect in the prospectus listing all such documents.

(1) the registrant's latest annual report on Form 10-K (17 CFR 249.310) filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10-K was required to have been filed;

(2) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (1) above; and

(3) if capital stock is to be registered and securities of the same class are registered under Section 12, of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

(b) The prospectus shall also state that all documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering, shall be deemed to be incorporated by reference into the prospectus.

**Instruction.** Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to use of material incorporated by reference.

**Item 13. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.** Furnish the information required by Item 510 of Regulation S-K (§ 229.510 of this chapter).

#### Part II. Information Not Required in Prospectus

**Item 14. Other Expenses of Issuance and Distribution.** Furnish the information required by Item 511 of Regulation S-K (§ 229.511 of this chapter).

**Item 15. Indemnification of Directors and Officers.** Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

**Item 16. Exhibits.** Subject to the rules regarding incorporation by reference, furnish

the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

**Item 17. Undertakings.** Furnish the undertakings required by Item 512 of Regulation S-K (§ 229.512 of this chapter).

#### Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_.

(Registrant) \_\_\_\_\_  
By (Signature and Title) \_\_\_\_\_

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Date) \_\_\_\_\_

**Instructions.** 1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

3. Where eligibility for use of the Form is based on the assignment of a security rating pursuant to Transaction Requirement B.2, the registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the security rating requirement will be met by the time of effectiveness.

20. By revising the facing sheet and signature page of Form S-6 in § 239.16 to read as follows (Form S-6 does not appear in the Code of Federal Regulations):

#### § 239.16 Form S-6, for unit investment trusts registered on Form N-8B-2.

\* \* \* \* \*

D. Name and complete address of agent for service:

Check box if it is proposed that this filing will become effective (immediately

upon filing or on (date)) pursuant to paragraph (b) of Rule 485.

**Signatures**

Pursuant to the requirements of the Securities Act of 1933, the registrant, ..... (certifies that it meets all of the requirements for effectiveness of this Registration Statement pursuant to rule 485(b) under the Securities Act of 1933 and) has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized. \* \* \*

21. By removing General Instructions C and D and redesignating General Instructions E and F as General Instructions C and D; by adding Items 1-3 and 17-21; by redesignating Items 1-13 and by further updating certain references in Form S-8 in § 239.16b to read as follows (Form S-8 does not appear in the Code of Federal Regulations):

§ 239.16b Form S-8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to certain plans. \* \* \*

*A. Rule as to Use of Form S-8*

(2) Where interests in a plan are being registered and the plan's latest annual report filed pursuant to Section 15(d) of the Securities Exchange Act is to be incorporated by reference pursuant to the requirements of Form S-8, the Plan shall either: (i) have been subject to the requirement to file reports pursuant to Section 15(d) for the prior 90 days and shall have filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the plan was required to file such reports and materials) or (ii) if the plan has not previously been subject to the reporting requirements of Section 15(d), concurrently with the filing of the registration statement on Form S-8 the plan shall file an annual report in the form required under Section 15(d) for its latest fiscal year (or if the plan has not yet completed its first fiscal year, then for a period ending not more than 90 days prior to the filing date), provided that if the plan has not been in existence for at least 90 days prior to the filing date, the requirement to file an annual report shall not apply. (See instructions to Form 11-K and Rule 15d-21 (17 CFR 240.15d-21)).

*B. Application of General Rules and Regulations*

(1) Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements. For purposes of this Form the term "employee" is defined

as any director, trustee, officer or other employee. The term "issuer" as used in this Form means the person whose securities are to be offered pursuant to the plan.

(2) Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate. "

*C. Unavailability of the Form S-8 Prospectus for Reoffers or Resales*

The Form S-8 prospectus will not be available for reoffers or resales of securities acquired pursuant to this registration statement by affiliates of the issuer, as defined in Rule 405 under the Act. However, such affiliates may reoffer or resell such securities pursuant to registration under Rule 415 (17 CFR 230.415) by means of a separate prospectus, filed with the registration statement on this Form S-8, that is prepared in the following manner:

(1) Such prospectus may be prepared in accordance with the requirements of Form S-3 if:

(a) The issuer, at the time of filing such prospectus, satisfies the Registrant Requirements for use of Form S-3; or

(b) \* \* \* \* \* (2) If subparagraph (1), above, does not permit the use of a prospectus on Form S-3, registered reoffers or resales must be made by means of a separate registration statement utilizing whichever form is applicable.

**Notes:**

1. Registered securities may be included in a reoffer prospectus if they have been or will be acquired by the selling security holder pursuant to the plan. If after the effective date the issuer wishes to add any person who has acquired or will acquire any registered securities pursuant to the plan to the list of selling shareholders, the issuer may do so by filing a post-effective amendment.

2. Unregistered securities issued pursuant to the plan prior to the effective date of the first registration statement covering securities issued pursuant to the plan may be included in a reoffer prospectus, if each of the following conditions has been met:

(a) Such securities were issued in accordance with a lawful exemption from registration, and the issuer files as an exhibit a statement indicating the section of the Securities Act or Rule of the Commission under which exemption from registration was claimed, which statement shall set forth briefly the facts relied upon to make the exemption available.

(b) The prospectus indicates the number of previously unregistered shares being reoffered and such number does not exceed ten percent of the total number of shares issuable under the plan.

(c) All persons (including non-affiliates) holding unregistered shares to be reoffered pursuant to the prospectus are named as selling shareholders in the prospectus; *Provided, however,* That any non-affiliate who holds less than the lesser of 400 shares or 1% of the shares issuable under the plan

need not be named if the prospectus indicates that certain unnamed non-affiliates, each of whom may sell up to 400 shares, may use the prospectus for reoffers and resales.

3. The term "person" as used in General Instruction C shall be the same as is set forth in Rule 144(a)(2) under the Act.

*D. Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment; Number of Copies*

Original registration statements on this Form S-8 will become effective automatically on the twentieth day after the date of filing (Rule 456, 17 CFR 230.456), pursuant to the provisions of Section 8(a) of the Act (Rule 459, 17 CFR 230.459). Pre-effective amendments may be filed prior to effectiveness, and such amendments will be deemed to have been filed with the consent of the Commission (Rule 475a, 17 CFR 230.475a). Accordingly, the filing of a pre-effective amendment will not commence a new twenty-day period. Post-effective amendments on this form shall become effective upon the date of filing (Rule 464, 17 CFR 230.464). Delaying amendments are not permitted in connection with either original filings or amendments (Rule 473(d), 17 CFR 239.473(d)), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this form become public upon filing with the Commission. As a result, requests for confidential treatment made under Rule 406 (17 CFR 230.406), must be processed with the Commission staff prior to the filing of the registration statement. The number of copies of the registration statement and of each amendment required by Rules 402 and 472 (17 CFR 230.402, 230.472) shall be filed with the Commission; *Provided, however,* That the number of additional copies referred to in Rule 402(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three, one of which shall be marked to clearly and precisely indicate changes.

*Part I. Information Required in Prospectus*

*Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus.*

Set forth on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (§ 229.501 of this chapter).

*Item 2. Inside Front and Outside Back Cover Pages of Prospectus.*

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (§ 229.502 of this chapter).

*Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.*

Furnish the information required by Item 503 of Regulation S-K (§ 229.503 of this chapter).

*Item 4. General Information Regarding the Plan.*

*Item 5. Securities to be Offered and Employees Who May Participate in the Plan.*

Item 6. Purchase of Securities Pursuant to the Plan

Item 7. Payment for Securities Offered

Item 8. Contributions Under the Plan

Item 9. Withdrawal from the Plan—Assignment of Interest

Item 10. Defaults Under the Plan

Item 11. Administration of the Plan

Item 12. Investment of Funds

(d) Instructions to Item 12(d).

Item 13. Charges and Deductions and Liens Therefor.

(a) Describe all charges and deductions (other than deductions described in Item 7(a) and taxes), which may be made against employees participating in the plan or against funds, securities or other property held under the plan and indicate who will receive, directly or indirectly, any part thereof.

Item 14. Description of Registrant's Securities.

(a) If capital stock is to be registered hereunder, and such class of stock is already registered under Section 12 of the Securities Exchange Act of 1934, comply with Item 15(c). (b) If capital stock is to be registered hereunder, and such class of stock is not registered under Section 12 of the Securities Exchange Act of 1934, furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter).

Item 15. Incorporation of Certain Documents by Reference.

The issuer and, where interests in the plan are being registered, the plan, shall incorporate by reference into the prospectus the documents listed in (a) through (c) below and shall state that all documents subsequently filed by them pursuant to Sections 13, 14 and 15(d) of the Securities Exchange Act of 1934, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in the prospectus and to be a part thereof from the date of filing of such documents. Copies of these documents are not required to be filed with the registration statement.

(a) \* \* \* \* \*

(c) If the class of securities to be offered is registered under Section 12 of the Securities Exchange Act of 1934, the description of such class of securities which is contained in a registration statement filed under such Act, including any amendment or report filed for the purpose of updating such description.

Item 16. Additional Information.

Describe any material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in an annual report or prospectus incorporated by reference in response to Item 15(a) and which have not been, nor will be, described in a timely-filed report on Form 8-K or 10-Q (17 CFR 249.308 and 249.308a).

Item 17. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

Item 18. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S-K (§ 229.518 of this chapter).

Part II. Information Not Required in Prospectus

Item 19. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

Item 21. Exhibits.

Furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

Item 20. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S-K (§ 229.512 of this chapter).

Instruction: In most cases, annual updating can be accomplished by utilizing Exchange Act periodic reports. (See Securities Act Release No. 6202 (April 2, 1980) [45 FR 23653].) However, in many of those situations where annual updating cannot be completely accomplished through the filing of Exchange Act periodic reports, the staff has indicated that registrants may utilize an "appendix" to the prospectus for this purpose. (See Securities Act Release No. 6281 (January 15, 1981) [46 FR 8446].)

Signatures

The Registrant. Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_.

(Registrant) \_\_\_\_\_  
By (Signature and Title) \_\_\_\_\_

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the date indicated.

