

G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7-28-98. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Statutory Basis and Text of Proposed Amendments

The proposed rules, rule amendments, schedules, and schedule amendments in this release are being proposed under Sections 2(3), 5, 7, 8, 10, 12, 19 and 28, of the Securities Act of 1933, as amended, and Sections 3(b), 4(e), 10(b), 13, 14, 18, 23(a), 24 and 36 of the Securities Act of 1934, as amended.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegation.

17 CFR Parts 229, 230, 232, 239 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

For the reasons set out in the preamble, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200 - ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. By adding paragraph (e)(16) to §200.30-1, to read as follows:

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

* * * * *

(e) * * *

(16) Pursuant to Rule 14e-5(d) (§240.14e-5(d) of this chapter), to grant requests for exemptions from Rule 14e-5 (§240.14e-5 of this chapter).

* * * * *

3. By amending paragraph (a)(6) of §200.30-3 to remove the phrase “Rules 10b-13(d), 14e-4(c), and 15c2-11(h) (§§240.10b-13(d), 240.14e-4(c), and 240.15c2-11(h) of this chapter)” and in its place add “Rules 14e-4(c), 14e-5(d), and 15c2-11(h) (§§240.14e-4(c), 240.14e-5(d), and 240.15c2-11(h) of this chapter)”, and to remove the phrase “to grant requests for exemptions from Rules 10b-13, 14e-4, and 15c2-11) (§§240.10b-13, 240.14e-4, and 240.15c2-11 of this chapter)” and in its place add “to grant requests for exemptions from Rules 14e-4, 14e-5, and 15c2-11 (§§240.14e-4, 240.14e-5, and 240.15c2-11 of this chapter)”.

* * * * *

PART 229 - STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 - REGULATION S-K

4. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77(e), 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

5. By revising paragraph (a)(2) of §229.10 to read as follows:

§ 229.10 General.

(a) Application of Regulation S-K.

* * * * *

(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), going-private transactions under section 13 (part 240 of this chapter), tender offer statements under sections 13 and 14 (part 240 of this chapter), annual reports to security holders and proxy and information statements under section 14 (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 that Act.

* * * * *

6. By adding an undesignated center heading and 229.1000 through 229.1016 to read as follows:

Mergers and Acquisitions (M-A)

229.1000 (Item 1000) Definitions.

229.1001 (Item 1001) Summary term sheet.

229.1002 (Item 1002) Subject company information.

229.1003 (Item 1003) Identity and background of filing person.

229.1004 (Item 1004) Terms of the transaction.

229.1005 (Item 1005) Past contacts, transactions, negotiations and agreements.

229.1006 (Item 1006) Purpose of the transaction and plans or proposals.

229.1007 (Item 1007) Source and amount of funds or other consideration.

229.1008 (Item 1008) Interest in securities of the subject company.

229.1009 (Item 1009) Persons/assets, retained, employed, compensated or used.

229.1010 (Item 1010) Financial statements.

229.1011 (Item 1011) Additional information.

229.1012 (Item 1012) The solicitation or recommendation.

229.1013 (Item 1013) Purposes, alternatives, reasons and effects in a going-private transaction.

229.1014 (Item 1014) Fairness of the going-private transaction.

229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.

229.1016 (Item 1016) Exhibits.

Mergers and Acquisitions (M-A)

§229.1000 (Item 1000) Definitions.

The following definitions apply to the terms used in Regulation M-A, unless specified otherwise:

- (a) Associate has the same meaning as in §240.12b-2 of this chapter;
- (b) Instruction C means General Instruction C to Schedule 13E-3 (§240.13e-100 of this chapter) and General Instruction C to Schedule TO (§240.14d-100 of this chapter);
- (c) Issuer tender offer has the same meaning as in §240.13e-4(a)(2) of this chapter;
- (d) Offeror means any person on whose behalf a tender offer is made;
- (e) Rule 13e-3 transaction has the same meaning as in §240.13e-3(a)(3) of this chapter;
- (f) Subject company means the company or entity whose securities are sought to be acquired in the transaction (e.g., the target), or that is otherwise the subject of the transaction;
- (g) Subject securities means the securities or class of securities that are sought to be acquired in the transaction or that are otherwise the subject of the transaction; and

- (h) Third-party tender offer means a tender offer that is not an issuer tender offer.

§229.1001 (Item 1001) Summary term sheet.

Summary term sheet. Provide security holders with a summary term sheet that is written in plain English. The summary term sheet must briefly describe in bullet point format the most material terms of the proposed transaction. The summary term sheet must provide security holders with sufficient information to understand the essential features and significance of the proposed transaction. The bullet points must cross-reference a more detailed discussion contained in the disclosure document that is disseminated to security holders.

