

Chesterfield, VA—Chesterfield County, SDF Rwy 33, Original

\*\*\* effective August 11, 1977.

Omaha, NE—Eppley Airfield, LOC (BC) Rwy 32L, Amdt. 10, cancelled

\*\*\* effective July 13, 1977.

Denver, CO—Arapahoe County, LOC Rwy 34R, Amdt. 2

3. By amending § 97.27 NDB/ADF SIAP's identified as follows:

\*\*\* effective September 8, 1977.

Carmi, IL—Carmi Municipal, NDB Rwy 36, Amdt. 2

Pittsfield, IL—Pittsfield-Penstone Municipal, NDB Rwy 31, Amdt. 1

Boone, IA—Boone Muni., NDB Rwy 14, Amdt. 4

Boone, IA—Boone Muni., NDB Rwy 32, Original

Davenport, IA—Davenport Muni., NDB Rwy 2, Amdt. 8

Kansas City, KS—Fairfax Muni., NDB-B, Amdt. 10

New Bedford, MA—New Bedford Muni., NDB Rwy 5, Amdt. 5

Trenton, MO—Trenton Muni., NDB Rwy 17, Amdt. 2

Trenton, MO—Trenton Muni., NDB Rwy 35, Amdt. 4

Coatesville, PA—Chester County G.O. Carlson, NDB Rwy 11, Amdt. 4

Burlington, VT—Burlington International, NDB Rwy 15, Amdt. 15

Lyndaville, VT—Caledonia County, NDB Rwy 2, Original

Chesterfield, VA—Chesterfield County, NDB Rwy 33, Amdt. 2

\*\*\* effective August 11, 1977.

Stow, MA—Minute Man Airfield, NDB-A, Amdt. 5

\*\*\* effective July 13, 1977.

Denver, Co—Arapahoe County, NDB, Rwy 34R, Amdt. 2

4. By amending § 97.29 ILS-MLS SIAP's identified as follows:

\*\*\* effective October 6, 1977.

Fairbanks, AK—Fairbanks International, ILS Rwy 1L, Amdt. 1

\*\*\* effective September 8, 1977.

Bloomington, IL—Bloomington-Normal, ILS Rwy 29, Amdt. 3

Kansas City, KS—Fairfax Muni., ILS-A, Amdt. 13

New Bedford, MA—New Bedford Muni., ILS Rwy 5, Amdt. 13

Pontiac, MI—Oakland-Pontiac, ILS Rwy 9R, Amdt. 7

Cleveland, OH—Cuyahoga County, ILS Rwy 23, Amdt. 4

Allentown, PA—Allentown-Bethlehem-Easton, ILS Rwy 13, Amdt. 2

Philadelphia, PA—North Philadelphia, ILS Rwy 24, Amdt. 7

Burlington, VT—Burlington International, ILS Rwy 15, Amdt. 16

\*\*\* effective August 11, 1977.

Omaha, NE—Eppley Airfield, ILS Rwy 32L, Original

\*\*\* effective July 14, 1977.

Kotzebue, AK—Ralph Wien Memorial, ILS/DME Rwy 8, Amdt. 1

NOTE.—Change FAA Form 8260-3 for Miami International, Miami, Florida, ILS Rwy 9R Amdt. 2 to Amdt. 3 published in transmittal letter 77-28.

5. By amending § 97.31 RADAR SIAP's identified as follows:

\*\*\* effective September 8, 1977.

Burlington, VT—Burlington International, RADAR-1, Amdt. 1

\*\*\* effective August 25, 1977.

Big Springs, TX—Howard County, RADAR-1, Orig. cancelled

\*\*\* effective August 11, 1977.

Beaumont-Port Arthur, TX—Jefferson County, RADAR-1, Amdt. 1

\*\*\* effective July 13, 1977.

Denver, CO—Arapahoe County, RADAR-1, Amdt. 6

6. By amending § 97.33 RNAV SIAP's identified as follows:

\*\*\* effective September 8, 1977.

Davenport, IA—Davenport Muni., RNAV Rwy 14, Amdt. 2

Davenport, IA—Davenport Muni., RNAV Rwy 32, Amdt. 2

Kansas City, KS—Fairfax Muni., RNAV Rwy 17, Amdt. 3

Kansas City, KS—Fairfax Muni., RNAV-C, Amdt. 5

Cleveland, OH—Cuyahoga County, RNAV Rwy 23, Amdt. 5

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354 (a), 1421, and 1510), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Delegation: 25 FR 6489 and Paragraph 802 of Order FSP 1100.1, as amended March 9, 1973.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on July 22, 1977.

JAMES M. VINES,

Chief, Aircraft Programs Division.

NOTE.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

[FR Doc. 77-21537 Filed 7-27-77; 8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER G—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER MAGNUSON-MOSS WARRANTY ACT

PART 700—INTERPRETATIONS OF MAGNUSON-MOSS WARRANTY ACT

Adoption of Interpretations and Explanatory Statement

Correction

In FR Doc. 77-19901, appearing at page 36112, in Part IV of the issue of Wednesday, July 13, 1977, on page 36115, in the third column, line seven of § 700.2 should read as follows: "parts used is the measuring date for".

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5844; 34-13787; IC-9862]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Filing and Disclosure Requirements Relating to Tender Offers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces: (1) the adoption of a new schedule which sets forth the disclosure requirements for persons making certain tender offers; and (2) the amendment of an existing rule to implement the filing of the schedule with the Commission and to specify the disclosure items contained in the schedule which are to be included or summarized in the information published, sent or given to security holders in connection with such tender offers. These actions, which are necessary in light of the dynamic nature of tender offers, are intended to augment the present statutory requirements by providing necessary disclosure to investors to enable them to make informed decisions in connection with a tender offer. The adoption of the schedule is part of the Commission's plan to replace its emergency rules under the Williams Act with a comprehensive regulatory framework with respect to tender offers.

EFFECTIVE DATE: August 31, 1977.

FOR FURTHER INFORMATION CONTACT:

John Huber, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-1750

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of new Schedule 14D-1 (17 CFR 240.14d-100) and the amendment of existing Rule 14d-1 (17 CFR 240.14d-1) which relate to the filing and disclosure requirements of persons making tender offers subject to Section 14(d) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)). These actions effectuate an intention previously announced by the Commission<sup>1</sup> to adopt separate schedules for reporting acquisitions subject to Section 13(d)(1) of the Exchange Act and for tender offers subject to Section 14(d)(1) of that Act. In order to facilitate an orderly transition to the use of separate schedules, the Commission today amend-

<sup>1</sup> Exchange Act Release No. 34-12676 (August 2, 1976) (41 FR 33004).

ed existing Schedule 13D (17 CFR 240.13d-101) and also announced that these actions will become effective concurrently with its beneficial ownership rules and schedules<sup>2</sup> on August 31, 1977. By adopting a separate Tender Offer Statement on Schedule 14D-1 at this time, the Commission anticipates the necessity of only one change over, viz. from Schedule 13D to Schedule 14D-1, and has attempted to avoid the unnecessary burden of requiring two change overs, viz. from the Schedule 13D in effect prior to August 31, 1977 to amended Schedule 13D and then again to Schedule 14D-1.

These actions are intended to provide more meaningful disclosure to security holders whose securities are being sought in certain tender offers. However, in taking these actions, the Commission has been mindful that any efforts to benefit investors in the context of tender offers should be made without unnecessarily tipping the balance of regulation in favor of either the person making the tender offer (the "bidder") or the management of the company whose securities are being sought (the "subject company").

The disclosure requirements embodied in Schedule 14D-1 and the amendments to existing Rule 14d-1 are primarily based on the proposed rules and schedules relating to tender offers which were published for comment by the Commission in 1976.<sup>3</sup> While Schedule 14D-1 has been adopted separately from the other tender offer proposals, it should be particularly noted that the other proposals have not been withdrawn by the Commission. Subsequent to the completion of the revision of certain of these proposals in response to the comment letters received from the public, the Commission presently anticipates further rulemaking action. At that time, the existing rules under Section 14(d)(1), with the exception of Schedule 14D-1, will be replaced by permanent rules and related schedules.