(Signature) \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Date) \_\_\_\_\_

The Plan. Pursuant to the requirements of the Securities Act of 1933, the plan has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(The Plan)  
By \_\_\_\_\_  
(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

(Signature) \_\_\_\_\_

(Title) \_\_\_\_\_

(Date) \_\_\_\_\_

Instructions. 1. The registration statement shall be signed by the registrant (and where interests in the plan are being registered, by the plan), their principal executive officer or officers, their principal financial officer, their controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the signing person is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the signing person is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

22. By removing General Instructions C, D and F, Items 1, 4-6, 13-15, 17, 29 and Instructions As to Exhibits; by adding Items 1-6, 9-10, 17-18 and 28; by redesignating the General Instructions and Items to reflect additions and removals; by revising redesignated Items 7-8, 27, 29, 31-32 and 34-35; and by further updating references in Form S-11 in § 239.18 to read as follows (Form S-11 does not appear in the Code of Federal Regulations):

§ 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

B. Application of General Rules and Regulations

(a) Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

(b) Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information

required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.

*C. Exchange Offers*

If any of the securities being registered are to be offered in exchange for securities of any other issuer, the prospectus also shall include the information which would be required by Items 9 to 16, and Item 18 if securities of such other issuer were being registered on this form. Item 26 also shall be answered as to any promoter, director, officer or security holder of such other issuer who is an affiliated person of the registrant.

*D. Definitions*

*Part I. Information Required in Prospectus*

*Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus.*

(a) Set forth on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (§ 229.501 of this chapter).

(b) If there are any limitations on the transferability of the securities being registered, so state on the outside front cover page of the prospectus and refer to a statement elsewhere in the prospectus as to the nature of such limitations. If there is no market for securities of the same class as those being registered, so state on the outside front cover page of the prospectus; otherwise, state elsewhere in the prospectus the nature of the market for such securities and the market price thereof as of the latest practicable date prior to the filing of the registration statement or amendment thereto.

*Item 2. Inside Front and Outside Back Cover Pages of Prospectus.*

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (§ 229.502 of this chapter).

*Item 3. Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.*

(a) Furnish the information required by Item 503 of Regulation S-K (§ 229.503 of this chapter).

(b) Where appropriate to a clear understanding by investors, an introductory statement shall be made in the forepart of the prospectus, in a series of short, concise paragraphs, summarizing the principal factors which make the offering speculative. Where appropriate, statements with respect to the following shall also be set forth:

(1) A comparison in percentages of the securities being offered to the public and those issued or to be issued to affiliated persons;

(2) The extent to which security holders may be liable for the acts or obligations of the registrant;

(3) Allocation of cash distributions between the public security holders and security holders who are affiliated persons;

(4) The remuneration and other forms of compensation and benefits to be received, directly or indirectly, by affiliated persons, including in the case of underwriters a comparison of the aggregate compensation to be received by them with the aggregate net

proceeds from the sale of the securities being registered.

*Item 4. Determination of Offering Price.*  
Furnish the information required by Item 505 of Regulation S-K (§ 229.505 of this chapter).

*Item 5. Dilution.*  
Furnish the information required by Item 506 of Regulation S-K (§ 229.506 of this chapter).

*Item 6. Selling Security Holders.*  
Furnish the information required by Item 507 of Regulation S-K (§ 229.507 of this chapter).

*Item 7. Plan of Distribution.*  
Furnish the information required by Item 508 of Regulation S-K (§ 229.508 of this chapter).

*Item 8. Use of Proceeds.*  
Furnish the information required by Item 504 of Regulation S-K (§ 229.504 of this chapter).

*Item 9. Selected Financial Data.*  
(a) Furnish the information required by Item 301 of Regulation S-K (§ 229.301 of this chapter).

*Instruction.* If, pursuant to this Item, a statement showing the pro forma taxable operating results of the registrant is included in the registration statement, the Commission or its staff may request as supplemental information, which the registrant should be prepared to furnish promptly upon request, a schedule reconciling such pro forma results with the historical operating results (see Rule 3-14 of Regulation S-X).

*Item 10. Management's Discussion and Analysis of Financial Condition and Results of Operations.*

Furnish the information required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

*Item 11. General Information as to Registrant.*

*Item 12. Policy with Respect to Certain Activities.*

*Item 13. Investment Policies of Registrant.*

*Item 14. Description of Real Estate.*

*Item 15. Operating Data.*  
Furnish the following information with respect to each improved property which is separately described in answer to Item 14.

(h) \* \* \*  
*Instruction.* Instruction 3 to Item 14 shall apply to this item.

*Item 16. Tax Treatment of Registrant and its Security Holders.*

*Item 17. Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.*

Furnish the information required by Item 201 of Regulation S-K (§ 229.201 of this chapter).

*Item 18. Description of Registrant's Securities.*

Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter).

*Item 19. Legal Proceedings.*  
Furnish the information required by Item 103 of Regulation S-K (§ 229.103 of this chapter).

*Item 20. Security Ownership of Certain Beneficial Owners and Management.*  
Furnish the information required by Item 403 of Regulation S-K (§ 229.403 of this chapter).

*Item 21. Directors and Executive Officers.*  
Furnish the information required by Item 401 of Regulation S-K (§ 229.401 of this chapter).

*Item 22. Management Remuneration and Transactions.*  
Furnish the information required by Item 402 of Regulation S-K (§ 229.402 of this chapter).

*Item 23. Selection, Management and Custody of Registrant's Investments.*

*Item 24. Policies with Respect to Certain Transactions.*

*Item 25. Limitations of Liability.*

*Item 26. Financial Statements and Information.*

Include in the prospectus the financial statements required by Regulation S-X, the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter), and the information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K. (§ 229.304 of this chapter). Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12-12, 12-28 and 12-29 of the Regulation may be omitted from the prospectus.

*Item 27. Interests of Named Experts and Counsel.*

Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

*Item 28. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.*

Furnish the information required by Item 510 of Regulation S-K (§ 229.510 of this chapter).

*Part II. Information Not Required in Prospectus*

*Item 29. Other Expenses of Issuance and Distribution.*

Furnish the information required by Item 511 of Regulation S-K (§ 229.511 of this chapter).

*Item 30. Sales to Special Parties.*

*Item 31. Recent Sales of Unregistered Securities.*

Furnish the information required by Item 701 of Regulation S-K (§ 229.701 of this chapter).

*Item 32. Indemnification of Directors and Officers.*

Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

**Item 33. *Treatment of Proceeds From Stock Being Registered.***

**Item 34. *Financial Statements and Exhibits.***

(a) List all financial statements filed as part of the registration statement, indicating those included in the prospectus.

(b) Furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

**Item 35. *Undertakings.***

Furnish the undertakings required by Item 512 of Regulation S-K (§ 229.512 of this chapter).

***Signatures***

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-11 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_.

(Issuer) \_\_\_\_\_  
By (Signature and Title) \_\_\_\_\_

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Date) \_\_\_\_\_

**Instructions.** 1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

23. By removing Instructions C and E and redesignating General Instruction D as General Instruction C; by adding Items 1-4 and 8 and redesignating Items 1-6 as Items 5-7 and 9-11; by revising redesignated Items 6-7 and 9-11; by removing Instructions as to Exhibits of Form S-14 in § 239.23 to read as follows (Form S-14 does not appear in the Code of Federal Regulations):

§ 239.23 Form S-14, for simplified registration of securities issued in certain transactions under Rules 133 and 145 (17 CFR 230.133, 230.145).

***B. Application of General Rules and Regulations***

(a) Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494).

That Regulation contains general requirements regarding the preparation and filing of registration statements.

(b) Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.

***C. Compliance with Proxy or Information Rules***

(b) If the proxy or information material sent to such security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

***Part I. Information Required in Prospectus***

**Item 1. *Forepart of Registration Statement and Outside Front Cover Page of Prospectus.***

Set forth on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (§ 229.501 of this chapter).

**Instruction.** The cross-reference sheet required by Item 501 shall show the location of the information required by proxy or information rules, as specified in Item 5 of this form.

**Item 2. *Inside Front and Outside Back Cover Pages of Prospectus.***

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (§ 229.502 of this chapter).

**Item 3. *Summary Information, Risk Factors and Ratio of Earnings to Fixed Charges.***

Furnish the information required by Item 503 of Regulation S-K (§ 229.503 of this chapter).

**Item 4. *Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.***

Furnish the information required by Item 201 of Regulation S-K (§ 229.201 of this chapter).

**Item 5. *Information Required by Proxy or Information Rules.***

(b) If neither the registrant nor any other person which is a party to the transaction in which the securities to be registered are to be issued is required to solicit proxies pursuant to Section 14(a), or to furnish information to security holders pursuant to Section 14(c), of the Securities Exchange Act of 1934 in regard

to the transaction, then the prospectus shall contain the information which would be required to be included in a proxy or information statement of the registrant if it were subject to Section 14(a) or 14(c) and may be in form of such a proxy or information statement.

**Item 6. *Additional Information Required for Reoffering by Persons and Parties Deemed To Be Underwriters.***

(a) Furnish the information required by Item 507 of Regulation S-K (§ 229.507 of this chapter).

**Instruction.** Information in response to Item 6(a) may be included to describe public reofferings proposed to be made, if such reofferings are subject only to consummation of the transaction described in Rule 145(a).

**Item 7. *Interests of Named Experts and Counsel.***

Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

**Item 8. *Disclosure of Commission Position on Indemnification for Securities Act Liabilities.***

Furnish the information required by Item 510 of Regulation S-K (§ 229.510 of this chapter).

**Part II. Information Required in Prospectus**

**Item 9. *Indemnification of Directors and Officers.***

Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

**Item 10. *Exhibits.***

Subject to the rules regarding incorporation by reference, furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

**Item 11. *Undertakings.***

Furnish the undertakings required by Item 512 of Regulation S-K (§ 229.512 of this chapter).

***Signatures***

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-14 and had duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_ on \_\_\_\_\_, 19\_\_\_\_.

(Issuer) \_\_\_\_\_  
By (Signature and Title) \_\_\_\_\_

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Date) \_\_\_\_\_

**Instructions.** 1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement

shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S-K concerning signatures pursuant to powers of attorney.

3. If the securities to be offered are those of a corporation, not yet in existence at the time the registration statement is filed, which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a registrant and shall be so designated on the cover page of this form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the registrant.