Instructions to Item 1001:

1. The summary term sheet must not recite all information contained in the disclosure document that will be provided to security holders. The summary term sheet is intended to serve as an overview of all material matters that are presented in the accompanying documents provided to security holders.
2. The summary term sheet must begin on the first or second page of the disclosure document provided to security holders.
3. Refer to Rule 421(d) of Regulation C of the Securities Act (§230.421 of this chapter) for a description of plain English disclosure.

§229.1002 (Item 1002) Subject company information.

- (a) Name and address. State the name of the subject company (or the issuer in the case of an issuer tender offer), and the address and telephone number of its principal executive offices.

- (b) Securities. State the exact title and number of shares outstanding of the subject class of equity securities as of the most recent practicable date (which may be based upon information in the most recently available filing with the Commission by the subject company unless the filing person has more current information).
- (c) Trading market and price. Identify the principal market in which the subject securities are traded and state the high and low sales prices for the subject securities in the principal market (or, if there is no principal market, the range of high and low bid quotations and the source of the quotations) for each quarter during the past two years. If there is no established trading market for the securities (except for limited or sporadic quotations), so state.
- (d) Dividends. State the frequency and amount of any dividends paid during the past two years with respect to the subject securities and briefly describe any restriction on the issuer's current or future ability to pay dividends. If the filing person is an affiliate of the subject company, furnish this information to the extent known after making reasonable inquiry.
- (e) Prior public offerings. If the filing person has made an underwritten public offering of the subject securities for cash during the past three years that was registered under the Securities Act of 1933 or exempt from registration under Regulation A (§230.251 through §230.263 of this chapter), state the date of the offering, the amount of securities offered, the offering price per share (adjusted for stock splits, stock dividends, etc. as appropriate) and the aggregate proceeds received by the filing person.
- (f) Prior stock purchases. If the filing person purchased any subject securities during the past two years, state the amount of the securities purchased, the range of prices paid and the average purchase price for each quarter during that period. Affiliates need not give information for purchases made before becoming an affiliate.

§229.1003 (Item 1003) Identity and background of filing person.

- (a) Name and address. State the name, business address and business telephone number of each filing person. Also state the name and address of each person specified in Instruction C to the schedule (except for Schedule 14D-9 (§240.14d-101 of this chapter)). If the filing person is an affiliate of the subject company, state the nature of the affiliation. If the filing person is the subject company, so state.
- (b) Business and background of entities. If any filing person (other than the subject company) or any person specified in Instruction C to the applicable schedule is not a natural person, state the person's principal business, state or other place of organization, and the information required by paragraphs (c)(3) and (c)(4) of this section for each person.

- (c) Business and background of natural persons. If any filing person or any person specified in Instruction C to the schedule is a natural person, provide the following information for each person:
- (1) Current principal occupation or employment and the name, principal business and address of any corporation or other organization in which the employment or occupation is conducted;
 - (2) Material occupations, positions, offices or employment during the past five years, giving the starting and ending dates of each and the name, principal business and address of any corporation or other organization in which the occupation, position, office or employment was carried on;
 - (3) A statement whether or not the person was convicted in a criminal proceeding during the past five years (excluding traffic violations or similar misdemeanors). If the person was convicted, describe the criminal proceeding, including the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;
 - (4) A statement whether or not the person was a party to any judicial or administrative proceeding during the past five years (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws. Describe the proceeding, including a summary of the terms of the judgment, decree or final order; and
 - (5) Country of citizenship.
- (d) Tender offer. Identify the tender offer and the class of securities to which the offer relates, the name of the offeror and its address (which may be based on the offeror's Schedule TO (§240.14d-100 of this chapter) filed with the Commission).

Instruction to Item 1003:

If the filing person is making information relating to the transaction available on the Internet, state the address where the information can be found.

§229.1004 (Item 1004) Terms of the transaction.

- (a) Material terms. State the material terms of the transaction.

- (1) Tender offers. In the case of a tender offer, the information must include:
- (i) The total number and class of securities sought in the offer;
 - (ii) The type and amount of consideration offered to security holders;
 - (iii) The scheduled expiration date;
 - (iv) Whether a subsequent offering period will be available, if the transaction is a third-party tender offer;
 - (v) Whether the offer may be extended, and if so, how it could be extended;
 - (vi) The dates before and after which security holders may withdraw securities tendered in the offer;
 - (vii) The procedures for tendering and withdrawing securities;
 - (viii) The manner in which securities will be accepted for payment; and
 - (ix) The periods for accepting securities on a pro rata basis and the offeror's present intentions in the event that the offer is oversubscribed (if the offer is for less than all securities of a class).