#### BACKGROUND

The Williams Act Amendments,<sup>4</sup> P.L. 90-439, provided for federal regulation of tender offers. The purpose of this federal regulation was to provide investor protection by requiring disclosure of material information and by affording substantive protection to shareholders.<sup>5</sup>

Congress considered the situation whereby a shareholder who was faced with making an investment decision in the context of a tender offer without adequate information as being "precisely the kind of dilemma which our Federal securities laws are designed to prevent."<sup>6</sup>

<sup>2</sup> Exchange Act Release No. 34-13291 (February 24, 1977) (42 FR 12342).

<sup>3</sup> Exchange Act Release No. 34-12676 (August 2, 1976) (41 FR 33004).

<sup>4</sup> Sections 13(d), 13(e), 14(d), 14(e) and 14(f) of the Exchange Act.

<sup>5</sup> S. Rep. No. 550, 90th Cong., 1st Sess. 1 (1967).

<sup>6</sup> *Id.* at 2.

While the primary objective of the Williams Act was to provide investor protection, Congress also recognized that "takeover bids should not be discouraged" and that the act should be administered in an even-handed way "to avoid tipping the balance of regulation either in favor of management or in favor of the person making the takeover bid." Thus, the act was designed to:

"... require full and fair disclosure for the benefit of investors while at the same time providing the offeror and management equal opportunity to fairly present their case."<sup>7</sup>

In order to immediately implement this statutory framework, the Commission adopted emergency rules and regulations under the Williams Act.<sup>8</sup> Subsequent to the passage of the 1970 Williams Act Amendments, P.L. 91-567, the Commission amended these emergency rules.<sup>9</sup>

In November and December 1974, the Commission conducted a Public Fact-Finding Investigation in the Matter of Beneficial Ownership, Takeovers and Acquisitions by Foreign and Domestic Persons ("Tender Offer Hearings").<sup>10</sup> The written and oral testimony of witnesses and letters of comment highlighted certain issues regarding tender offers and the need for rulemaking action by the Commission.

On the basis of the Tender Offer Hearings, Congressional hearings,<sup>11</sup> judicial decisions and the Commission's experience with the existing regulatory framework, the Commission in August 1976 published its tender offer proposals for comment.<sup>12</sup> These proposals represented the Commission's first comprehensive rulemaking proposals under the Williams Act with respect to tender offers. They were intended to provide specific disclosure and dissemination requirements, additional substantive regulatory protections, particular antifraud provisions and other regulations relating to cash tender. Therefore, by providing for full disclosure, Congress acted "to correct the current gap in our securities laws."<sup>13</sup>

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Exchange Act Release No. 8370 (July 30, 1968) (33 FR 11015) amended by Release No. 8392 (August 30, 1968) (33 FR 13036). See also Release No. 8556 (March 24, 1969) (34 FR 6101).

<sup>11</sup> Exchange Act Release No. 9060 (January 18, 1971) (36 FR 976). The Commission has also adopted rules relating to short-tendering of securities (17 CFR 240.10b-4) and purchases during a tender offer by a bidder other than pursuant to such offer (17 CFR 240.10b-13).

<sup>12</sup> Securities Act Release Nos. 5\*29 (September 9, 1974) (39 FR 33835) and 5538 (November 5, 1974) (39 FR 41223).

<sup>13</sup> See, e.g., Hearings Before the Senate Committee on Banking, Housing, and Urban Affairs on Corporate Takeovers, 94th Cong., 2d Sess. (1976).

<sup>14</sup> Exchange Act Release No. 34-12676 (August 2, 1976) (41 FR 33004).

<sup>15</sup> *Id.* at 4.

offers and exchange offers. Pursuant to its request for comments, 111 letters<sup>14</sup> were submitted by the following commentators:

Corporations .....	54
Law Firms and Associations .....	24
Securities Industry .....	8
Trade Organizations and Associations .....	6
Academics .....	2
State Administrative Agencies .....	2
Other Interested Persons .....	5

On the basis of the comment letters and the Commission's subsequent experience, certain of the tender offer proposals are currently undergoing revision. The Commission is of the view that the adoption of the present proposals and those now being revised, will implement the intent of Congress in enacting Sections 14(d) and 14(e) of the Exchange Act. The adoption of Schedule 14D-1 represents the first step by the Commission in establishing a comprehensive regulatory framework specifically designed for tender offers.

#### SYNOPSIS OF ADOPTED SCHEDULE AND AMENDED RULE AND SCHEDULE

This synopsis is included in order to assist all interested persons in their understanding of and compliance with the filing and disclosure provisions of new Schedule 14D-1, amended Rule 14d-1, and amended Schedule 13D. However, attention is directed to the actual text of the schedules and rule for a more complete understanding.

#### A. TENDER OFFER STATEMENT: SCHEDULE 14D-1 (17 CFR 240.14D-100)

(1) *Cover sheet.* The Cover Sheet of the proposed Schedule contained an instruction that eight copies of the statement, including all exhibits, should be filed with the Commission. This instruction has been modified to require the filing with the Commission at its headquarters office of ten copies of the statement. Eight of these copies should include all exhibits, while the other two copies should include the exhibits described in Item 11(a) of the Schedule (i.e., the tender offer materials). This modification is intended to insure that the number of copies filed is sufficient to allow the Commission to transmit copies to the regional offices.

A second instruction concerning filing fees has been included on the Cover Sheet. In the release announcing the tender offer proposals (the "Tender Offer Release"),<sup>15</sup> the Commission in-

<sup>14</sup> See File No. S7-649. For the convenience of the public, a copy of the summary of these comment letters, which was prepared by the staff of the Commission, has been placed in the public file. However, it should be noted that in adopting these proposals, the Commission relied on the comment letters themselves, rather than on the staff's summary of comments.

<sup>15</sup> Exchange Act Release No. 34-12676 (August 2, 1976) (41 FR 33004).

licated that a non-refundable fee would be required to be paid when the initial Schedule 14D-1 is filed and that no additional filing fees would be required for amendments thereto. The determination of the amount of such a fee includes consideration of the direct and indirect cost to the Government, the value to the recipient, public policy or interest served and other pertinent factors.<sup>38</sup> While the Commission still plans to require a fee for all Williams Act filings as described above, consideration of the formal fee structure has not been completed. Therefore, the issue of fees will be handled in a subsequent release. Until such time, no fee will be required with respect to the filing of Schedule 14D-1 or any amendment thereto. Instruction 2 to the Cover Sheet was added to reflect this position.

(2) *General instructions.* As published for comment, proposed Schedule 14D-1 contained four instructions which generally pertained to the preparation of the schedule and the filing of amendments thereto. With certain significant exceptions, the instructions to Schedule 14D-1 generally conform to those which were proposed.

Instruction C of the proposed Schedule recognized that disclosure is not limited to the person filing the statement when the bidder is a partnership, a limited partnership, a syndicate, other group or a corporation. However, the additional persons who are subject to the Schedule's reporting requirements should be identifiable and the number of such persons should not be so broad as to cause the benefits of disclosure to be outweighed by the burdens of compliance placed on the bidder. Consequently, proposed Instruction C was intended to clarify and to curtail, as far as feasible, the additional persons who would be subject to the disclosure requirements of Items 2-7 of the proposed Schedule. With certain modifications, this intent has been maintained in Instruction C as adopted.