24. By removing General Instructions C and F and Item 10; by redesignating General Instructions D and E as General Instructions C and D; by adding Items 1, 2 and 14-15; by redesignating Items 1-14 as Items 3-17; by revising redesignated Items of Form S-15 in 10-13, 16-17; § 239.29 to read as follows (Form S-15 does not appear in the Code of Federal Regulations):

**§ 239.29 Form S-15, optional form for registration of securities to be offered in certain business combination transactions.**

*General Instructions*

*A. Rules to Use of Form S-15*

2. At the time of filing the registration statement, the issuer (a) meets the requirements for the use of Form S-2 (§ 239.12), (b) has furnished its latest annual report to security holders pursuant to Rule 14a-3 (§ 240.14a-3) or Rule 14c-3 (§ 240.14c-3) and (c) such report contains audited year-end financial statements as of a fiscal year-end not more than fifteen months prior to the date the registration statement becomes effective.

*B. Application of General Rules and Regulations*

1. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

2. Attention is directed to Regulation S-K (17 CFR Part 229) for the requirements applicable to the content of the non-financial

statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.

*C. Compliance With Proxy or Information Rules*

*D. Availability of the Prospectus for Reoffers or Resales*

The Form S-15 prospectus may be used by affiliates of the issuer, or by any other persons who may be deemed underwriters of such securities, for reoffers or resales of securities acquired pursuant to this registration statement, Provided that: (1) the requirements of Rule 415 (§ 230.415) are met; (2) the additional information called for by Item 10 of this Form is included in the prospectus so used; and, (3) if, after the effective date, the issuer wishes to add any person to the list of selling security holders, the issuer may do so by filing a post-effective amendment.

*Part I. Information Required in Prospectus*

*Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus.*

Set forth on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (§ 229.501 of this chapter).

*Item 2. Inside Front and Outside Back Cover Pages of Prospectus.*

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (§ 229.502 of this chapter).

*Item 3. Summary Information and Risk Factors and Ratio of Earnings to Fixed Charges.*

(a) Immediately following the cover page of the prospectus, set forth a summary containing the following:

(i) a brief description of the general nature of the business conducted by the issuer and by the company being acquired;

(ii) a brief description of the transaction pursuant to which the securities being registered are to be offered; and

(iii) in comparative columnar form, comparative per share data adjusted to be presented on an equivalent share basis of the issuer and the company being acquired, for the following items:

(A) book value per share as of the date of the most recent balance sheet presented in response to Item 5 or incorporated by reference in response to Item 12;

(B) cash dividends declared per share during the last full fiscal year for which financial statements are presented in response to Item 5 or incorporated by reference in response to Item 12;

(C) net earnings per share for the year ended as of the same date used for purposes of paragraph (A) of this Item, and for the year to date ended as of the end of the latest corresponding fiscal quarter which ended more than forty-five days prior to the effective date of the registration statement; and

(D) market value of securities as of the day preceding public announcement of the proposed transaction, or, if no such public announcement was made, as of the day preceding the day the agreement with respect to the transaction was entered into.

(b) In addition, the summary shall contain the information required by Item 503 of Regulation S-K (§ 229.503 of this chapter), Item 4. *Terms of the Transaction.*

(e) As to each class of securities of the issuer, or of the company being acquired, which is admitted to dealing on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the plan, state the high and low sale prices (or, in the absence of trading in a particular period, the range of the bid and asked prices) for each quarterly period within two years. This information may be omitted if the plan involves merely the liquidation or dissolution of the issuer.

*Item 5. Description of the Company Being Acquired.*

(a) If the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934 and has furnished an annual report to security holders pursuant to Rule 14a-3 (§ 240.14a-3) or Rule 14c-3 (§ 240.14c-3) for its latest fiscal year, then, at the issuer's option, portions of such annual report may be incorporated by reference and such annual report may be delivered in accordance with the provisions of Items 11 and 16 of this Form.

(b) \* \* \*  
(ii) market price of and dividends on the common equity of the company being acquired and related stockholder matters as required by Item 201 of Regulation S-K (§ 229.201 of this chapter).

(iii) selected financial data as required by Item 301 of Regulation S-K (§ 229.301 of this chapter).

(iv) management's discussion and analysis of financial condition and results of operation as required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

(v) financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rules 14a-3(b)(1), (b)(2), (b)(3) and (b)(4) (§ 240.14a-3) or Rules 14c-3(a)(1), (a)(2), (a)(3) and (a)(4) (§ 240.14c-3), had the company being acquired been required to prepare such a report; provided, however, that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited; and

*Item 6. Voting Information.*

(c) \* \* \*  
(ii) *Beneficial Ownership.* Furnish the information required by Item 403 of Regulation S-K (§ 229.403 of this chapter) with respect to both the issuer of the securities being registered and the company being acquired. To the extent that this information is already furnished pursuant to

paragraph (a) of this Item, a statement to that effect will suffice.

(iii) *Executive Officers and Directors.* With respect to the issuer, furnish the information required by Item 401 of Regulation S-K (§ 229.401 of this chapter). With respect to the company being acquired, identify each of the executive officers and directors and indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

**Item 7. Interest of Certain Persons in the Transaction.**

**Item 8. Additional Information With Respect to the Issuer.**

(a) \*\*\*\*\*  
(iii) delivering to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report which was delivered to its security holders and which included the required financial and other information.

(b) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders. Financial information may be required in the prospectus if the financial statements in the annual report to security holders do not reflect the results of a significant business combination accounted for as a pooling of interests or as a purchase or a change in accounting principles or a correction of an error where such change or correction requires a substantial retroactive restatement of financial statements where there has been a material disposition of assets outside the normal course of business.

**Item 9. Additional Information With Respect to the Company Being Acquired.**

(a) If the company being acquired has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, has furnished an annual report to security holders pursuant to Rule 14a-3 for its latest fiscal year, and such annual report is incorporated by reference into and delivered with the prospectus pursuant to the option provided by Item 5(a), provide financial and other information with respect to the company being acquired in the form required by Part I of Form 10-Q as of the end of the most recent of the first three fiscal quarters which ended more than forty-five days prior to the effective date of this registration statement or as of a more recent date by one of the following means:

\*\*\*\*\*  
(iii) delivering to each person to whom a prospectus is delivered a copy of the latest quarterly report which was delivered to the security holders of the company being acquired and which included the required financial and other information.

(b) Describe any and all material changes in the affairs of the company being acquired which have occurred since the end of the latest fiscal year for which certified financial statements have been included either:

(i) in the annual report to security holders delivered pursuant to Item 17 of this Form; or  
(ii) in the prospectus as a result of the provisions of paragraph (b)(v) of Item 5 of this Form.

Financial information may be required in the prospectus if such financial statements do not reflect the results of a significant business combination accounted for as a pooling of interests or as a purchase or a change in accounting principles or a correction of an error where such change requires a substantial retroactive restatement of financial statements or where there has been a material disposition of assets outside the normal course of business.

\*\*\*\*\*

(d) \*\*\*\*\*  
(iii) include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written or oral request of such person, a copy of any and all of the information which has been incorporated by reference in the registration statement, other than exhibits to such information. Indicate the address (including title or department) and telephone number to which such a request is to be directed.

**Item 10. Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters.**

\*\*\*\*\*  
(a) Furnish the information required by Item 507 of Regulation S-K (§ 229.507 of this chapter).

\*\*\*\*\*

**Item 11. Information Delivered.**

A statement shall be made indicating that the prospectus is accompanied by the following documents, specified portions of which are incorporated by reference (See Item 12):

(a) the issuer's latest annual report to security holders; and

(b) if the company being acquired has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, has furnished its annual report for its latest fiscal year to security holders pursuant to and meeting the requirements of Rule 14a-3 (§ 240.14a-3) or Rule 14c-3 (§ 240.14c-3), and the issuer has elected pursuant to the option provided by Item 5(a) to incorporate by reference from such annual report and deliver it with the prospectus, such annual report.

**Item 12. Incorporation of Certain Information by Reference.**

(a) The information listed in (i), (ii), (iii) and, if applicable, (iv) below shall be specifically incorporated by reference into the prospectus by means of a statement to that effect in the prospectus listing all such information:

(i) The following information contained in the annual report(s) to security holders delivered with the prospectus:

(A) description of business furnished in accordance with the provisions of Rule 14a-3(b)(5);

(B) certified financial statements furnished in accordance with the provisions of Rule 14a-3(b);

(C) supplementary financial information furnished in accordance with the provisions of Rule 14a-3(b)(3);

(D) information concerning disagreements with accountants furnished in accordance with the provisions of Rule 14a-3(b)(4);

(E) information relating to industry segments, classes of similar products or

services, foreign and domestic operations and export sales furnished in accordance with the provisions of Item 101 of Regulation S-K (§ 229.101 of this chapter);

(F) market price of and dividends on issuer's common equity and related stockholder matters furnished in accordance with Item 201 of Regulation S-K (§ 229.201 of this chapter);

(G) selected financial data furnished in accordance with Item 301 of Regulation S-K (§ 229.301 of this chapter); and

(H) management's discussion and analysis of financial condition and results of operations furnished in accordance with Item 303 of Regulation S-K (§ 229.303 of this chapter).

(ii) Any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the issuer on or after the end of the issuer's latest fiscal year reported on in the annual report to security holders delivered with the prospectus pursuant to Item 16 and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable state law or, if no such vote or consent is solicited, the date the transaction described in the registration statement is fully consummated.

(iii) Any reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 by the company being acquired on or after the end of such company's latest fiscal year as reported on in the annual report to security holders delivered with the prospectus pursuant to Item 16 or as reported on in the prospectus pursuant to Item 5 and prior to the date the vote or consent solicited pursuant to the registration statement is final under applicable state law or, if no such vote or consent is solicited, the date the transaction in the registration statement is fully consummated.

(iv) If the issuer elects, pursuant to Item 8(a)(iii), or 9(a)(iii), to deliver a copy of the latest quarterly report which was delivered to its security holders, financial information therein equivalent to that required to be presented in Part I of Form 10-Q.

(b) The issuer may also state, if it chooses, that specifically described portions of documents which are incorporated by reference are not a part of the registration statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail.