- (2) Mergers or Similar Transactions. In the case of a merger or similar transaction, the information must include:
- (i) A brief description of the transaction;
 - (ii) The consideration offered to security holders;
 - (iii) The reasons for engaging in the transaction;
 - (iv) An explanation of any material differences in the rights of security holders as a result of the transaction;
 - (v) The vote required for approval of the transaction;
 - (vi) A brief statement as to the accounting treatment of the transaction; and
 - (vii) The federal income tax consequences of the transaction.

Instruction to Item 1004(a):

If the consideration offered consists solely of stock exempt from registration under the Securities Act of 1933, provide a description of the securities that complies with Item 202 of Regulation S-K (§229.202). This description is not required if the issuer of the securities meets the requirements of General Instructions I.B. and I.C.1. of Form B (§239.5 of this chapter) and elects to furnish information pursuant to Item 10; only capital stock is to be issued; and securities of the same class are registered under section 12 of the Exchange Act and either are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association.

- (b) Purchases. State whether any securities are to be purchased from any officer, director or affiliate of the subject company and provide the details of each transaction.
- (c) Different terms. Describe any term or arrangement in the Rule 13e-3 transaction that treats any subject security holders differently from other subject security holders.
- (d) Appraisal rights. State whether or not dissenting security holders are entitled to any appraisal rights. If so, summarize the appraisal rights. If there are no appraisal rights available under state law for security holders who object to the transaction, briefly outline any other rights that may be available to security holders under the law.
- (e) Provisions for unaffiliated security holders. Describe any provision made by the filing person in connection with the transaction to grant unaffiliated security holders access to the corporate files of the filing person or to obtain counsel or appraisal services at the expense of the filing person. If none, so state.
- (f) Eligibility for listing or trading. If the transaction involves the offer of securities of the filing person in exchange for equity securities held by non-affiliated security holders of the subject company, describe whether or not the filing person will take steps to assure that the securities offered are or will be eligible for trading on any national securities exchange or an automated inter-dealer quotation system.

§229.1005 (Item 1005) Past contacts, transactions, negotiations and agreements.

- (a) Transactions. Briefly state the nature and approximate dollar amount of any transaction, other than those described in paragraphs (b) or (c) of this section, that occurred during the past two years, between the filing person (including any person specified in Instruction C of the schedule) and;

- (1) The subject company or any of its affiliates that are not natural persons if the aggregate value of the transactions is more than one percent of the subject company's consolidated revenues for:
 - (i) The fiscal year when the transaction occurred; or
 - (ii) The past portion of the current fiscal year, if the transaction occurred in the current year; and

Instruction to Item 1005(a)(1):

The information required by this Item may be based on information in the subject company's most recent filing with the Commission, unless the filing person has reason to believe the information is not accurate.

- (2) Any executive officer, director or affiliate of the subject company that is a natural person if the aggregate value of a transaction or series of similar transactions with that person exceeds \$60,000.
- (b) Significant corporate events. Describe any negotiations, transactions or material contacts during the past two years between the filing person (including subsidiaries of the filing person and any person specified in Instruction C of the schedule) and the subject company or its affiliates concerning any:
- (1) Merger;
 - (2) Consolidation;
 - (3) Acquisition;
 - (4) Tender offer for or other acquisition of any class of the subject company's securities;
 - (5) Election of the subject company's directors; or
 - (6) Sale or other transfer of a material amount of assets of the subject company.
- (c) Negotiations or contacts. Describe any negotiations or material contacts concerning the matters referred to in paragraph (b) of this section during the past two years between:
- (1) Any affiliates of the subject company; or
 - (2) The subject company or any of its affiliates and any person not affiliated with the subject company who would have a direct interest in such matters.

Instruction to Item 1005(c):

Identify the person who initiated the contacts or negotiations.

- (d) Conflicts of interest. If material, describe any agreement, arrangement or understanding and any actual or potential conflict of interest between the filing person or its affiliates and:
- (1) The subject company, its executive officers, directors or affiliates; or
 - (2) The offeror, its executive officers, directors or affiliates.

Instruction to Item 1005(d):

If the filing person is the subject company, no disclosure called for by this paragraph is required in the document disseminated to security holders, so long as substantially the same information was filed with the Commission previously and disclosed in a proxy statement, report or other communication sent to security holders by the subject company in the past year. The document disseminated to security holders, however, must refer specifically to the discussion in the proxy statement, report or other communication that was sent to security holders previously. The information also must be filed as an exhibit to the schedule.

- (e) Agreements involving the subject company's securities. Describe any agreement, arrangement, or understanding between the filing person (including any person specified in Instruction C of the schedule) and any other person with respect to any securities of the subject company. Name all persons that are a party to the agreements, arrangements, or understandings and describe all material provisions.