If the statement is filed by a partnership, limited partnership, syndicate or other group and, thus, by operation of clauses (i) through (iv) of the Instruction, refers to a corporation or if the statement is filed by a corporation, clauses (a), (b) and (c) of Instruction C set forth the additional persons with respect to such corporation (the "bidding corporation") to whom Items 2-7 of the Schedule apply. Clause (a) makes the Instruction applicable to each executive officer and director of the bidding corporation. Each person controlling the bidding corporation is covered by clause (b), while each executive officer and director of any corporation ultimately in control of the bidding corporation is included pursuant to clause (c). Clauses (a) and (c) of Instruction C require disclosure only regarding executive officers and directors rather than all officers. The term "executive officer" is

defined in Instruction C. Clause (b) requires disclosure of all persons controlling the bidding corporation which includes any corporation ultimately in control of the bidding corporation. In multiple tier corporate structures, e.g. where one or more layers of controlling corporations exist between the bidding corporation and the corporation in ultimate control, clause (b), among other things, requires identification and disclosure concerning the corporations in the mid-tier corporate structure. An officer or director of a mid-tier corporation would not be included within clause (b) if such officer or director did not control the bidding corporation. Moreover, as is discussed below, corporations in the multiple tier structure which did not control the bidding corporation are also excluded from the operation of clause (b).

The following is furnished as an example of the operation of clauses (a), (b), and (c) of Instruction C. Corporation C (the bidding corporation) makes a tender offer. Corporation C is controlled by Corporation B (a mid-tier corporation) which is in turn controlled by Corporation A (the corporation in ultimate control of the bidding corporation). Corporation A also controls Corporation D which has no ownership of or control over Corporation C. Under clause (a), each executive officer and director of Corporation C would be subject to Instruction C. Under clause (b), Corporations B and A would be subject to Instruction C. Additionally, any officer or director of Corporation B who also controls Corporation C would be subject to Instruction C because of clause (b). Pursuant to clause (c) of Instruction C, each executive officer and director of Corporation A would be subject to that Instruction. However, since Corporation D does not control Corporation C, it would not be subject to Instruction C and none of Corporation D's officers or directors would be so subject, assuming that each such officer or director does not control Corporation C.

While Instruction C is intended for the purposes described above it should be noted that if disclosure of certain information concerning a corporation not specified above would be material to an investment decision by a security holder of the subject company whether to sell, tender or hold the securities being sought, such information should be included. For example, if a controlling person of the bidding corporation has a privately held corporation which has engaged in merger negotiations with the subject company in the subject company's fiscal year immediately prior to the tender offer, such information should be disclosed even though such privately held corporation is not specified in Instruction C. The Commission will administer Instruction C mindful that the primary purpose of the Williams Act is to provide investor protection.

Proposed Instruction C also pertained to limited partnerships. In response to the commentators, a new clause specifi-

cally dealing with limited partnerships was added to the Instruction. Clause (ii) of Instruction C would require disclosure of each partner who is denominated as a general partner or who functions as a general partner of such limited partnership. Limited partners who do not act or have the power to act in a manner substantially equivalent to general partners would be excluded. This amendment was intended to be consistent with the changes made in the disclosure required of corporations.

Instruction D of the proposed Schedule dealt with the filing of a final amendment to proposed Schedule 14D-1 upon the termination of the tender offer. Unless there had been a material change in the information previously reported on proposed Schedule 14D-1, this final amendment would have been deemed sufficient to satisfy the reporting requirements of Section 13(d) of the Exchange Act. In response to the commentators who criticized proposed Instruction D as being unclear, revisions were made to that Instruction and new Instructions E and F were adopted. Instruction D of the Schedule requires the filing of a final amendment promptly after the termination of the tender offer. The final amendment would include disclosure of material changes in the items of Schedule 14D-1, particularly Item 6(a), which have occurred since the filing of the most recent amendment to that schedule or, if no amendments have been filed, since the date of the initial filing of the schedule with the Commission. Statements that the tender offer has terminated, the date of such termination and the results of such tender offer would also be required. Instruction F of the Schedule sets forth the presumption that a final amendment which meets the requirements of Instruction D will be deemed to satisfy the reporting requirements of Section 13(d).

Instruction E of the Schedule pertains to a bidder who, prior to the filing of a Schedule 14D-1, has filed a Schedule 13D with respect to the acquisition of securities of the same class which is the subject of the bidder's tender offer. Instruction E states that a bidder in this situation must amend the previously filed Schedule 13D and permits such amendment to be made by means of the bidder's Schedule 14D-1 and amendments thereto, with the exception of the final amendment required by Instruction D. This is conditioned on the bidder making an indication on the cover sheet of the Schedule 14D-1 that it is amending its Schedule 13D by means of this statement. The final amendment required to be filed by Instruction D is excluded from the operation of Instruction E because of the provisions of Instruction F.

Although the Commission is not adopting proposed Rule 14d-1 at this time, two of the terms defined by that proposal, "bidder" and "subject company," are contained in Instruction G to Schedule 14D-1. Since these terms are repeatedly used in the Schedule, they were de-

<sup>38</sup> Independent Offices Appropriations Act, 31 U.S.C. 483(a).

defined in Instruction G in the interest of clarity.

(3) *Item 1. Security and Subject Company.* Item 1 of proposed Schedule 14D-1 require disclosure of certain information regarding the subject company and the class of equity securities of the subject company being sought by the tender offer. Partly in response to the comment letters, certain minor changes were made. First, the term "principal business address" contained in proposed Item 1(a) was changed to "principal executive offices" in order to be consistent with the disclosure required in other Commission filings. Second, a parenthetical clause was inserted in Item 1(b) of the Schedule to enable the bidder to rely on information contained in the most recently available filing with the Commission by the subject company with regard to the number of shares outstanding of the class of equity securities of the subject company being sought, unless the bidder has reason to believe that such information is not current. It should be noted that if the bidder is aware of any changes in the number of shares outstanding since the subject company's most recently available filing, reliance by the bidder on the parenthetical clause in Item 1(b) of the Schedule would be misplaced. Finally, proposed Item 1(c) was revised in two respects. It was made clear in Item 1(c) that the market price information required by that sub-item pertained to the principal market in which such securities are traded. The word "representative" which appeared in the parenthetical clause in proposed Item 1(c) was deleted since such information may not be ascertainable, particularly in the case of securities traded in the over-the-counter market.

(4) *Item 2. Identity and background.* Item 2 of the proposed Schedule pertained in part to disclosure requirements regarding the bidder and related persons concerning employment history, criminal convictions and certain civil actions for the five year period prior to the tender offer. While certain commentators criticized the proposed reduction of the ten year period previously required by Schedule 13D with regard to employment history and criminal convictions, others considered the proposed five year period ample. The five year time period is consistent with rulemaking action by the Commission in other areas of disclosure such as: Item 2 of amended Schedule 13D;<sup>29</sup> and the proposed amendments to Item 16 of Form S-1 [17 CFR 239.11], Item 19 of Form S-11 [17 CFR 239.18], Item 6 of Form 10 [17 CFR 249.210], Item 12 of Form 10-K [17 CFR 249.310] and Item 6 of Schedule 14A [17 CFR 240.14a-101].<sup>30</sup>

Additionally, the introductory paragraph of Item 2 was modified. This was intended to clarify the disclosure required

by Item 2 for natural persons as compared with other entities. If the person filing the statement or any person enumerated in Instruction C of the Schedule is a corporation, partnership, limited partnership, syndicate or other group of persons certain information is required. This includes: the name; the State or other place of organization; the principal business; the address of the principal office; and the information regarding criminal proceedings and civil actions required by Items 2 (e) and (f), respectively. If one or more of these is inapplicable or if the answer is in the negative, a statement should be made to that effect pursuant to Instruction A of the Schedule and/or the Instructions to Items 2 (e) and (f) respectively. While the requirement of a statement of principal business was not specifically proposed for comment, the issue of principal business was generally subject to comment and the requirement represents a codification of present tender offer practices. If the person filing the statement or any person enumerated in Instruction C is a natural person, the disclosure required by Items 2(a) through 2(g) should be provided with respect to any such person.

In the Commission's view, the expansion of disclosure required by Item 2 comports with the legislative history of the Williams Act.<sup>31</sup>

(5) *Item 3. Past contacts, transactions or negotiations with the subject company.* As proposed, Item 3 recognized that a tender offer may not be an isolated event in the corporate histories of the bidder and the subject company. Disclosure concerning certain events which occurred, either directly or indirectly, between these parties in the recent past is material to an investment decision by a security holder in the context of a tender offer.