**Item 13. Interests of Named Experts and Counsel.**

Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

**Item 14. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.**

Furnish the information required by Item 510 of Regulation S-K (§ 229.510 of this chapter).

**Part II. Information Not Required in Prospectus**

**Item 15. Indemnification of Directors and Officers.**

Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

Item 16. Exhibits.

Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

Item 17. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S-K (§ 229.512 of this chapter).

Signatures

Pursuant to the requirements of the Securities Act of 1933, the issuer certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-15 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of \_\_\_\_\_, State of \_\_\_\_\_, on \_\_\_\_\_, 19\_\_\_\_.

(Issuer) \_\_\_\_\_  
By (Signature and Title) \_\_\_\_\_

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) \_\_\_\_\_  
(Title) \_\_\_\_\_  
(Date) \_\_\_\_\_

Instructions. 1. The registration statement shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the issuer is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the issuer is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate partner signing the registration statement.

2. The name of such person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and Item 601 of Regulation S-K (§ 229.601 of this chapter) concerning signatures pursuant to powers of attorneys.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

25. By revising § 240.3b-2 to read as follows:

§ 230.3b-2 Definition of "officer."

The term "officer" means a president, vice president, secretary, treasury or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

26. By revising paragraphs (b)(1)(i) and (2) and (c)(3) of § 240.3b-6 to read as follows:

§ 240.3b-6 Liability for certain statements by issuers.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K; or add " " if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, and

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S-K (§ 229.302 of this chapter), supplementary financial information, and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q, or in an annual report to shareholders meeting the requirements of Rule 14a-3 (b) and (c) or Rule 14c-3 (a) and (b) under the Securities Exchange Act of 1934.

(c) \* \* \*

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations pursuant to Item 303 of Regulation S-K add " " or

27. By revising § 240.3b-7 to read as follows:

§ 240.3b-7 Definition of "executive officer."

The term "executive officer," when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division of function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if

they perform such policy making functions for the registrant.

28. By revising paragraph (k) of § 240.10b-7 to read as follows:

§ 240.10b-7 Stabilizing to facilitate a distribution.

\* \* \* \* \*

(k) ~~Disclosure of stabilizing.~~ Any person subject to this rule who sells to, or purchases for the account of, any person, any security or any right or warrant to subscribe to any such security, where the price of such security, right or warrant has been stabilized, shall give or send to such person, at or before the completion of each transaction entered into while the distribution is in progress, written notice that stabilizing purchases may be or have been effected. If, however, at or before the completion of the transaction, the purchaser receives a prospectus, offering circular, confirmation or other writing containing a statement similar to that comprising the legend provided for in Item 502(d) of Regulation S-K (§ 229.502(d) of this chapter), then no other written notice with respect to stabilizing need be given to such purchaser.

29. By removing § 240.12b-4 and by removing and reserving § 240.12b-24.

30. By amending Regulation 12B (17 CFR 240.12b-1 to 240.12b-36) by revising § 240.12b-1; by removing the paragraph designations in § 240.12b-2 and leaving the terms in alphabetical order; by revising the definition of the terms "certified," "control," "material," "promoter," "significant subsidiary," and "totally held subsidiary" in § 240.12b-2; by adding the definition of the terms "common equity," "managing underwriter" and "North American issuer" in § 240.12b-2 in alphabetical sequence; by revising §§ 240.12b-11, 240.12b-12 and 240.12b-23; and by adding § 240.12b-4 to read as follows:

Regulation 12B: Registration and Reporting—General

§ 240.12b-1 Scope of regulation.

The rules contained in this regulation shall govern all registration statements pursuant to Sections 12(b) and 12(g) of the Act and all reports filed pursuant to Sections 13 and 15(d) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

§ 240.12b-2 Definitions.

\* \* \* \* \*

**Certified.** The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

**Common equity.** The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

**Control.** The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

**Managing underwriter.** The term "managing underwriter" includes an underwriter (or underwriters) who, by contract or otherwise, deals with the registrant; organizes the selling effort; receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

**Material.** The term "material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered.

**North American issuer.** The term "North American issuer" means any foreign private issuer incorporated or organized under the laws of Canada or Mexico or any political subdivision thereof.

**Promoter.** (1) The term "promoter" includes:

(i) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or

(ii) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in

consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(2) All persons coming within the definition of "promoter" in paragraph (1) of this definition may be referred to as "founders" or "organizers" or by another term provided that such term is reasonably descriptive of those persons' activities with respect to the issuer.

**Significant subsidiary.** The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for purposes of determining whether the past or future acquisition of another company in a business combination accounted for as a pooling of interests is significant for purposes of applying § 210.3-08 or reporting on Form 8-K, this condition is also met when the number of common shares exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

**Computational note.** For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the

equity in the income or loss of the tested subsidiary should be excluded from the income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

**Totally held subsidiary.** The term "totally held subsidiary" means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

#### § 240.12b-4 Supplemental information.

The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall be returned to the registrant upon request, provided that:

(a) Such request is made at the time such information is furnished to the staff;

(b) The return of such information is consistent with the protection of investors; and

(c) The return of such information is consistent with the provisions of the Freedom of Information Act (5 U.S.C. 552).

#### § 240.12b-11 Number of copies; signatures; binding.

(a) Except as provided in a particular form, three complete copies of each statement or report, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commission. At least one complete copy of each statement shall be filed with each exchange on which the securities covered thereby are to be registered. At least one complete copy of each report under section 13 of the Act shall be filed with each exchange on which the registrant has securities registered.

(b) At least one copy of each statement or report filed with the Commission and one copy thereof filed with each exchange shall be manually signed in the manner prescribed by the appropriate form.

(c) Each copy of a statement or report filed with the Commission or with an exchange shall be bound in one or more parts. Copies filed with the Commission shall be bound without stiff covers. The statement or report shall be bound on the left side in such a manner as to leave the reading matter legible.

§ 240.12b-12 Requirements as to paper, printing and language.

(a) Statements and reports shall be filed on good quality, unglazed white paper approximately 11 inches or approximately 8 1/2 by 13 inches in size, insofar as practicable. However, tables, charts, maps and financial statements may be on larger paper if folded to that size.

(b) The statement or report and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, or typewritten. However, the statement or report of any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(c) The body of all printed statements and reports and all notes to financial statements and other tabular data included therein shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(d) Statements and reports shall be in the English language. If any exhibit or other paper or document filed with a statement or report is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

General Requirements as to Contents

§ 240.12b-23 Incorporation by reference.

(a) Except for information filed as an exhibit which is covered by Rule 12b-32 (17 CFR 240.12b-32), information may be incorporated by reference in answer, or

partial answer, to any item of a registration statement or report subject to the following provisions:

(1) Financial statements incorporated by reference shall satisfy the requirements of the form or report in which they are incorporated. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is given;

(2) Information in any part of the registration statement or report may be incorporated by reference in answer, or partial answer, to any other item of the registration statement or report; and

(3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statement, shall be filed as an exhibit to the statement or report, except that a proxy or information statement incorporated by reference in response to Part III of Form 10-K (17 CFR 249.310) need not be filed as an exhibit.

(b) Any incorporation by reference of matter pursuant to this section shall be subject to the provisions of Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter) restricting incorporation by reference of documents which incorporate by reference other information. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. Where only certain pages of a document are incorporated by reference and filed as an exhibit, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear or confusing.

§ 240.12b-24 [Reserved]

31. By revising Instruction C of § 240.13d-101 to read as follows:

§ 240.13d-101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d-1(a) and amendments thereto filed pursuant to § 240.13d-2(a).

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for

by Items 2-6, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above mentioned items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation.

32. By removing paragraph (a)(2); by redesignating paragraphs (a)(3)-(a)(5) as paragraphs (a)(2)-(a)(4); and by revising paragraphs (c)(2), (e)(3)(ii) and (f)(1) and by revising the introductory texts of redesignated paragraphs (a)(3), (a)(3)(i) and (a)(3)(iii) of § 240.13e-3 to read as follows:

§ 240.13e-3 Going private transactions by certain issuers or their affiliates.

(a) \* \* \* \*  
 (3) A "A" Rule 13e-3 transaction is any transaction or series of transactions involving one or more of the transactions described in paragraph (a)(3)(i) of this section which has either a reasonable likelihood or a purpose of producing, either directly or indirectly, any of the effects described in paragraph (a)(3)(ii) of this section;  
 (1) The transactions referred to in paragraph (a)(3) of this section are:

(ii) The effects referred to in paragraph (a)(3) of this section are:

(c) \* \* \* \*  
 (2) An issuer or affiliate which is subject to paragraph (c)(1) of this section and which is soliciting proxies or distributing information statements in connection with a transaction described in paragraph (a)(3)(i)(A) of this section may elect to use the timing procedures for conducting a solicitation subject to Regulation 14A (§§ 240.14a-1 to 240.14a-103) or a distribution subject to Regulation 14C (§§ 240.14c-1 to 240.14c-101) in complying with paragraphs (d), (e) and (f) of this section, provided that if an election is made, such solicitation or distribution is conducted in accordance with the requirements of the respective regulations, including the filing of preliminary copies of soliciting

materials or an information statement at the time specified in Regulation 14A or 14C, respectively.

\* \* \* \* \*  
(e) \* \* \*  
(3) \* \* \* \* \*

(ii) set forth on the outside front cover page, in capital letters printed in bold face roman type at least as large as ten point modern type and at least two points leaded, the statement in paragraph (e)(3)(ii)(A) of this section, if the Rule 13e-3 transaction does not involve a prospectus, or the statement in paragraph (e)(3)(ii)(B) of this section, if the Rule 13e-3 transaction involves a prospectus, and in the latter case such statement shall be used in lieu of that required by Item 501(c)(5) of Regulation S-K (§ 229.501 of this chapter).

(f) \* \* \*  
(1) If the Rule 13e-3 transaction involves a purchase as described in paragraph (a)(3)(i)(A) of this section or a vote, consent, authorization, or distribution of information statements as described in paragraph (a)(3)(i)(C) of this section, the issuer or affiliate engaging in the Rule 13e-3 transaction shall:

\* \* \* \* \*

33. By removing paragraph (a)(7); by redesignating paragraph (a)(8) as paragraph (a)(7); and by revising Instruction B(1) to paragraph (d) of § 240.13e-4 to read as follows:

§ 240.13e-4 Tender offers by issuers.