Instructions to Item 1005(e):

1. The information required by this Item includes: the transfer or voting of securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withholding of proxies, consents or authorizations.
2. Include information for any 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 the subject securities. No disclosure, however, is required about standard default and similar provisions contained in loan agreements.

§229.1006 (Item 1006) Purpose of the transaction and plans or proposals.

- (a) Purposes. State the purposes of the transaction.

- (b) Use of securities acquired. Indicate whether the securities acquired in the transaction will be retained, retired, held in treasury, or otherwise disposed of.
- (c) Plans. Describe any plans, proposals or negotiations that relate to or would result in:
- (1) Any extraordinary transaction, such as a merger, reorganization or liquidation, involving the subject company or any of its subsidiaries;
 - (2) Any purchase, sale or transfer of a material amount of assets of the subject company or any of its subsidiaries;
 - (3) Any material change in the present dividend rate or policy, or indebtedness or capitalization of the subject company;
 - (4) 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 or to change any material term of the employment contract of any executive officer;
 - (5) 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 (15 U.S.C. 80a-13);
 - (6) Any class of equity securities of the subject company to be delisted from a national securities exchange or cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;
 - (7) Any class of equity securities of the subject company becoming eligible for termination of registration under Section 12(g)(4) of the Act (15 U.S.C. 78l);
 - (8) The suspension of the subject company's obligation to file reports under Section 15(d) of the Act (15 U.S.C. 78o);
 - (9) The acquisition by any person of additional securities of the subject company, or the disposition of securities of the subject company; or
 - (10) Any changes in the subject company's charter, bylaws or other governing instruments or other actions that could impede the acquisition of control of the subject company.
- (d) Subject company negotiations. If the filing person is the subject company:

- (1) State whether or not that person is engaged in any negotiations in response to the tender offer that relate to:
 - (i) A tender offer or other acquisition of the subject company's securities by the filing person or any of its subsidiaries; or
 - (ii) Any of the matters referred to in paragraphs (c)(1) through (c)(3) of this section; and
- (2) Describe any transaction, board resolution, or signed contract that is entered into in response to the tender offer that relates to one or more of the matters referred to in paragraph (d)(1) of this section.

Instruction to Item 1006(d)(1):

If an agreement in principle has not been reached at the time of filing, no disclosure under paragraph (d)(1) of this section is required of the possible terms of or the parties to the transaction if in the opinion of the board of directors of the subject company disclosure would jeopardize continuation of the negotiations. In that case, disclosure indicating that negotiations are being undertaken or are underway and are in the preliminary stages is sufficient.

§229.1007 (Item 1007) Source and amount of funds or other consideration.

- (a) Source of funds. State the specific sources and total amount of funds or other consideration to be used in the transaction. If the transaction involves a tender offer, disclose the amount of funds or other consideration required to purchase the maximum amount of securities sought in the offer.
- (b) Conditions. State any material conditions to the financing discussed in response to paragraph (a) of this section. Disclose any alternative financing arrangements or alternative financing plans in the event the primary financing plans fall through. If none, so state.

- (c) Expenses. Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the transaction including, but not limited to, filing, legal, accounting and appraisal fees, solicitation expenses and printing costs and state whether or not the subject company has paid or will be responsible for paying any or all expenses.
- (d) Borrowed funds. If all or any part of the funds or other consideration required is, or is expected to be borrowed, directly or indirectly, for the purpose of the transaction:
- (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 any other material terms or conditions of the loan; and
 - (2) Briefly describe any plans or arrangements to finance or repay the loan, or, if no plans or arrangements have been made, so state.

Instruction to Item 1007(d):

If the transaction is a third-party tender offer and the source of all or any part of the funds used in the transaction is to come from a loan made in the ordinary course of business by a bank as defined by Section 3(a)(6) of the Act (15 U.S.C. §78c), the name of the bank will not be made available to the public if the filing person so requests in writing and files the request, naming the bank, with the Secretary of the Commission.

§229.1008 (Item 1008) Interest in securities of the subject company.

- (a) Securities ownership. State the aggregate number and percentage of subject securities that are beneficially owned by each person named in response to Item 1003 of Regulation M-A (§229.1003) and by each associate and majority-owned subsidiary of those persons. Give the name and address of any associate or subsidiary.

Instructions to Item 1008(a):

1. For purposes of this section, beneficial ownership is determined in accordance with Rule 13d-3 (§240.13d-3 of this chapter) under the Exchange Act. Identify the shares that there is a right to acquire.
2. The information required by this section may be based on the number of outstanding securities disclosed in the subject company's most recently available filing with the Commission, unless the filing person has more current information.