Consequently, proposed Item 3(a) required disclosure of business relationships and transactions between the bidder or its affiliates and the subject company or its affiliates during the past three years. Proposed Item 3(b) called for disclosure of contacts, relationships, negotiations or transactions between those persons during a similar period which concerned events such as the following: a merger or consolidation with or acquisition of the subject company or any of its affiliates; a tender offer or other acquisition of securities of any class issued by the subject company; an election of directors of the subject company; and the sale or other transfer of a material amount of assets by the subject company or any of its subsidiaries.

Several commentators took the position that the scope of the disclosure of

business relationships or transactions as well as the number of persons who would be affected by the disclosure requirements of proposed Item 3(a) were too broad. In light of these comments, the persons included within the purview of Item 3(a) were more precisely defined and a materiality standard was added. Additionally, the term "relationships" was deleted and the three year period was clarified to pertain to the period since the commencement of the subject company's third full fiscal year preceding the date of the filing of the Schedule 14D-1. By focusing the period on the subject company rather than on the bidder or calendar years, this clarification was intended to benefit the shareholders of the subject company in understanding and analyzing the disclosure. As adopted, Item 3(a)(1) of the Schedule requires disclosure for transactions between the person filing this statement, including those persons enumerated in Instruction C, and the subject company or its affiliates which are corporations only if the aggregate amount involved for such fiscal year or portion of such current fiscal year in which such transaction occurred exceeded one percent of the subject company's consolidated revenues for that fiscal year or portion thereof. Thus, the disclosure is intended to match, as far as feasible, the fiscal year or current portion thereof in which the transaction occurred with the corresponding fiscal year or current portion thereof of the subject company. Item 3(a)(2) of the Schedule requires disclosure of a transaction or a series of transactions between the person filing this statement including the persons enumerated in Instruction C, and the executive officers, directors or affiliates of the subject company which are not corporations only if the aggregate amount involved for the entire period described in Item 3(a) exceeded \$40,000.

Certain changes were also made to Item 3(b). As in proposed Item 3(a), the term "relationships" in proposed Item 3(b) was deleted and the three year period was clarified in a similar manner. The scope of the persons affected by the disclosure requirements of Item 3(b) was more precisely defined and the types of events within the purview of that sub-item was modified. As adopted, Item 3(b) requires a description of any contacts, negotiations or transactions between the bidder or its subsidiaries or the persons enumerated in Instruction C and the subject company or its affiliates concerning: a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets. This description pertains to the period since the commencement of the subject company's third full fiscal year preceding the date of the filing of the Schedule 14D-1.

The changes in Item 3 are intended to reduce, to the extent feasible, the burden placed on the bidder by such disclosure, while at the same time furnishing sufficient information concerning past contacts, negotiations and

<sup>29</sup> Exchange Act Release No. 34-13291 (February 24, 1977) (42 FR 12342).

<sup>30</sup> See Exchange Act Release No. 34-12946 (November 9, 1976) (41 FR 49493).

<sup>31</sup> "The competence and integrity of a company's management and of those persons who seek management positions are of vital importance to stockholders. Secrecy in this area is inconsistent with the expectations of the people who invest in the securities of publicly held corporations and impairs public confidence in securities as a medium of investment." S. Rep. No. 550, 90th Cong., 1st Sess., 2 (1967).

transactions to the shareholders of the subject company to assist them in making an informed investment decision.

(6) *Item 4. Source and amount of funds or other consideration.* Item 4 of the proposed Schedule increased the disclosure required by Schedule 13D with regard to the source and amount of funds or other consideration to be employed by the bidder in the tender offer. If any part of such funds or other consideration is borrowed or similarly obtained for the purpose of the tender offer, proposed Item 4 required disclosure of the material terms or conditions of such loan agreements such as the stated and effective interest rates as well as a description of any plans or arrangements to finance or repay such loans. If no such plans or arrangements have been made, a statement to that effect was required. To implement the provisions of Section 13(d) (1) (B) of the Exchange Act, proposed Item 4 established a procedure whereby the identity of certain banks making loans would not be available to the public, provided the bidder submitted a written request, including the identity of such bank, to the Secretary of the Commission.

With certain minor revisions, Item 4 as adopted is substantially similar to Item 4 as proposed. Several commentators questioned the meaning of the term "or similarly obtained" as proposed in Item 4. As a result of the comments submitted, the term "or similarly obtained" was deleted. However, Item 4(b) requires disclosure concerning any funds or other consideration which are expected to be, directly or indirectly, borrowed for the purpose of the tender offer as well as those which are in fact borrowed at the time of the filing of the Schedule. Additionally, the summary information required by Item 4(b) (1), if Item 4(b) is applicable, pertains to each arrangement as well as each loan agreement.

Other commentators criticized the proposed requirement that the bidder state the effective interest rate on loans obtained for the purpose of the tender offer. The Commission was not persuaded by these views. Disclosure regarding the effective interest rate is material in the context of tender offers. Disclosure of the stated interest rate and compensating balance requirements or arrangements, which was proposed by one commentator as an alternative to the effective interest rate, is not sufficient because an investor in the normal course may not be able to fully evaluate such information. However, in order to clarify the disclosure requirement where more than one loan agreement is involved, Item 4 (b) (1) of the Schedule requires, among other things, the effective interest rate for each such loan agreement, rather than a combined effective interest rate.

In the Commission's opinion, the disclosure requirements of Item 4 will provide more meaningful disclosure to investors in the context of tender offers and will not place an undue burden on the bidder.

(7) *Item 5. Purpose of the tender offer and plans and proposals of the bidder.* Item 5 of the proposed Schedule concerned disclosure of the bidder's purposes in making the tender offer for the subject company's securities, as well as the bidder's plans and proposals relating to the subject company after the completion of the tender offer. To obviate the possible limitation of the disclosure of purposes to the matters covered by Item 5(a) through 5(g), the main paragraph of Item 5 now contains two sentences. In order to clarify the meaning of the term "extraordinary corporate transaction," proposed Item 5(a) was revised. The examples contained in Item 5(a) are not intended to be exclusive but rather are intended to furnish guidance as to the type of corporate transaction which necessitates disclosure. Item 5(f) was also revised to include a description of any plans or proposals which relate to or would result in causing a class of securities of the subject company to cease to be quoted in an inter-dealer quotation system of a registered national securities association. This addition was considered to be consistent with Item 5(f), as proposed, which required such disclosure regarding the delisting of a class of securities of the subject company from a national securities exchange. In other respects, this item is the same as that proposed for comment.

(8) *Item 6. Interest in securities of the subject company.* As proposed for comment, Item 6 expanded the disclosure of beneficial ownership of securities of the class of securities being sought by the tender offer which had previously been required by Item 5 of Schedule 13D. In response to the comments submitted by several writers, a parenthetical clause was added to Item 6(a) permitting reliance on the most recently available filing with the Commission by the subject company in making the determination of the percentage of the class of securities beneficially owned by such persons unless the bidder has reason to believe the information in such filing is not current. Two instructions were added to Item 6(b). The first instruction provides that the description of any transaction during the past 60 days in the class of securities reported on by a person covered by the sub-item should include, but not necessarily be limited to: the identity of such person; the date of the transaction; the amount of such securities involved; the price per share of such securities; and where and how the transaction was effected. Pursuant to the second instruction, the disclosure required by Item 6(b) may be filed with the Commission after the date of the initial filing of the Schedule 14D-1 if such information is not available to the bidder at the time of such initial filing. However, this disclosure must be filed by amendment promptly and in no event later than two business days after such initial filing. Moreover, if such information is material, it must also be disclosed to the security holders of the subject company.

This instruction is intended to facilitate efforts to preserve the confidentiality of the tender offer, prior to the date it is first published, sent or given to security holders, in order to avoid possible misuse of inside information.