\* \* \* \* \*

(d) \* \* \* \* \*  
Instruction:

(B) \* \* \* \* \*

(1) The following summary financial information for (i) the two most recent fiscal years and (ii) the latest year-to-date interim period and corresponding interim period of the preceding year:

Income Statement:

Net sales and operating revenues and other revenues
Income before extraordinary items
Net income

Balance Sheet (at end of period):

Working capital
Total assets
Total assets less deferred research and development charges and excess of cost of assets acquired over book value
Total indebtedness
Shareholders' equity

Per Share\*

Income per common share before extraordinary items
Extraordinary items

\* Average number of shares of common stock outstanding during each period was . . . . . (as adjusted to given effect to stock dividends or stock splits)

Net income per common share (and common share equivalents, if applicable)  
Net income per share on a fully diluted basis

\* \* \* \* \*

34. By redesignating paragraphs (b)(4)-(12) as paragraphs (b)(5)-(13); adding a new paragraph (b)(4) and a new paragraph (e); and revising paragraphs (b)(3), and redesignated paragraphs (b)(5)-(9) and (12); and by revising redesignated paragraphs (b)(10), Note, and (11), introductory text, of § 240.14a-3 to read as follows:

§ 240.14a-3 Information to be furnished to security holders.

\* \* \* \* \*

(b) \* \* \* \* \*  
(3) The report shall contain the supplementary financial information required by item 302 of Regulation S-K (§ 229.302 of this chapter).

(4) The report shall contain information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304 of this chapter).

(5)(i) The report shall contain the selected financial data required by Item 301 of Regulation S-K (§ 229.301 of this chapter).

(ii) The report shall contain management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

(7) the report shall contain information relating to the issuer's industry segments, classes of similar products or services, foreign and domestic operations and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S-K (§ 229.101 of this chapter).

Notes.—Paragraph (b)(11) of this section permits the information required by this paragraph to be set forth in any form deemed suitable by management

(8) The report shall identify each of the issuer's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is employed.

(9) The report shall contain the market price of and dividends on the issuer's common equity and related stock holder matters required by Item 201 of Regulation S-K (§ 229.201 of this chapter).

(10) \* \* \*

Note.—Pursuant to the undertaking required by paragraph (b)(10) of this section,

an issuer shall furnish a copy of its annual report on Form 10-K (§ 249.310 of this chapter) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the annual meeting of the issuer's security holders, the person making the request was a beneficial owner of securities entitled to vote at such meeting.

(11) Subject to the foregoing requirements, the report may be in any form deemed suitable by management and the information required by paragraphs (b)(5) to (b)(10) of this section may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to such presentation.

(12) Paragraphs (b)(5) through (b)(11) of this section shall not apply to an investment company registered under the Investment Company Act of 1940. Subject to the requirements of paragraphs (b)(1) through (b)(4) of this section, the annual report to security holders of such investment company may be in any form deemed suitable by management.

(e) An annual report to security holders prepared on an integrated basis pursuant to General Instruction H to Form 10-K (§ 249.310) may also be submitted in satisfaction of this rule. When filed as the annual report on Form 10-K, responses to the Items of that form are subject to section 18 of the Act notwithstanding paragraph (c).

35. By revising paragraphs (i) and (j) to § 240.14a-6 to read as follows:

§ 240.14a-6 Material required to be filed.

(i) At the time of filing the preliminary proxy solicitation material, the persons upon whose behalf the solicitation is made, other than companies registered under the Investment Company Act of 1940, or where an application or declaration under the Public Utility Holding Company Act of 1935 is involved, shall pay to the Commission the following applicable fee: (1) For preliminary proxy material which solicits proxies for election of directors or other business for which a stockholder vote is necessary, but apparently no controversy is involved, a fee of \$125; (2) for proxy material where a contest as set forth in Rule 14a-11 is involved, a fee of \$500 from each party to the controversy; and (3) for proxy material involving acquisitions or mergers, a fee of \$1,000. Where both

companies involved in the acquisition or merger must file proxy material with the Commission, each shall pay \$500 of the fee. There shall be no refunds.

(j) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S-14 (§ 239.23 of this chapter) or Form S-15 (§ 239.29 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S-14 or Form S-15 shall be filed in accordance with this section but separate copies of such material need not be filed as an amendment of such registration statement.

36. By removing Item 14(b)(9); and revising Items 4(b)(2), 5(d), (e) and (g); 6(a); 7; 9(c) and (d) and Instructions 1 and 3(c) thereunder; 10(c) and (d) and Instruction 1 thereunder; 11(b) and (c) and Instruction 1 thereunder; 14(b)(8); 15(a) and 20 of Schedule 14A in § 240.14a-101 to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Item 4. Interest of certain persons in matters to be acted upon.

(b) With respect to any person, other than a director or officer of the issuer acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4(b) and (c) of Schedule 14B.

Item 5. Voting securities and principal holders thereof.

(d) Furnish the information required by Item 403(a) of Regulation S-K (§ 229.403(a) of this chapter) to the extent known by the persons on whose behalf the solicitation is made.

(e) Furnish the information required by Item 403(b) of Regulation S-K (§ 229.403(b) of this chapter).

(g) Furnish the information required by Item 403(c) of Regulation S-K (§ 229.403(c) of this chapter).

Item 6. Directors and executive officers.

(a) The information required by Item 401 of Regulation S-K (§ 229.401 of this chapter).

Item 7. Remuneration of directors and executive officers. (See Note C at the beginning of Schedule 14A).

Furnish the information required by Item 402 (§ 229.402 of this chapter) and Instruction 4 to Item 103 of Regulation S-K (§ 229.103 of this chapter) if action is to be taken with regard to (i) the election of directors, (ii) any bonus, profit sharing or other remuneration plan, contract, or arrangement in which any director, nominee for election as a director, or officer of the issuer will participate, (iii) any pension or retirement plan in which any such person will participate or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the issuer, the information required need be furnished only as to nominees of the persons making the solicitation and associates of such nominees.

Item 9. Bonus, profit sharing and other remuneration plans.

(c) State the name and position with the issuer of each person specified in Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter) who will participate in the plan and the amount which each such person would have received under the plan for the last fiscal year of the issuer if the plan had been in effect.

(d) Furnish such information, in addition to that required by this item and Item 402 of Regulation S-K (§ 229.402 of this chapter), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan, and (iii) all employees, if employees may participate in the plan.

Instructions. 1. The term "plan" as used in this item means any plan as defined in Instruction 7 to Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter).

(c) If action is to be taken with respect to any plan in which directors or officers may participate, the information called for Items 402(d) (1) and (2) of Regulation S-K (§ 229.402 of this chapter) shall be furnished for the last five fiscal years of the issuer and any period subsequent to the end of the latest such fiscal year, in aggregate amounts for the entire period for each such person and group. If any

named person, or any other director or officer, purchased securities through the exercise of options during such period, state the aggregate amount of securities of that class sold during the period by such named person and by such named person and such other directors and officers as a group. The information called for by this Instruction 3(c) is in lieu of the information since the beginning of the issuer's last fiscal year called for by Items 402(d) (1) and (2) of Regulation S-K (§ 229.402 of this chapter). If employees may participate in the plan to be acted upon, state the aggregate amount of securities called for by all options granted to employees during the five-year period and, if the options were other than "restricted" or "qualified" stock options or options granted pursuant to an "employee stock purchase plan", as the quoted terms are defined in sections 422 through 424 of the Internal Revenue Code, state that fact and the weighted average option price per share. The information called for by this instruction may be furnished in the form of the table illustrated in Item 402 of Regulation S-K (§ 229.402 of this chapter).

Item 10. Pension and retirement plans.

(c) State (1) the name and position with the issuer of each person specified in Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter) who will be entitled to participate in the plan, (2) the amount which would have been paid or set aside by the issuer and its subsidiaries for the benefit of such person for the last fiscal year of the issuer if the plan had been in effect, and (3) the amount of the annual benefit estimated to be payable to such person in the event of retirement at normal retirement date.

(d) Furnish such information, in addition to that required by this item and Item 402 of Regulation S-K (§ 229.402 of this chapter), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and (iii) all

employees, if employees may participate in the plan.

*Instructions.* 1. The term "plan" as used in this item means any plan as defined in Instruction 7 to Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter). Instruction 2 to Item 9 shall apply to this item.

Item 11. *Options, warrants or rights.*

(b) State separately the amount of options, warrants, or rights received or to be received by the following persons, naming each such person: (i) each director or officer named in answer to Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter); (ii) each nominee for election as a director of the issuer; (iii) each associate of such directors, officers or nominees; and (iv) each other person who received or is to receive 5 percent of such options, warrants or rights. State also the total amount of such options, warrants or rights received or to be received by all directors and officers of the issuer as a group, without naming them.

(c) Furnish such information, in addition to that required by this item and Item 402 of Regulation S-K (§ 229.402 of this chapter), as may be necessary to describe adequately the provisions already made pursuant to all bonus, profit sharing, pension, retirement, stock option, stock purchase, deferred compensation, or other remuneration or incentive plans, now in effect or in effect within the past five years, for (i) each director or officer named in answer to Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter) who may participate in the plan to be acted upon; (ii) all present directors and officers of the issuer as a group, if any director or officer may participate in the plan; and (iii) all employees, if employees may participate in the plan.

*Instructions.* 1. The term "plan" as used in this item means any plan as defined in Instruction 7 to Item 402(a) of Regulation S-K (§ 229.402(a) of this chapter).

Item 14. *Mergers, consolidations, acquisitions and similar matters.*

(b) \* \* \*

(8) Furnish the information relating to the issuer's industry segments, classes of similar products or services, foreign and domestic operations and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S-K (§ 229.101 of this chapter).

*Instructions.*

Item 15. *Financial information.*

(a) If an action is to be taken with respect to any matter specified in Item 12, 13 or 14 above, furnish the financial statements required by Regulation S-X. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate. If financial statements required by Regulation S-X are furnished, also furnish the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter), information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304 of this chapter) and management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

Item 20. *Amendment of charter, bylaws or other documents.*

If action is to be taken with respect to any amendment of the issuer's charter, bylaws or other documents as to which information is not required above, state briefly the reasons for and the general effect of such amendment.