3. The information required by this section with respect to officers, directors and associates of the subject company must be given to the extent known after making reasonable inquiry.
- (b) Securities transactions. Describe any transaction in the subject securities during the past 60 days. The description of transactions required must include, but not necessarily be limited to:
- (1) The identity of the persons specified in the Instruction to this section 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.

Instructions to Item 1008(b):

1. Provide the required transaction information for the following persons:
 - (a) The filing person (for all schedules);
 - (b) Any person named in Instruction C of the schedule and any associate or majority-owned subsidiary of the issuer or affiliate filing the schedule (for all schedules except Schedule 14D-9 (§240.14d-101 of this chapter));
 - (c) Any executive officer, director, affiliate or subsidiary of the filing person (for Schedule 14D-9 (§240.14d-101 of this chapter));
 - (d) The issuer and any executive officer or director of any subsidiary of the issuer or filing person (for an issuer tender offer on Schedule TO (§240.14d-100 of this chapter)); and
 - (e) The issuer and any pension, profit-sharing or similar plan of the issuer or affiliate filing the schedule (for a going-private transaction on Schedule 13E-3 (§240.13e-100 of this chapter)).
2. Provide the information required by this Item if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not initially available, it must be obtained and filed with the Commission promptly, but in no event later than three business days after

the date of the filing, and if material, disclosed in a manner reasonably designed to inform security holders.

§229.1009 (Item 1009) Persons/assets, retained, employed, compensated or used.

- (a) Solicitations or recommendations. Identify all persons and classes of persons that are directly or indirectly employed, retained, or to be compensated to make solicitations or recommendations in connection with the transaction. Provide a summary of all material terms of employment, retainer or other arrangement for compensation.
- (b) Employees and corporate assets. Identify any officer, class of employees or corporate assets of the subject company that has been or will be employed or used by the filing person in connection with the transaction. Describe the purpose for their employment or use.

Instruction to Item 1009(b):

Provide all information required by this Item except for the information required by paragraph (a) of this section and Item 1007 of Regulation M-A (§229.1007).

§229.1010 (Item 1010) Financial statements.

- (a) Financial information. Furnish the following financial information:
 - (1) Audited financial statements for the two fiscal years required to be filed with the company's most recent annual report under Sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m; 15 U.S.C. 78o);
 - (2) Unaudited balance sheets, comparative year-to-date income statements and related earnings per share data, statements of cash flows, and comprehensive income required to be included in the company's most recent quarterly report filed under the Exchange Act;
 - (3) Ratio of earnings to fixed charges, computed in a manner consistent with §229.503(d), for the two most recent fiscal years and the interim periods provided under paragraph (a)(2) of this section; and
 - (4) Book value per share as of the date of the most recent balance sheet presented.

- (b) Pro forma information. If material, furnish pro forma information disclosing the effect of the transaction on:
- (1) The company's balance sheet as of the date of the most recent balance sheet presented under paragraph (a) of this section;
 - (2) The company's statement of income, earnings per share, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period provided under paragraph (a)(2) of this section; and
 - (3) The company's book value per share as of the date of the most recent balance sheet presented under paragraph (a) of this section.
- (c) Summary Information. Furnish a fair and adequate summary of the information specified in paragraphs (a) and (b) of this section for the same periods specified. A fair and adequate summary includes:
- (1) The summarized financial information specified in §210.1-02(bb) of this chapter;
 - (2) Income per common share from continuing operations (basic and diluted, if applicable);
 - (3) Net income per common share (basic and diluted, if applicable);
 - (4) Ratio of earnings to fixed charges, computed in a manner consistent with §229.503(d);
 - (5) Book value per share as of the date of the most recent balance sheet; and
 - (6) If material, pro forma data for the summarized financial information specified in paragraph (c)(1) through (c)(6) of this section disclosing the effect of the transaction.

§229.1011 (Item 1011) Additional information.

- (a) Agreements, regulatory requirements and legal proceedings. If material to a security holder's decision whether to sell, tender or hold the securities sought in the tender offer, furnish the following information:
- (1) Any present or proposed material agreement, arrangement, understanding or relationship between the offeror 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 agreement,

arrangement or understanding disclosed under any other sections of Regulation M-A);

Instruction to paragraph (a)(1):

In an issuer tender offer disclose any material agreement, arrangement, understanding or relationship between the offeror and any of its executive officers, directors, controlling persons or subsidiaries.

- (2) To the extent known by the offeror after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;
- (3) The applicability of any anti-trust laws;
- (4) The applicability of margin requirements under Section 7 of the Act (15 U.S.C. 78g) and the applicable regulations; and
- (5) 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, and a brief summary of the proceedings and the relief sought.