Although Item 6(b) of the Schedule relates to transactions in the class of securities reported on, it should be noted that the Commission would consider transactions with respect to the subject company's securities, other than the class reported on (such as other classes of securities of the subject company, warrants and options) by such persons during such period as a matter of concern. In appropriate circumstances, disclosure regarding these transactions may be required by Item 10(f) of the Schedule, which is discussed below, or by other provisions of the Exchange Act, such as Section 14(e).

(9) *Item 7. Contracts, arrangements, understandings, or relationships with respect to the subject company's securities.* As proposed, Item 7 of the Schedule, which was substantially similar to Item 6 of Schedule 13D, required disclosure concerning any contract, arrangement, understanding, or relationship between the bidder or the persons enumerated in proposed Instruction C of the Schedule and any person with respect to any securities of the subject company. In response to several comment letters, the introductory language of the proposal was revised to require a description rather than complete information as proposed. This revision is intended to indicate that only the material terms rather than every detail of any such contract, arrangement, understanding or relationship are required to be disclosed.

(10) *Item 8. Persons retained, employed, or to be compensated.* Proposed Item 8 of the Schedule required disclosure concerning any persons and classes of persons employed, retained, or to be compensated by the bidder or by any person on the bidder's behalf to make solicitations or recommendations in connection with the tender offer. This item was adopted as proposed. It should be noted that compliance with this item should include information concerning any soliciting dealer's or similar fees offered by or on behalf of the bidder, including a brief description of any limitations thereon.

(11) *Item 9. Financial statements of certain bidders.* In proposed Schedule 14D-1, disclosure of the bidder's financial statements, prepared in compliance with Form 10 as amended (17 CFR 249.210), was required if an average, prudent investor ought reasonably to be informed of such information in deciding whether to tender, sell, or hold securities being sought in the tender offer. The commentators who were critical of this proposal expressed concern about the materiality test and the requirement of compliance with Form 10. While the concept of financial disclosure has been retained in the Schedule as adopted, several changes were made generally in response to the commentators. First, finan-

cial information is included in a separate disclosure item. Second, compliance with new Item 9 is required only where the bidder is other than a natural person<sup>22</sup> and only when the bidder's financial condition is material to a decision by security holders of the subject company whether to tender, sell, or hold securities being sought in the tender offer. As Instruction 1 to Item 9 points out, a determination as to whether disclosure of financial information is material is dependent on the facts and circumstances concerning the tender offer. These may include, but are not limited to: (1) the terms of the tender offer, particularly those terms concerning the amount of securities being sought, such as any or all, a fixed minimum with the right to accept additional shares tendered, all or none, and a fixed percentage of the outstanding; (2) whether the purpose of the tender offer is for control of the subject company; (3) the plans or proposals of the bidder described in Item 5 of the Schedule; and (4) the ability of the bidder to pay for the securities sought in the tender offer and/or to repay any loans made by the bidder or its affiliates in connection with the tender offer or otherwise. It should be noted that the factors described above are not exclusive nor is it necessary that any or all such factors be present in order to trigger the materiality test. Third, assuming the conditions of Items 9, as described above, are met, current, adequate financial information concerning the bidder should be furnished or, if the bidder is controlled by another entity which is not a natural person and has been formed for the purpose of making the tender offer, current, adequate financial information concerning such parent, should be furnished. This standard represents a modification of that which was proposed. In order to provide guidance as to what constitutes current, adequate financial information, Instruction 1 to Item 9 sets forth the types of financial information which will be deemed adequate for purposes of the Item. The "safe harbor" provided by Instruction 1 to Item 9 is premised on the nature of the bidder. Form 10 financial statements will be sufficient for a domestic bidder which is otherwise eligible to use that form, while Form 20 (17 CFR 249.200) financial statements will be sufficient for a foreign bidder which is otherwise eligible to use that form. Finally, two other instructions were added to Item 9 for the purpose of limiting possible burdens on the bidder. Instruction 2 to Item 9 pro-

vides for incorporation by reference of financial statements under certain conditions if the bidder is subject to the periodic reporting requirements of the Exchange Act. Instruction 3 to Item 9 permits a bidder who is not subject to the periodic reporting requirements of the Exchange Act to furnish unaudited financial statements if audited financial statements are not available or obtainable without unreasonable cost or expense and the bidder includes a statement to that effect, disclosing the reasons therefor, in response to Item 9.

The proviso to Item 9 requires financial information concerning a parent only if: (1) the bidder is controlled by another entity which is not a natural person; and (2) the bidder has been formed for the purpose of making the tender offer. However, it should be specifically noted that the Commission will not tolerate schemes to circumvent the requirements of Item 9 by relying on this proviso. Such schemes would include, for example, a tender offer made by a bidder which is a non-operating, shell corporation controlled by another corporation and which was previously formed for purposes other than making the tender offer. In this case, assuming that financial information is material to a decision by a security holder of the subject company whether to sell, tender or hold securities being sought in the tender offer, current, adequate financial information concerning such parent would be required.

(12) *Item 10. Additional information.*<sup>23</sup> In the proposed Schedule, Item 9 required disclosure of certain additional information if an average, prudent investor ought reasonably to be informed of such information in deciding whether to sell, tender, or hold securities being sought in the tender offer. Generally in response to the comment letters, the proposal was revised in several respects. First, the materiality test of the proposal, which was derived from the definition of the term "material" in Rule 12b-2(j) (17 CFR 240.12b-2(j)), was replaced by the term "material." The Commission presently plans to include a definition of that term substantially similar to that in Rule 12b-2(j) in the definitional section of the tender offer proposals when they are adopted. Second, Item 9(b) was revised to limit disclosure of applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer to those requirements or approvals which are known by the bidder after reasonable investigation. Third, disclosure of any material pending legal proceedings relating to the tender offer is required by Item 10(e). This sub-item was added to the narrative of the Schedule in response to the comment letters concerning the proposal that documents or papers relating to the tender offer

which are filed in any court also be filed as exhibits to the proposed Schedule. In lieu of that proposal, Item 10(e) was added along with an Instruction requiring that one copy of any document relating to a major development in a material pending legal proceeding described in Item 10(e) be promptly furnished to the Commission on a supplemental basis. This procedure coincides with the present administrative practice. These changes are intended to ensure that investors are provided with meaningful disclosure concerning material legal proceedings of courts and administrative agencies which relate to the bidder's tender offer, to avoid imposing unnecessary additional costs on the bidder and to reduce the burden on the filing systems of the Commission. Finally, Item 10(f), which is similar to Rule 408 under the Securities Act of 1933 (17 CFR 230.408) and Rule 12b-20 under the Exchange Act (17 CFR 240.12b-20), was added in response to the comment letters which had criticized the non-exclusive nature of the proposed item.<sup>24</sup> Under Item 10(f), disclosure is required of additional material information as may be necessary to make the statements required by the Schedule, in light of the circumstances under which they are made, not materially misleading. This disclosure would include matters which are closely related to the various items of the Schedule. For example, material litigation, other than that disclosed pursuant to Item 10(e) of the Schedule, which may reflect on the integrity of the bidder or would have a material effect on the bidder's financial condition or its ability to repay any loans made in connection with the tender offer, would be included within the purview of Item 10(f). Another example of the operation of Item 10(f) would be as follows: although Item 2(e) relates to criminal convictions during the past five years, if a person enumerated in Instruction C had been convicted in a material criminal proceeding six years prior to the date of the filing of the Schedule but had been serving a sentence or had been on probation during the five year period, disclosure of such conviction would be required by Item 10(f).

(13) *Item 11. Material to be filed as exhibits.* Proposed Item 10 required that certain materials be filed as exhibits to the proposed Schedule. Proposed Item 10(d) related to opinions prepared by legal counsel pertaining to the tender offer. This proposed filing requirement was opposed by several commentators who criticized its scope and application. Partly in response to these views, the proposal was substantially revised. Item 11(d) requires that any written opinion prepared by legal counsel at the bidder's request and communicated to the bidder which pertains to the tax consequences

<sup>22</sup> It should be noted, however, that under the facts and circumstances of a particular tender offer, financial information concerning a bidder who is a natural person may be material to an investment decision by holders of the class of securities being sought by such tender offer whether to tender, sell or hold such securities. Disclosure of material facts is not limited to the specific requirements of Schedule 14D-1. See, e.g., *Corenco Corporation v. Schiavone & Sons, Inc.*, 362 F. Supp. 939, 949 (S.D.N.Y. 1973) aff'd in part rem'd in part, 488 F.2d 207 (2d Cir. 1973).