*Instruction.* \* \* \* \*

37. By revising Item 4(b) of Schedule 14B in § 240.14a-102 to read as follows:

§ 240.14a-102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to § 240.14a-11c(c) (Rule 14a-11(c)).

Item 4. *Further matters.*

(b) Furnish for yourself and your associates the information required by Item 402(f) of Regulation S-K (§ 229.402(f) of this chapter).

38. By removing § 240.14a-103.

§ 240.14a-103 [Removed]

39. By redesignating paragraphs (a) (4)-(11) as paragraphs (a) (5)-(12); adding a new paragraph (a)(4); revising paragraph (a)(3) and redesignated paragraphs (a) (7)-(9), the Note to (a)(10), and the introductory text to (a) (11) and (12) of § 240.14c-3 to read as follows:

§ 240.14c-3 Annual report to be furnished security holders.

(a) \* \* \*

(3) The report shall contain the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter).

(4) The report shall contain the information concerning disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304 of this chapter).

(5)(i) The report contains selected financial data required by Item 301 of

Regulation S-K (§ 229.301 of this chapter).

(ii) The report shall contain management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

(7) The report shall contain the information relating to the issuer's industry segments, classes of similar products or services, foreign and domestic operations and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S-K (§ 229.101 of this chapter).

Note.—Paragraph (a)(11) of this section permits the information required by this paragraph to be set forth in any form deemed suitable by management.

(8) The report shall identify each of the issuer's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is so employed.

(9) The report shall contain the market price of and dividends on the issuer's common stock and related security holder matters required by Item 201 of Regulation S-K (§ 229.201 of this chapter).

(10) \* \* \*

Note.—Pursuant to the undertaking required by paragraph (a)(10) of this section, an issuer shall, furnish a copy of its annual report on Form 10-K (§ 249.310) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the annual meeting of the issuer's security holders, the person making the request was a beneficial owner of securities entitled to vote at such meeting.

(11) Subject to the foregoing requirements, the report may be in any form deemed suitable by management and the information required by paragraphs (a)(5) to (a)(10) of this section may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to such presentation.

(12) Paragraphs (a)(5) through (a)(11) of this section shall not apply to an investment company registered under the Investment Company Act of 1940. Subject to the requirements of paragraphs (a)(1) through (a)(4) of this section, the annual report to security holders of such investment company

may be in any form deemed suitable by management.

§ 240.14d-1 [Amended]

40. By removing paragraph (a)(6) and by redesignating paragraphs (a)(7) and (a)(8) as paragraphs (a)(6) and (a)(7) of § 240.14d-1.

41. By revising paragraph (e)(1)(viii) of § 240.14d-6 to read as follows:

§ 240.14d-6 Disclosure requirements with respect to tender offers.

(e) \*\*\*\*\*

(1) \*\*\*\*\*

(viii) The disclosure required by Item 9 of Schedule 14D-1 or a fair and adequate summary thereof. (Under normal circumstances, the following summary financial information for the period covered by the financial information furnished in response to Item 9 will be a sufficient summary. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained).

Income Statement:

Net sales and operating revenues and other revenues

Income before extraordinary items

Net income

Balance sheet (at end of period):

Work capital

Total assets

Total assets less deferred research and development charges and excess cost of assets acquired over book value

Total indebtedness

Shareholders' equity

Per Share 1

Income per common share before extraordinary items

Extraordinary items

Net income per common share (and common share equivalents, if applicable)

Net income per share on a fully diluted basis

42. By revising Item 11(e) of Schedule 14D-1 in § 240.14d-100 to read as follows:

240.14d-100 Schedule 14D-1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

Item 11. Material to be filed as exhibits.

(e) In an exchange offer where securities of the bidder have been or are to be registered under the Securities Act of 1933, the prospectus containing the information to be included therein by

<sup>1</sup>Average number of share of common stock outstanding during each period was . . . (as adjusted to given effect to stock dividends or stock splits).

Rule 432 (§ 230.432 of this chapter) of that Act;

43. By redesignating paragraphs (b)-(h) as paragraphs (e)-(i) of § 240.15c2-8 and adding a new paragraph (b) to that section to read as follows:

§ 240.15c2-8 Delivery of prospectus.

(b) In connection with an issue of securities, the issuer of which has not previously been required to file reports pursuant to sections 13(a) or 15(d) of the Securities Exchange Act of 1934, unless such issuer has been exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Act, such broker or dealer shall deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the mailing of such confirmation.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

44. By removing §§ 249.212, 249.214, 249.216, 249.314, 249.316 and 249.404.

45. By removing Items 1, 2, and 3; adding a new Item 1; and renumbering Item 4 as Item 2 of Form 8-A in § 249.208a to read as follows: (Form 8-A does not appear in the Code of Federal Regulations).

§ 249.208a Form 8-A, for registration of certain classes of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

Information Required in Registration Statement

Item 1. Description of Registrant's Securities to be Registered.

Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter).

Instruction. If a description of the securities comparable to that required here is contained in any other filing with the Commission, such description may be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the application filed with the exchange.

Item 2. Exhibits.

46. By removing Items 4, 5, and 6; adding a new Item 4; renumbering Item 7 as Item 5; and revising the Instructions as to Exhibits of Form 8-B in § 249.208b to read as follows (Form 8-B does not appear in the Code of Federal Regulations):

§ 249.208b Form 8-B, for registration of securities of certain successor issuers pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

Item 4. Description of Registrant's Securities to be Registered.

Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter).

Instruction. If a description of the securities comparable to that required here is contained in any other filing with the Commission, such description may be incorporated by reference to such other filing in answer to this item. If the securities are to be registered on a national securities exchange and the description has not previously been filed with such exchange, copies of the description shall be filed with copies of the application filed with the exchange.

Item 5. Financial Statements and Exhibits.

Instructions as to Exhibits

Subject to Rule 12b-32 (17 CFR 240.12b-32) regarding the incorporation of exhibits by reference, the following exhibits shall be filed as a part of the application or statement. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 5.

47. By amending Form 10 in § 249.210 to read as follows: (Form 10 does not appear in the Code of Federal Regulations):

§ 249.210 Form 10, general form for registration of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.

Item 1. Business.

Furnish the information required by Item 101 of Regulation S-K (§ 229.101 of this chapter).

Item 2. Financial Information.

Furnish the information required by Items 301 and 303 of Regulation S-K (§§ 229.301 and 229.303 of this chapter).

Item 3. Properties.

Furnish the information required by Item 102 of Regulation S-K (§ 229.102 of this chapter).

Item 4. Security Ownership of Certain Beneficial Owners and Management.

Furnish the information required by Item 403 of Regulation S-K (§ 229.403 of this chapter).

Item 5. Directors and Executive Officers.

Furnish the information required by Item 401 of Regulation S-K (§ 229.401 of this chapter).

Item 6. Management Remuneration and Transactions.

Furnish the information required by Item 402 of Regulation S-K (§ 229.402 of this chapter).

Item 7. Legal Proceedings.

Furnish the information required by Item 103 of Regulation S-K (§ 229.103 of this chapter).

**Item 8. Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.**

Furnish the information required by Item 201 of Regulation S-K (§ 229.201 of this chapter).

**Item 9. Recent Sales of Unregistered Securities.**

Furnish the information required by Item 701 of Regulation S-K (§ 229.701 of this chapter).

**Item 10. Description of Registrant's Securities to be Registered.**

Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter).

**Item 11. Indemnification of Directors and Officers.**

Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

**Item 12. Financial Statements and Supplementary Data.**

Furnish all financial statements required by Regulation S-X and the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter).

**Item 13. Disagreements With Accountants on Accounting and Financial Disclosure.**

Furnish the information required by Item 304 of Regulation S-K (§ 229.304 of this chapter).

**Item 14. Financial Statements and Exhibits.**

- (a) List separately all financial statements filed as part of the registration statement.
- (b) Furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

**Signatures**

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant)

Date \_\_\_\_\_

By \_\_\_\_\_

(Signature) \*

48. By adding and revising Instructions E and a new Instruction 4 to Item 7(a); renumbering current Instruction 4 to Item 7(a) as Instruction 5; and revising General Instructions A, B, C and D, Items 1(b), 4(d), 5 and 7(b) and renumbered Instruction 5 to Item 7(a) of Form 8-K in § 249.308 to read as follows (Form 8-K does not appear in the Code of Federal Regulations):

**§ 249.308 Form 8-K, for current reports.**

**General Instructions**

**A. Rules to be used of Form 8-K**

Form 8-K shall be used for current reports under Section 13 or 15(d) of the Securities

\* Print name and title of the signing officer under his signature.

Exchange Act of 1934, filed pursuant to Rule 13a-11 (17 CFR 240.13a-11) or Rule 15d-11 (17 CFR 240.15d-11).

**B. Events to be Reported and Time for Filing of Reports**

1. A report of this form is required to be filed upon the occurrence of any one or more of the events specified in Items 1-4 and 6 of this form. Reports of events specified in those items are to be filed within 15 days after the occurrence of the earliest such event reported.

2. Since a report on this form pursuant to Item 5 is optional, there is correspondingly no mandatory time for filing. Registrants are encouraged, however, to file promptly after the occurrence of any event therein reported.

3. If substantially the same information as that required by this form has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b-2 (17 CFR 240.12b-2).

4. When considering current reporting on this form, particularly of other events of importance pursuant to Item 5, registrants should have due regard for the accuracy, completeness and currency of the information in registration statements filed under the Securities Act of 1933 which incorporate by reference information in reports filed pursuant to the Securities Exchange Act of 1934, including reports on this form.

**C. Application of General Rules and Regulations**

1. The General Rules and Regulations under the Act (17 CFR Part 240) contain certain general requirements which are applicable to reports on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on this form.

2. Particular attention is directed to Regulation 12B (17 CFR 240.12b-1 et seq.) which contains general requirements regarding matters such as the kind and size of paper to be used, the legibility of the report, the information to be given whenever the title of securities is required to be stated, and the filing of the report. The definitions contained in Rule 12b-2 should be especially noted. See also Regulations 13A (17 CFR 240.13a-1 et seq.) and 15D (17 CFR 240.15d-1 et seq.).