Instruction to Item 1011(a)(5):

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 must be furnished promptly to the Commission staff on a supplemental basis.

- (b) Other material information. Furnish 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.

§229.1012 (Item 1012) The solicitation or recommendation.

- (a) Solicitation or recommendation. State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the filing person is advising holders of the subject securities to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, describe the other action recommended. If the filing person is the subject company and is not making a recommendation, state whether the subject company is expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

- (b) Reasons. State the reasons for the position (including the inability to take a position) stated in paragraph (a) of this section. Conclusory statements such as “The tender offer is in the best interests of shareholders” are not considered sufficient disclosure.
- (c) Intent to tender. To the extent known by the filing person after making reasonable inquiry, state whether the filing person or any executive officer, director, affiliate or subsidiary of the filing person currently intends to tender, sell or hold the subject securities that are held of record or beneficially owned by that person.
- (d) Intent to tender or vote in a going-private transaction. To the extent known by the filing person after making reasonable inquiry, state whether or not any executive officer, director or affiliate of the issuer (or any person specified in Instruction C to the schedule) currently intends to tender or sell subject securities owned or held by that person and/or how each person currently intends to vote subject securities, including any securities the person has proxy authority for. State the reasons for the intended action.

Instruction to Item 1012(d):

Provide the information required by this section if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not available, it must be filed with the Commission promptly, but in no event later than three business days after the date of the filing, and if material, disclosed in a manner reasonably designed to inform security holders.

- (e) Recommendations of others. To the extent known by the filing person after making reasonable inquiry, state whether or not any person specified in paragraph (d) of this section has made a recommendation either in support of or opposed to the transaction and the reasons for the recommendation.

§229.1013 (Item 1013) Purposes, alternatives, reasons and effects in a going-private transaction.

- (a) Purposes. State the purposes for the Rule 13e-3 transaction.
- (b) Alternatives. If the subject company or affiliate considered alternative means to accomplish the stated purposes, briefly describe the alternatives and state the reasons for their rejection.

- (c) Reasons. State the reasons for the structure of the Rule 13e-3 transaction and for undertaking the transaction at this time.
- (d) Effects. Describe the effects of the Rule 13e-3 transaction on the subject company, its affiliates and unaffiliated security holders, including the federal tax consequences of the transaction.

Instructions to Item 1013:

1. Conclusory statements will not be considered sufficient disclosure in response to this section.
2. The description required by paragraph (d) of this section must include a reasonably detailed discussion of both the benefits and detriments of the Rule 13e-3 transaction to the subject company, its affiliates and unaffiliated security holders. The benefits and detriments of the Rule 13e-3 transaction must be quantified to the extent practicable.
3. If this statement is filed by an affiliate of the subject company, the description required by paragraph (d) of this section must include, but not be limited to, the effect of the Rule 13e-3 transaction on the affiliate's interest in the net book value and net earnings of the subject company in terms of both dollar amounts and percentages.

§229.1014 (Item 1014) Fairness of the going-private transaction.

- (a) Fairness. State whether the subject company or affiliate filing the statement reasonably believes that the Rule 13e-3 transaction is fair or unfair to unaffiliated security holders. If any director dissented to or abstained from voting on the Rule 13e-3 transaction, identify the director, and indicate, if known, after making reasonable inquiry, the reasons for the dissent or abstention.
- (b) Factors considered in determining fairness. Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this section is based and, to the extent practicable, the weight assigned to each factor. The discussion must include an analysis of the extent, if any, to which the filing person's beliefs are based on the factors described in Instruction 2 of this section, paragraphs (c), (d) and (e) of this section and §229.1015.
- (c) Approval of security holders. State whether or not the transaction is structured so that approval of at least a majority of unaffiliated security holders is required.

- (d) Unaffiliated representative. State whether or not a majority of directors who are not employees of the subject company has retained an unaffiliated representative to act solely on behalf of unaffiliated security holders for purposes of negotiating the terms of the Rule 13e-3 transaction and/or preparing a report concerning the fairness of the transaction.
- (e) Approval of directors. State whether or not the Rule 13e-3 transaction was approved by a majority of the directors of the subject company who are not employees of the subject company.
- (f) Other offers. If any offer of the type described in paragraph (viii) of Instruction 2 to this section has been received, describe the offer and state the reasons for its rejection.