<sup>23</sup> Due to the additions of a separate item regarding financial statements of certain bidders, this item and the item concerning the material to be filed as exhibits were re-numbered Items 10 and 11, respectively.

<sup>24</sup> This revision should not be misinterpreted. Disclosure of material facts is not limited to the specific requirements of Schedule 14D-1. See "Corenco" supra, note 20.

of the tender offer be filed as an exhibit to the Schedule.

**B. RULE 14d-1: FILING OF SCHEDULE 14D AND FURNISHINGS OF INFORMATION TO SECURITY HOLDERS (17 CFR 240.14d-1)**

Since the Commission determined to adopt Schedule 14D-1 separately from the other tender offer proposals, it became necessary to amend existing Rule 14d-1 (17 CFR 240.14d-1) on an interim basis. This action was taken to implement the filing of Schedule 14d-1 with the Commission and to ensure that the information published, sent or given to security holders of the class of securities being sought reflects the changes made by Schedule 14D-1.

Consequently, the words "Schedule 14D-1" were substituted for the words "Schedule 13D" where they had appeared in that rule. Rule 14d-1(c)(4) (17 CFR 240.14d-1(c)(4)) was also revised to reflect the items of Schedule 14D-1 which are required to be included or summarized in the information published, sent or given to security holders. Among these items is Item 9 which pertains to the financial statements of certain bidders. If Item 9 is applicable to a tender offer, the information required by it or a fair and adequate summary of such information is required to be furnished to security holders. While the financial statements necessary to present such a summary will vary depending on the facts and circumstances of a particular tender offer, the Commission believes that guidance may be helpful to bidders in making this determination. Instruction 2 to Rule 14d-1(c)(4) provides that summary financial information equivalent to that described in paragraph e of Guide 59 of the Guides for Preparation and Filing of Registration Statements will normally be sufficient summary disclosure of Item 9 of Schedule 14D-1 for purposes of Rule 14d-1(c)(4). If the financial information required by Item 9 is summarized, Instruction 2 also provides that appropriate instructions should be included stating how more complete financial information can be obtained. Revisions corresponding to those made in Rule 14d-1(c)(4) were also made to Rule 14d-1(d) (17 CFR 240.14d-1(d)).

Additionally, proposed Rule 14d-1(g) which had previously been proposed for comment,<sup>25</sup> was adopted. By this action, the definition of the term "beneficial owner" which is set forth in Rule 13d-3 (17 CFR 240.13d-3) for purposes of Section 13(d)(1) of the Exchange Act is applicable also for purposes of Section 14(d)(1) of that Act.

**C. SCHEDULE 13D: ACQUISITION STATEMENT (17 CFR 240.13D-101)**

In light of the transition to the use of separate schedules for reporting acquisitions subject to Section 13(d)(1) of the Exchange Act and for tender offers subject to Section 14(d)(1) of that Act, existing Schedule 13D (17 CFR 240.13d-

101) was amended by deleting Items 7 and 8 of that schedule. This action which had been previously indicated by the Commission<sup>26</sup> does not affect the proposed amendments to Schedule 13D which have been published for comment.<sup>27</sup>

**CERTAIN FINDINGS**

In publishing the tender offer proposals, the Commission specifically invited comments with respect to: (1) the costs of the proposals to bidders, subject companies and others; and (2) the impact or burdens of the proposals on competition which are neither necessary nor appropriate in furthering the purposes of the Exchange Act.

The comment letters which raised questions concerning the possible costs which might be engendered by the adoption of the proposals did not provide any significant basis for concluding that the implementation of the Commission's statutory mandate in the manner proposed would be outweighed by any such possible additional costs. In view of the Congressional presumption in favor of the adoption and amendment of the schedules and rule contained herein, the Commission finds that the costs imposed upon bidders by such rulemaking action are not unreasonable and are outweighed by the benefits which will accrue to investors.

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the schedules and rule adopted and amended herein will have on competition. In light of the lack of comments raising significant questions concerning the burdens on competition which the proposals adopted by the Commission would have, the Commission finds that compliance by bidders with these actions will not impose any significant burden on competition and that, in any event, any possible competitive burden will be outweighed by, and is necessary and appropriate to achieve, the benefits which disclosure of this information will provide to investors.

**AUTHORITY**

The Commission hereby adopts Schedule 14D-1 on a permanent basis and amends Rule 14d-1 and Schedule 13D pursuant to the authority set forth in Sections 13(d), 14(d), 14(e), and 23 of the Exchange Act. The Commission finds that any change in the adopted and amended rule and schedules from those published in the Beneficial Ownership Proposals<sup>28</sup> and the Tender Offer Pro-

<sup>25</sup> Exchange Act Release No. 34-13292 (February 24, 1977) (42 FR 12355).

<sup>26</sup> Id.

<sup>27</sup> Exchange Act Release No. 34-11616 (August 25, 1975) (40 FR 42212). Certain of these proposals were adopted in Exchange Act Release No. 34-13291 (February 24, 1977) (42 FR 12342) and other proposals relating to beneficial ownership were concurrently proposed for comment in Exchange Act Release No. 34-13292 (February 24, 1977) (42 FR 12355).

posals<sup>29</sup> have been generally subject to comment and are either technical in nature or are less burdensome than previous requirements or proposals so that further notice and other rulemaking procedures pursuant to the Administrative Procedure Act of 1946<sup>30</sup> are not necessary.

**TEXT OF ADOPTED SCHEDULE AND AMENDED RULE AND SCHEDULE**

The following are the actions being taken:

**§ 240.13d-101 [Amended]**

I. In 17 CFR 240.13d-101, Item 7, Persons Retained, Employed or to be Compensated, and Item 8, Material to be Filed as Exhibits, are deleted.

II. Rule 14d-1 is amended to read as follows:

**§ 240.14d-1 Filing of Schedule 14D-1 (§ 240.14d-1) and furnishing of information to security holders.**

(a) No person, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of the Act, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless, at the time copies of the offer or request or invitation are first published or sent or given to security holders, such person has filed with the Commission a statement containing the information and exhibits required by Schedule 14D-1.

(c) \* \* \*

(4) The information required by Items 1(c), 2(b), 2(e), 2(f), and 2(g); 3, 4, 5, 6, 7, 8, 9, and 10 of Schedule 14D-1 (§ 240.14d-100) or a fair and adequate summary thereof.

*Instructions.* 1. Negative responses to any such item or subitem of Schedule 14D-1 (§ 240.14d-100) need not be included in the information published or sent or given to security holders.

2. Although the financial statements necessary to present a fair and adequate summary of Item 9 of Schedule 14D-1 (§ 240.14d-100) may vary depending on the facts and circumstances involved, summary financial information equivalent to that required by paragraph e of Guide 59 of the Guides of Preparation and Filing of Registration Statements will normally be sufficient summary disclosure of Item 9 for purposes of paragraph (c)(4) of this section. If the information required by this section is summarized, appropri-

<sup>28</sup> Exchange Act Release No. 34-12676 (August 6, 1975) (41 FR 33004).

<sup>29</sup> 5 U.S.C. 553.

<sup>25</sup> Exchange Act Release No. 34-11616 (August 25, 1975) (40 FR 42212).

ate instructions should be included stating how more complete financial information can be obtained.

(d) Any additional material soliciting or requesting such tender offer subsequent to the initial solicitation or request shall contain the name of the persons making such solicitation or request and the information required by Items 1(c), 2(b), 2(e), 2(f), and 2(g); 3, 4, 5, 6, 8, 9, and 10 of Schedule 14D-1 (§ 240.14d-100), or a fair and adequate summary thereof: *Provided, however*, That such material may omit any of such information previously furnished to the persons solicited or requested for tender offers. Copies of such additional material soliciting or requesting such tender offers shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders.