**D. Preparation of Report**

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12 (17 CFR 240.12b-12). The report shall contain the numbers and captions of all applicable items, but the text of such items may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b-13 (17 CFR 240.12b-13). All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

**F. Incorporation by Reference**

If the registrant makes available to its stockholders or otherwise publishes, within

the period prescribed for filing the report, a press release or other document or statement containing information meeting some or all of the requirements of this form, the information called for may be incorporated by reference to such published document or statement, in answer or partial answer to any item or items of this form, provided copies thereof are filed as an exhibit to the report on this form.

**Information To Be Included in the Report**

**Item 1. Changes in Control of Registrant.**

(b) Furnish the information required by Item 403(c) of Regulation S-K (1.229.403(c) of this chapter).

**Item 4. Changes in Registrant's Certifying Accountants.**

(d) The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether he agrees with the statements made by the registrant in response to this item and, if not, stating the respects in which he does not agree. The registrant shall file copies of the former accountant's letter as an exhibit to the report on this form. If the former accountant's letter is unavailable at the time of filing, it shall be filed within thirty days thereafter.

**Item 5. Other Events.**

The registrant may, at its option, report under this item any events, with respect to which information is not otherwise called for by this form, that the registrant deems of importance to security holders.

**Item 7. Financial Statements and Exhibits.**

List below the financial statements and exhibits, if any, filed as part of this report.

**(a) Instructions.**

**4. Extension of Time for Filing.**

If the required financial statements for an acquired business are not available at the time the report on Form 8-K is filed, the registrant should so indicate in the Form 8-K report, and should file such of the required financial statements as are available. In such circumstances, the registrant may also, at its option, include unaudited financial statements in the report on Form 8-K. In all cases, the required financial statements for an acquired business should be filed under cover of Form 8 as soon as available but not later than 60 days after the report on Form 8-K is filed. The Commission may, upon the written request of the registrant and where consistent with the protection of investors, extend the time for filing the financial statements herein required beyond that provided above. A written request for such relief should be submitted separately from the subject report or cover letter to the report and, where necessary for a determination of the request, shall set forth the same information as called for in Instruction 5 below.

5i Filing of Other Financial Information in Certain Cases-

The Commission may, upon the written request of the registrant and where consistent with the protection of investors, permit the omission of one or more such financial statements or the filing in substitution therefor of appropriate statements or information of comparable character, if the required audited financial statements are not reasonably available to the registrant, because the obtaining thereof would involve unreasonable effort, expense or practical difficulties. A written request for such relief should be submitted separately from the subject report or the cover letter to the report.

The request shall set forth the following information:

- (a) The reason(s) for the unavailability of the audited financial statements;
(b) The estimated costs of the audit;
(c) An explanation of any other practical auditing problems;
(d) A letter from the registrant's independent auditors confirming the above representation; and
(e) A tabular presentation of the following items of information, comparing the acquired business(es) with the registrant on a consolidated basis (excluding the acquired business(es)):
(1) gross sales and operating revenues;
(2) net income;
(3) total assets;
(4) total stockholder equity; and
(5) total purchase price compared to total assets of registrant.

The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements and information herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

(b) Exhibits. The exhibits shall be furnished in accordance with the provisions of Item 601 of Regulation S-K (§ 229.601 of this chapter).

49. By adding a new General Instruction E; redesignating General Instructions E, F and G as F, G and H; and revising redesignated General Instructions F and EL Item 2 in Part I, and Items 1 and 6(a) in Part U of Form 10-Q in § 249.308a as follows (Form 10-Q does not appear in the Code of Federal Regulations);

§ 249.308a Form 10-Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

General Instructions

E. Integrated Reports to Security Holders

Quarterly reports to security holders may be combined with the required information of

Form 10-Q and will be suitable for filing with the Commission if the following conditions are satisfied:

- 1. The combined report contains full and complete answers to all items required by Part I of this form. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made.
2. If not included in the combined report, the cover page, appropriate responses to Part II, and the required signatures shall be included in the Form 10-Q. Additionally, as appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the form.

F. Filled Status of Information Presented

- 1. Pursuant to Rule 13ar-13(d) and Rule 15d-13(d), the information presented in satisfaction of the requirements of Items 1 and 2 of Part I of this form, whether included directly in a report on this form, incorporated therein by reference from a report, document or statement filed as an exhibit to Part I of this form pursuant to Instruction D(1) above, included in an integrated report pursuant to Instruction E above, or contained in a statement regarding computation of per share earnings or a letter regarding a change in accounting principles filed as an exhibit to Part I pursuant to Item 601 of Regulation S-K (§ 229.601 of this chapter), except as provided by Instruction F(2) below, shall not be deemed filed for the purpose of Section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to the other provisions of the Act.

H. Commission of Information by Certain Wholly-Owned Subsidiaries

- 1. There is prominently set forth, on the cover page of the Form 10-Q, a statement that the registrant meets the conditions set forth in General Instruction H(1) (a) and (b) of Form 10-Q and is therefore filing this Form with the reduced disclosure format.

Part I—Financial Information

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Furnish the information required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

Part II—Other Information

Item 1. Legal Proceedings.

Furnish the information required by Item 103 of Regulation S-K (§ 229.103) of this chapter. As to such proceedings which have been terminated during the period covered by the report, provide similar information, including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

Instruction

Item & Exhibits, on Form 8-K (§ 249.308 of this chapter).

(a) Furnish the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

50. By adding a new General Instruction H, Item 4 and Item 9; redesignating General Instructions H and I as I and J; renumbering Items 4, 9, 10 and 11 as Items 12, 10, 11 and 13; and revising General Instructions C, D and G, redesignated Instructions I and J, Items 1, 2, 3, 5, 6, 7 and 8 and renumbered Items 10, 11, 12 and 13 of Form 10-K in § 249.310 as follows (Form 10-K does not appear in the Code of Federal Regulations):

§ 249.310 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

General Instructions

C. Preparation of Report

(1) This Form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b-12. Except as provided in General Instruction G, the answers to the items shall be prepared in the manner specified in Rule 12b-13.

(2) ...

D. Signature and Filing of Report

(1) Three complete copies of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, and five additional copies which need not include exhibits, shall be filed with the Commission. At least one complete copy of the report, including financial statements, financial statement schedules, exhibits, and all other papers and documents filed as a part thereof, shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange shall be manually signed. Copies not manually signed shall bear typed or printed signatures.

(2)(a) The report shall be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. Where the registrant is a limited partnership, the report shall be signed by the majority of the board of directors of any corporate general partner who signs the report, (b) The name of each person who signs the report shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report. Attention is directed to Rule 12b-11 (17 CFR 240.12b-11) concerning manual signatures

and signatures pursuant to powers of attorney.

*G. Information to be Incorporated by Reference*

(2) The information called for by Parts I and II of this Form (Items 1 through 9 or any portion thereof) may, at the registrant's option, be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(b) or Rule 14c-3(a) or from the registrant's annual report to security holders, even if not furnished to the Commission pursuant to Rule 14a-3(b) or Rule 14c-3(a), provided such annual report contains the information required by Rule 14a-3.

Note.—In order to fulfill the requirements of Part I of Form 10-K, the incorporated portion of the annual report to security holders must contain the information required by Items 1-3 of Form 10-K, to the extent applicable.

(3) The information required for Part III (Items 10, 11 and 12) shall be incorporated by reference from the registrant's definitive proxy statement (filed or to be filed pursuant to Regulation 14A) or definitive information statement (filed or to be filed pursuant to Regulation 14C) which involves the election of directors, if such definitive proxy statement or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by the Form 10-K. However, if such definitive proxy or information statement is not filed with the Commission in the 120-day period, the Items comprising the Part III information must be filed as part of the Form 10-K, or as an amendment to the Form 10-K under cover of Form 8, not later than the end of the 120-day period. It should be noted that the information regarding executive officers required by Item 401 of Regulation S-K (§ 229.401 of this chapter) may be included in Part I of Form 10-K under an appropriate caption. See Instruction 4 to Item 401(b) of Regulation S-K (§ 229.401(b) of this chapter).

(4) No item numbers or captions of items need be contained in the material incorporated by reference into the report. However, the registrant's attention is directed to Rule 12b-23(e) (17 CFR 240.12b-23(e)) regarding the specific disclosure required in the report concerning information incorporated by reference. When the registrant combines all of the information in Parts I and II of this Form (Items 1 through 9) by incorporation by reference from the registrant's annual report to security holders and all of the information in Part III of this Form (Items 10, 11 and 12) by incorporation by reference from a definitive proxy statement or information statement involving the election of directors, then, notwithstanding General Instruction C(1), this Form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by Part IV of this Form, signatures, and a cross reference sheet setting forth the item numbers and captions

in Parts I, II and III of this Form and the page and/or pages in the referenced materials where the corresponding information appears.

*H. Integrated Reports to Security Holders*

Annual reports to security holders may be combined with the required information of Form 10-K and will be suitable for filing with the Commission if the following conditions are satisfied:

(1) The combined report contains full and complete answers to all items required by Form 10-K. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made. If the information required by Part III of Form 10-K is omitted by virtue of General Instruction G, a definitive proxy or information statement shall be filed.

(2) The cover page and the required signatures are included. As appropriate, a cross-reference sheet should be filed indicating the location of information required by the items of the Form.

*I. Registrants Filing on Form S-18*

If the registrant is subject to the reporting requirements of Section 15(d) of the Exchange Act and such obligation arises solely because the registrant has filed a registration statement on FoAn S-18 (17 CFR 239.28) which has become effective during the last fiscal year, the registrant may comply with the disclosure requirements of Form S-18 Item 6, Description of Business; Item 10, Remuneration of Directors and Officers; and Item 13, Interest of Management and Others in Certain Transactions, in lieu of complying with the disclosure requirements of Item 1, Business, and Item 11, Management Remuneration and Transactions, herein. Item 6 of this Form, Selected Financial Data, may be omitted at the election of such registrant.