Instructions to Item 1014:

1. A statement that the issuer or affiliate has no reasonable belief as to the fairness of the Rule 13e-3 transaction to unaffiliated security holders will not be considered sufficient disclosure in response to paragraph (a) of this section.
2. The factors that are important in determining the fairness of a transaction to unaffiliated security holders and the weight, if any, that should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraphs (c), (d) and (e) of this section and whether the consideration offered to unaffiliated security holders constitutes fair value in relation to:
 - (i) Current market prices;
 - (ii) Historical market prices;
 - (iii) Net book value;
 - (iv) Going concern value;
 - (v) Liquidation value;
 - (vi) Purchase prices paid in previous purchases disclosed in response to §229.1002(f);

- (vii) Any report, opinion, or appraisal described in §229.1015; and
 - (viii) Firm offers of which the subject company or affiliate is aware made by any unaffiliated person, other than the filing persons, during the past two years for:
 - (A) The merger or consolidation of the subject company with or into another company, or vice versa;
 - (B) The sale or other transfer of all or any substantial part of the assets of the subject company; or
 - (C) A purchase of the subject company's securities that would enable the holder to exercise control of the subject company.
3. Conclusory statements, such as "The Rule 13e-3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer" will not be considered sufficient disclosure in response to paragraph (b) of this section.

§229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.

- (a) Report, opinion or appraisal. State whether or not the subject company or affiliate has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party that is materially related to the Rule 13e-3 transaction, including, but not limited to: any report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the transaction to the issuer or affiliate or to security holders who are not affiliates.
- (b) Preparer and summary of the report, opinion or appraisal. For each report, opinion or appraisal described in response to paragraph (a) of this section or any negotiation or report described in response to Item 1014(d) of Regulation M-A (§229.1014) or Item 14(b)(6) of Schedule 14A (§240.14a-101 of this chapter) concerning the terms of the transaction:
 - (1) Identify the outside party and/or unaffiliated representative;
 - (2) Briefly describe the qualifications of the outside party and/or unaffiliated representative;

- (3) Describe the method of selection of the outside party and/or unaffiliated representative;
- (4) Describe any material relationship that existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of the relationship between:
 - (i) The outside party, its affiliates, and/or unaffiliated representative; and
 - (ii) The subject company or its affiliates;
- (5) If the report, opinion or appraisal relates to the fairness of the consideration, state whether the subject company or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid; and
- (6) Furnish a summary concerning the negotiation, report, opinion or appraisal. The summary must include, but need not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the subject company or affiliate; and any limitation imposed by the subject company or affiliate on the scope of the investigation.

Instruction to Item 1015(b):

The information called for by paragraphs (b)(1), (2) and (3) of this section must be given with respect to the firm that provides the report, opinion or appraisal rather than the employees of the firm that prepared the report.

- (c) Availability of documents. Furnish a statement to the effect that the report, opinion or appraisal will be made available for inspection and copying at the principal executive offices of the subject company or affiliate during its regular business hours by any interested equity security holder of the subject company or representative who has been so designated in writing. This statement also may provide that a copy of the report, opinion or appraisal will be transmitted by the subject company or affiliate to any interested equity security holder of the subject company or representative who has been so designated in writing upon written request and at the expense of the requesting security holder.

§229.1016 (Item 1016) Exhibits.

File as an exhibit to the schedule:

- (a) Any disclosure materials furnished to security holders by or on behalf of the filing person, including:
 - (1) Tender offer materials (including transmittal letter);
 - (2) Solicitation or recommendation (including those referred to in §229.1012;
 - (3) Going-private disclosure document;
 - (4) Prospectus used in connection with an exchange offer where securities are registered under the Securities Act of 1933; and
 - (5) Any other disclosure materials;
- (b) Any loan agreement referred to in response to §229.1007;

Instruction to Item 1016(b):

If the filing relates to a third-party tender offer and a request is made under §229.1007(d), the identity of the bank providing financing may be omitted from the loan agreement filed as an exhibit.

- (c) Any report, opinion or appraisal referred to in response to §229.1014(d) or §229.1015;
- (d) Any document setting forth the terms of any agreement, arrangement, understanding or relationship referred to in response to §229.1005(e) or §229.1011(a)(1);
- (e) Any agreement, arrangement or understanding referred to in response to §229.1005(d), or the pertinent portions of any proxy statement, report or other communication containing the disclosure required by §229.1005(d);
- (f) A detailed statement describing security holders' appraisal rights and the procedures for exercising those appraisal rights referred to in response to §229.1004(d);
- (g) Any written instruction, form or other material that is furnished to persons making an oral solicitation or recommendation by or on behalf of the filing person directly or indirectly in connection with the transaction; and
- (h) Any written opinion prepared by legal counsel at the filing person's request and communicated to the filing person pertaining to the tax consequences of the transaction.