(e) Ten copies of the statement required by paragraph (a), every amendment to such statement and all other material required by this rule and such statement shall be filed with the Commission.

(g) The definition of beneficial owner set forth in Rule 13d-3 (§ 240.13d-3) for purposes of section 13(d)(1) of the Act shall apply also for purposes of section 14(d)(1) of the Act.

III. Schedule 14D-1 is adopted 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.

(Amendment No. \_\_\_\_\_)

-----  
(Name of Subject Company)

-----  
(Bidder)

-----  
(Title of Class of Securities)

-----  
(CUSIP Number of Class of Securities)

-----  
(Name, address and telephone number of person authorized to receive notices and communications on behalf of bidder)

*Instructions.* 1. Eight copies of this statement, including all exhibits, and two additional copies of this statement, including only the exhibits described in Item 11(a) of this statement, should be filed with the Commission.

2. No fee is required to be paid to the Commission in connection with the filing of the initial statement or amendments thereto.

*General Instructions A.* The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference shall be clearly identified in the reference by

page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2-7, inclusive, shall be given with respect to: (i) each partner of such 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 ultimately in control of such corporation. Executive officer shall mean the president, secretary, treasurer and any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy making functions for the corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

D. Upon termination of the tender offer, the bidder shall promptly file a final amendment to Schedule 14D-1 [§ 240.14d-100] disclosing all material changes in the items of that Schedule and stating that the tender offer has terminated, the date of such termination and the results of such tender offer.

E. If the bidder, before filing this statement, has filed a Schedule 13D [§ 240.13d-101] with respect to the acquisition of securities of the same class referred to in Item 1(a) of this statement, the bidder shall amend such Schedule 13D [§ 240.13d-101] and may do so by means of this statement and amendments thereto, including the final amendment required to be filed by Instruction D: *Provided*, That the bidder indicates on the cover sheet of this statement that it is amending its Schedule 13D [§ 240.13d-101] by means of this statement.

F. The final amendment required to be filed by Instruction D shall be deemed to satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the bidder pursuant to the tender offer as reported in such final amendment.

G. For purposes of this statement, the following definitions shall apply:

(i) The term "bidder" means any person on whose behalf a tender offer is made; and

(ii) The term "subject company" means any issuer whose securities are sought by a bidder pursuant to a tender offer.

*Item 1. Security and subject company.* (a) State the name of the subject company and the address of its principal executive offices;

(b) State the exact title and the number of shares outstanding of the class of equity securities being sought (which may be based upon information contained in the most recently available filing with the Commission by the subject company unless the bidder has reason to believe such information is not current), the exact amount of such securities being sought and the consideration being offered therefor; and

(c) Identify the principal market in which such securities are traded and state the high and low sales prices for such securities in such principal market (or, in the absence thereof, the range of high and low bid quotations)

for each quarterly period during the past two years.

*Item 2. Identity and background.* If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (e) and (f) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (g) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted;

(d) Material occupations, positions, offices or employments during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office or employment was carried on. *Instruction.* If a person has held various positions with the same organization, or if a person holds comparable positions with multiple related organizations, each and every position need not be specifically disclosed.

(e) Whether or not, during the last 5 years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. *Instruction.* While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(f) Whether or not, during the last 5 years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting activities subject to, federal or state securities laws or finding any violation of such laws; and, if so, identify and describe such proceeding and summarize the terms of such judgment, decree or final order. *Instruction.* While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(g) Citizenship(s).

*Item 3. Past contacts, transactions or negotiations with the subject company.* (a) Briefly state the nature and approximate amount (in dollars) of any transaction, other than those described in Item 3(b) of this schedule, which has occurred since the commencement of the subject company's third full fiscal year preceding the date of this schedule, between the person filing this schedule (including those persons enumerated in Instruction C of this schedule) and:

(1) The subject company or any of its affiliates which are corporations: *Provided, However*, That no disclosure need be made with respect to any transaction if the aggregate amount involved in such transaction was less than one percent of the subject company's consolidated revenues (which may be based upon information contained in the most recently available filing with the Commission by the subject company, unless the bidder has reason to believe otherwise) (i) for the fiscal year in which such transaction occurred or, (ii) for the portion of the current fiscal year which has occurred, if the transaction occurred in such year; and

(2) The executive officers, directors or affiliates of the subject company which are

not corporations if the aggregate amount involved in such transaction or in a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, exceeds \$40,000.

(b) Describe any contacts, negotiations or transactions which have occurred since the commencement of the subject company's third full fiscal year preceding the date of this schedule between the bidder or its subsidiaries (including those persons enumerated in Instruction C of this schedule) and the subject company or its affiliates concerning: a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

**Item 4. Source and amount of funds or other consideration.** (a) State the source and the total amount of funds or other consideration for the purchase of the maximum number of securities for which the tender offer is being made.

(b) If all or any part of such funds or other consideration are or are expected to be, directly or indirectly, borrowed for the purpose of the tender offer:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions relative to such loan agreement; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowings, or if no such plans or arrangements have been made, make a statement to that effect.

(c) If the source of all or any part of the funds to be used in the tender offer is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

**Item 5. Purpose of the tender offer and plans or proposals of the bidder.** State the purpose or purposes of the tender offer for the subject company's securities. Describe any plans or proposals which relate to or would result in:

(a) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the subject company or any of its subsidiaries;

(b) A sale or transfer of a material amount of assets of the subject company or any of its subsidiaries;

(c) Any change in the present board of directors or management of the subject company including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board;

(d) Any material change in the present capitalization or dividend policy of the subject company;

(e) Any other material change in the subject company's corporate structure or business, including, if the subject company is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by section 13 of the Investment Company Act of 1940;

(f) Causing a class of securities of the subject company to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; or

(g) A class of equity securities of the subject company becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act.

**Item 6. Interest in securities of the subject company.** (a) State the aggregate num-

ber and percentage of the class represented by such shares (which may be based on the number of shares outstanding as contained in the most recently available filing with the Commission by the subject company unless the bidder has reason to believe such information is not current), beneficially owned (identifying those shares for which there is a right to acquire) by each person named in Item 2 of this schedule and by each associate and majority-owned subsidiary of such person giving the name and address of any such associate or subsidiary.

(b) Describe any transaction in the class of securities reported on that was effected during the past 60 days by the persons named in response to paragraph (a) of this item or by any executive officer, director or subsidiary of such person.

**Instructions.** 1. The description of a transaction required by Item 6(b) shall include, but not necessarily be limited to: (1) the identity of the person covered by Item 6(b) who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per share; and (5) where and how the transaction was effected.

2. If the information required by Item 6(b) of this schedule is available to the bidder at the time this statement is initially filed with the Commission pursuant to Rule 14d-1(e) [§ 240.14d-1(e)], such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it should be filed with the Commission promptly but in no event later than two business days after the date of such filing and, if material, should be disclosed to security holders of the subject company in a manner similar to that in which the tender offer was first published, sent or given to such security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

**Item 7. Contracts, Arrangements, Understandings or Relationships with Respect to the Subject Company's Securities.** Describe any contract, arrangement, understanding or relationship (whether or not legally enforceable) between the bidder (including those persons enumerated in Instruction C to this schedule) and any person with respect to any securities of the subject company (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any of such securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss, or the giving or withhold of proxies), naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

**Item 8. Persons Retained, Employed or to be Compensated.** Identify all persons and classes of persons employed, retained or to be compensated by the bidder, or by any person on the bidder's behalf, to make solicitations or recommendations in connection with the tender offer and describe briefly the terms of such employment, retainer or arrangement for compensation.