*J. Omission of Information by Certain Wholly-Owned Subsidiaries*

- (2) \*\*\*
- (b) Such registrants may omit the list of subsidiaries exhibit required by Item 601 of Regulation S-K (§ 229.601 of this chapter).
- (c) Such registrants may omit the information called for by the following otherwise required items: Item 4, Submission of Matters to a Vote of Security Holders; Item 10, Directors and Executive Officers of the Registrant; Item 11, Management Remuneration and Transactions; and Item 12, Security Ownership of Certain Beneficial Owners and Management.

Securities and Exchange Commission,  
Washington, D.C. 20549

Form 10-K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

State the aggregate market value of the voting stock held by non-affiliates of the registrant. The aggregate market value shall be computed by reference to the price at

which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in Rule 405, 17 CFR 230.405).

Note.—If a determination as to whether a particular person or entity is an affiliate cannot be made without involving unreasonable effort and expense, the aggregate market value of the common stock held by non-affiliates may be calculated on the basis of assumptions reasonable under the circumstances, provided that the assumptions are set forth in this Form.

*Part I*

Item 1. Business.

Furnish the information required by Item 101 of Regulation S-K (§ 229.101 of this chapter) except that the discussion of the development of the registrant's business need only include developments since the beginning of the fiscal year for which this report is filed.

Item 2. Properties.

Furnish the information required by Item 102 Regulation S-K (§ 229.102 of this chapter).

Item 3. Legal Proceedings.

(a) Furnish the information required by Item 103 of Regulation S-K (§ 229.103 of this chapter).

(b) As to any proceeding that was terminated during the fourth quarter of the fiscal year covered by this report, furnish information similar to that required by Item 103 of Regulation S-K (§ 229.103 of this chapter), including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders.

If any matter was submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

- (a) The date of the meeting and whether it was an annual or special meeting.
- (b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Rule 14a-11 (17 CFR 240.14a-11) of Regulation 14A under the Act) terminating any solicitation subject to Rule 14a-11, including the cost or anticipated cost to the registrant.

Instructions:

1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders'

meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14A under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant has published a report containing all of the information called for by this item, the item may be answered by a reference to the information contained in such report.

Part II

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.

Furnish the information required by Item 201 of Regulation S-K (§ 229.201 of this chapter).

Item 6. Selected Financial Data.

Furnish the information required by Item 301 of Regulation S-K (§ 229.301 of this chapter).

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation.

Furnish the information required by Item 303 of Regulation S-K (§ 229.303 of this chapter).

Item 8. Financial Statements and Supplementary Data.

Furnish financial statements meeting the requirements of Regulation S-X (§ 21Q of this chapter) and the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter). Financial statements of the registrant and its subsidiaries consolidated as required by Rule 14a-3(h) shall be filed under this item. Other financial statements and schedules required under Regulation S-X may be filed as "Financial Statement Schedules" pursuant to Item 13 Exhibits, Financial Statement Schedules, and Reports on Form 8-K, of this Form.

Item 9. Disagreements on Accounting and Financial Disclosure.

Furnish the information required by Item 304 of Regulation S-K (§ 229.304 of this chapter).

Part III

Item 10. Directors and Executive Officers of the Registrant.

Furnish the information required by Item 401 of Regulation S-K (§ 229.401 of this chapter).

Item 11. Management Remuneration and Transactions.

Furnish the information required by Item 402 Regulation S-K (§ 229.402 of this chapter).

Item 12. Security Ownership of Certain Beneficial Owners and Management.

Furnish the information required by Item 403 of Regulation S-K (§ 229.403 of this chapter).

Part IV

Item 13. Exhibits, Financial Statement Schedules, and Reports on Form 8-K.

(a) Those exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter) and by paragraph (c) below. Where any financial statement, financial statement schedule, or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. For purposes of all rules concerning incorporation by reference a financial statement schedule shall constitute an "exhibit." See Rule 12b-23 (§ 240.12b-23 of this chapter).

(c) Registrants shall file, as exhibits to this Form, the exhibits required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

51. By revising paragraphs (b)(1)(i) and (2) and (a)(3) of § 250.103A to read as follows:

§ 250.103A Liability for certain statements by issuers.

(b) \* \* \*

(1) \* \* \*

(i) At the time such statements are made or reaffirmed, either the issuer is "subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K; or, if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter), management's discussion and analysis

of financial condition and results of operations, or Item 302 of Regulation S-K (§ 229.302 of this chapter), supplementary financial information, and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q, or in an annual report to shareholders meeting the requirements of Rules 14a-3 (b) and (c) or 14c-3 (a) and (b) under the Securities Exchange Act of 1934.

(c) \* \* \* \*

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations - included pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter) or

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

52. By revising paragraphs (b)(1)(i), (2) and (c)(3) of § 260.0-11 to read as follows:

§ 260.0-11 Projections of future economic performance by issuers.

(b) \* \* \*

(1) \* \* \*

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K; or, if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 13(b) or (g) of the Securities Exchange Act of 1934, and

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S-K (§ 229.302 of this chapter), supplementary financial information, and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q, or in an annual report to shareholders meeting the requirements of Rule 14a-3 (b) and (c) or 14c-3 (a) and (b) under the Securities Exchange Act of 1934.

(c) \*\*\*\*\*

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter); or

\* \* \* \* \*

53. By revising the facing sheet, signature page and Instructions as to Summary Prospectuses of Form N-1 in § 274.11 to read as follows (Form N-1 does not appear in the Code of Federal Regulations):

§ 274.11 Form N-1, registration statement of open end management investment companies.

\* \* \* \* \*

Check box if it is proposed that this filing will become effective (immediately upon filing or on (date)) pursuant to paragraph (b) of Rule 485.

\* \* \* \* \*

#### Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant, ..... (certifies that it meets all of the requirements for effectiveness of this Registration Statement pursuant to Rule 485(b) under the Securities Act of 1933 and) has duly caused this registration statement to be signed on its behalf by the undersigned thereunto duly authorized, \* \* \*

\* \* \* \* \*

#### Instructions as to Summary Prospectuses

The summary prospectus to be used pursuant to Rule 431 (§ 230.431 of this chapter) for companies whose securities are registered on Form N-1 shall be available only if (1) a Registration Statement relating to these securities has been filed, \* \* \*

\* \* \* \* \*

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; Sec. 308(a)(2), 90 Stat. 57; Secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a)1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78f, 78m, 78n, 78o(d), 78w(a), 79(a), 77sss(a), 80a-37)

By the Commission.

George A. Fitzsimmons,  
*Secretary.*

March 3, 1982.

[FR Doc. 82-7054 Filed 3-15-82; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 211

[Release Nos. 33-6386; 34-18527; AS-307;  
File No. S7-872]

#### Rescission of Certain Accounting Series Releases Relating to the Computation of the Ratio of Earnings to Fixed Charges

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Rescission of interpretive releases.

**SUMMARY:** The Commission announces rescission of two interpretive releases relating to the computation and presentation of the ratio of earnings to fixed charges and the ratio of earnings to combined fixed charges and preferred dividends in filings with the Commission. The interpretations provided in Accounting Series Release Nos. 119 and 122 are no longer necessary because of amendments to the requirements for these ratios adopted in a separate action announced today. Similarly, the guidance for computing these ratios provided in Topics 3-B and 9-B of Staff Accounting Bulletin No. 40 is no longer necessary and is also being deleted.

**EFFECTIVE DATE:** March 3, 1982.

**FOR FURTHER INFORMATION CONTACT:** John W. Albert, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202-272-2133).

**SUPPLEMENTARY INFORMATION:** In a separate action announced today, the Commission adopted a comprehensive revision to the rules and forms governing the registration of securities under the Securities Act of 1933. These rule amendments include, among other things, the adoption of requirements for the presentation of the ratio of earnings to fixed charges and the ratio of earnings to combined fixed charges and preferred dividends. Under these rules, requirements governing the computation and disclosure of these ratios on an historical and pro forma basis have been revised and standardized.

<sup>1</sup>Release No. 33-6383, "Adoption of Integrated Disclosure System" (March 3, 1982) (Published elsewhere in this issue).

Prior to the adoption of these rules instructions for the computation and presentation of these ratios were contained in various Commission forms and were supplemented by (related interpretations set forth in certain accounting series releases. Accounting Series Release No. 119<sup>2</sup> prohibits the deduction of actual or imputed interest income, investment income, or gains on retirement of debt from fixed charges for purposes of computing either the historical or pro forma ratio of earnings to fixed charges. Similarly, Accounting Series Release No. 122<sup>3</sup> sets forth conditions under which the ratio of earnings to fixed charges should also be presented on a total enterprise basis. These interpretations have been incorporated, with minor revisions, into the revised rules.

In view of the revised requirements for presentation of the ratio of earnings to fixed charges and the ratio of earnings to combined fixed charges and preferred dividends adopted today, the interpretations provided in Accounting Series Release Nos. 119 and 122 are no longer necessary and are hereby rescinded. Similarly, the guidance provided in Topics 3-B and 9-B of Staff Accounting Bulletin No. 40 is no longer necessary and is also being deleted.<sup>4</sup>

#### PART 211—INTERPRETIVE RELEASES RELATING TO ACCOUNTING MATTERS

**COMMISSION ACTION:** The Commission hereby rescinds and removes the following releases in the accounting series, Part 211 of Title 17, Chapter II, of the Code of Federal Regulations: Accounting Series Release Nos. 119, 122.

\* \* \* \* \*

(Sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)) of the Securities Act of 1933 and Sections 12, 13, 15(d) and 23(a) [15 U.S.C. 78f, 78m, 78o(d), 78w(a)] of the Securities Exchange Act of 1934)

By the Commission.

George A. Fitzsimmons,  
*Secretary.*

March 3, 1982.

[FR Doc. 82-6815 Filed 3-12-82; 8:45 am]

BILLING CODE 8010-01-M

<sup>2</sup>"Computation of Ratio of Earnings to Fixed Charges," June 15, 1971 (36 FR 11918).

<sup>3</sup>"Coverage of Fixed Charges," August 10, 1971 (36 FR 15527).

<sup>4</sup>Topics 3-B and 9-B provide guidance on computing the income tax effects of preferred stock dividends and determining when a parent company ratio should also be presented, respectively. This guidance has also been incorporated into the revised rules.