**Item 9. Financial Statements of Certain Bidders.** Where the bidder is other than a

natural person and the bidder's financial condition is material to a decision by a security holder of the subject company whether to sell, tender or hold securities being sought in the tender offer, furnish current, adequate financial information concerning the bidder *Provided*, That if the bidder is controlled by another entity which is not a natural person and has been formed for the purpose of making the tender offer, furnish current, adequate financial information concerning such parent.

**Instructions.** 1. The facts and circumstances concerning the tender offer, particularly the terms of the tender offer, may influence a determination as to whether disclosure of financial information is material. However, once the materiality requirement is applicable, the adequacy of the financial information will depend primarily on the nature of the bidder.

In order to provide guidance in making this determination, the following types of financial information will be deemed adequate for purposes of this item for the type of bidder specified: (a) Financial statements prepared in compliance with Form 10 as amended [§ 240.210 of this chapter] for a domestic bidder which is otherwise eligible to use such form; and (b) financial statements prepared in compliance with Form 20 [§ 240.200 of this chapter] for a foreign bidder which is otherwise eligible to use such form.

2. If the bidder is subject to the periodic reporting requirements of sections 13(a) or 15(d) of the Act, financial statements contained in any document filed with the Commission may be incorporated by reference in this schedule solely for the purposes of this schedule *Provided* That such financial statements substantially meet the requirements of this item; an express statement is made that such financial statements are incorporated by reference; the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and an indication is made where such information may be inspected and copies obtained. Financial statements which are required to be presented 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 required to be given.

3. If the bidder is not subject to the periodic reporting requirements of the Act, the financial statements required by this item need not be audited if such audited financial statements are not available or obtainable without unreasonable cost or expense and a statement is made to that effect disclosing the reasons therefor.

**Item 10. Additional information.** If material to a decision by a security holder whether to sell, tender or hold securities being sought in the tender offer, furnish information as to the following:

(a) Any present or proposed material contracts, arrangements, understandings or relationships between the bidder or any of its executive officers, directors, controlling persons or subsidiaries and the subject company or any of its executive officers, directors, controlling persons or subsidiaries (other than any contract, arrangement or understanding required to be disclosed pursuant to Items 3 or 7 of this schedule);

(b) To the extent known by the bidder after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(c) The applicability of anti-trust laws;

(d) The applicability of the margin requirements of section 7 of the Act and the regulations promulgated thereunder;

(e) Any material pending legal proceedings relating to the tender offer including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto and a brief summary of the proceedings; and

*Instruction.* In connection with this subitem, a copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding should be promptly furnished to the Commission on a supplemental basis.

(f) Such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

*Item 11. Material to be filed as exhibits.* Furnish a copy of: (a) Tender offer material which is published, sent or given to security holders by or on behalf of the bidder in connection with the tender offer;

(b) Any loan agreement referred to in Item 4 of this schedule. *Instruction.* The identity of any bank which is a party to a loan agreement need not be disclosed if the person filing the statement has requested that the identity of such bank not be made available to the public pursuant to Item 4 of this schedule.

(c) Any document setting forth the terms of any contracts, arrangements, understandings or relationships referred to in Item 7 or 10(a) of this schedule;

(d) Any written opinion prepared by legal counsel at the bidder's request and communicated to the bidder pertaining to the tax consequences of the tender offer;

(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 required to be included therein by Rule 434b [§ 230.434b] of that Act;

(f) If any oral solicitation of security holders is to be made by or on behalf of the bidder, any written instruction, form or other material which is furnished to the persons making the actual oral solicitation for their use, directly or indirectly, in connection with the tender offer.

*Signature.* After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date)

(Signature)

(Name and title)

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

(Secs. 13(d), 14(d), 14(e), 23, 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 580; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; sec. 18, 89 Stat. 155; 15 U.S.C. 78m(d), 78n(d), 78n(e), 78w.)

By the Commission,

GEORGE A. FITZSIMMONS,  
Secretary.

JULY 21, 1977.

[FR Doc. 77-21738 Filed 7-27-77; 8:45 am]

Title 31—Money and Finance: Treasury  
SUBTITLE A—OFFICE OF THE SECRETARY  
OF THE TREASURY

PART 10—PRACTICE BEFORE THE  
INTERNAL REVENUE SERVICE

Revision of Provisions Governing Practice  
by Former Government Employees and  
Miscellaneous Amendments

AGENCY: Department of the Treasury.

ACTION: Final rule.

**SUMMARY:** The rule amends the regulations governing practice by attorneys, certified public accountants, and enrolled agents who represent clients before the Internal Revenue Service. The majority of the amendments are editorial, eliminate outdated terms and provisions, or bring the regulations into conformity with present law.

In addition, the rule amends the regulations to increase the restrictions on the representation of clients before the Internal Revenue Service by former Government employees. The purpose of this amendment is to prevent any conflict of interest, or appearance of a conflict of interest, when a former employee appears before the Service to handle a matter in which he/she may have been involved while employed by the Government.

**EFFECTIVE DATE:** This revision of Part 10 becomes effective on August 29, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Leslie S. Shapiro, Director of Practice, 202-634-5071.

**SUPPLEMENTARY INFORMATION:** On April 21, 1977, the Department of the Treasury published a proposed rule (42 FR 20635) to amend the regulations governing practice before the Internal Revenue Service (31 CFR Part 10). The primary purpose of the proposed changes was to increase the restrictions on former Government employees who represent clients before the Internal Revenue Service.

By and large, the comments received in response to the proposal were favorable. Several commenters, while agreeing in principle with the proposal, made suggestions warranting the clarification of provisions in the proposed rule.

DISCUSSION OF MAJOR COMMENTS

SCOPE OF PROHIBITION ON FORMER  
GOVERNMENT EMPLOYEES

As stated in the preamble to the proposed revision, § 10.26 as revised is intended to parallel the provisions of 18 U.S.C. 207 (a) and (b) but with a slight broadening of the official responsibility rule.

Some comments have suggested that the absolute bar imposed by § 10.26 could include situations where the former employee had participated in the development of a legal position or policy while employed by the Government, but where the specific case in which the former employee seeks to represent arises sub-

sequent to the termination of his/her employment. As such, it would materially expand the prohibitions intended by the Chief Counsel's Advisory Committee on Rules of Professional Conduct ("the Advisory Committee"). The September 21, 1976 report of the Advisory Committee (41 FR 4111) stated that the definition of the term "transaction" is intended to include within its scope "any matter in which the same facts, same issue of law, and the tax status or tax liability of the same party or parties are at issue as were involved in a matter that was the subject of the former employee's participation or official responsibility."

To assist in the alleviation of this possible confusion, and in order to remove a circular definition which appeared in the proposed rules, technical amendments have been made to the definition of "transaction". In addition, the separate definition of "specific party" has been eliminated; however, the concept (with some modification) has been retained in the definition of "transaction". As incorporated in the definition of "transaction", a specific party is defined as a party "whose rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service, or other legal rights are determined or immediately affected therein". It is believed that this definition will more clearly reflect the intended scope of this rule. "Immediately affected" as used in the definition of "transaction", can be illustrated by the following example cited by the Advisory Committee in its September 21, 1976 report: If a former employee participated in determining the tax status of a particular taxpayer's share of an item of partnership income, the tax consequences to his co-partner of a share of the same item of partnership income would be part of the same "transaction" within the meaning of the definition, and the former employee could not represent the other partner or the spouse or assignee or transferee of any partner with respect to the tax status of the particular item of partnership income involved in the matter in which the employee had participated. However, the fact that the same issue of law and substantially identical facts might be involved with respect to a partner in a different partnership would not bring any of the partners of such other partnership within the definition of the term "transaction."

DEFINITION OF TRANSACTION

Two comments were received indicating a view that, in proposed § 10.26(a) (3), the phrase "or the failure to act with respect thereto" is unnecessary. The Department is persuaded that the problem at which this phrase was directed, that of a "lazy" employee profiting by his laziness, is adequately addressed by the definitions of "participate" and "official responsibility". Consequently, such language is deleted.

FIRM REPRESENTATION

Two comments have been received with respect to the restriction on repre-