Exhibit Table to Item 1016 of Regulation M-A

13E-3 TO 14D-9

Disclosure Material	X	X	X
Loan Agreement	X	X	
Report, Opinion or Appraisal	X		
Contracts, Arrangements or Understandings	X	X	X
Statement re: Appraisal Rights	X		
Oral Solicitation Materials	X	X	X
Tax Opinion		X	

PART 230 - GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

7. The authority citation for Part 230 is revised to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z-3, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

8. In §230.145 as proposed to be amended in a document published elsewhere in this Federal Register, republish the Preliminary Note and paragraph (b) to read as follows:

§ 230.145 Reclassifications of securities, mergers, consolidations and acquisitions of assets.

Preliminary Note * * * Issuers must register transactions described in paragraph (a) of this section on Form C (§ 239.6 of this chapter), Form SB-3 (§239.11 of this chapter) or Form N-14 (§ 239.23 of this chapter).

* * * * *

(b) Communications. Communications in connection with a registered transaction described in paragraph (a) of this section may be made in accordance with §230.135, §230.165, §230.166, §230.167, §230.168 or §230.169.

* * * * *

9. By adding § 230.162 to read as follows:

§ 230.162 Submission of tenders in registered exchange offers.

Notwithstanding Section 5(a) of the Act (15 U.S.C. 77e), security holders may tender their securities in an exchange offer subject to Regulation 14D (§§ 240.14d-1 through 240.14d-101) before a registration statement is effective as to the security offered, so long as no securities are purchased until the registration statement is effective and the tender offer has expired in accordance with the tender offer rules.

10. In § 230.166 as proposed to be added in a document published elsewhere in this issue of the Federal Register, republish paragraph (b) to read as follows:

§ 230.166 Offers made before filing a registration statement.

* * * * *

(b) Form C/SB-3 transactions. Notwithstanding Section 5(c) of the Act (15 U.S.C. 77e), the offeror of securities in a transaction to be registered on Form C (§239.6

of this chapter), SB-3 (§239.11 of this chapter), F-8 (§239.38 of this chapter), F-80 (§239.41 of this chapter) or F-10 (§239.40 of this chapter) (when that form is used in a business combination) may make an offer to sell or solicit an offer to buy securities before the filing of a registration statement with respect to those securities if:

(1) Any prospectus relating to the transaction used in the period beginning with the first public announcement and ending with the filing of the registration statement is filed in accordance with §230.425; and

(2) In an exchange offer, the offers are made in accordance with the tender offer rules; and, in a transaction involving the vote of security holders, the offers are made in accordance with the proxy rules.

* * * * *

11. In § 230.167 as proposed to be added in a document published elsewhere in this issue of the Federal Register, republish paragraph (b) to read as follows:

§ 230.167 Exemption from Section 5(c) for certain communications.

* * * * *

(b) In offerings registered on Form C (§ 239.6 of this chapter), SB-3 (§ 239.11 of this chapter), F-8 (§ 239.38 of this chapter), F-80 (§ 239.41 of this chapter) or F-10 (§ 239.40 of this chapter) (when Form F-10 is used in connection with a business combination transaction), any communication before the first communication related to the offering (except for communications among the participants in the offering) shall not constitute an offer to sell or an offer to buy the securities being offered under the registration statement for purposes of Section 5(c) of the Act, provided that the parties to the transaction take all reasonable steps within their control to prevent further distribution

or publication of such communication during the period between that first communication and the date of filing the registration statement.

* * * * *

12. In § 230.425 as proposed to be added in a document published elsewhere in this issue of the Federal Register, republish paragraph (b)(3) to read as follows:

§ 230.425 Filing of “free writing” and other non-section 10 prospectuses.

* * * * *

(b) * * *

(3) Five copies of any prospectus used before the filing of a registration statement in reliance on §230.166(b) must be filed with the Commission on or before the date of first use. Each copy of a prospectus filed under this section must identify the filer and the company that is the subject of the offering in the upper right hand corner of the cover page, in addition to the information required by paragraph (c) of this section.

* * * * *

13. By revising § 230.432 to read as follows:

§ 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 that is subject to section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n) must include all of the information required by §240.14d-6(d)(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.

PART 232 - REGULATION S-T - GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

14. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a-8, 80a-29, 80a-30 and 80a-37.

* * * * *

15. By amending §232.13 in the first sentence of paragraph (d) by removing the phrase “may be ‘mailed for filing with the Commission’ at the same time” and adding in its place “must be filed on the same day” and by removing the phrase “on a business day” and adding in its place “during the official business hours”.

PART 239 - FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

16. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

17. In Form C (referenced in § 239.6) as proposed to be added in a document published elsewhere in this issue of the Federal Register, republish paragraph (c) of Item 18 and paragraph (b) of Item 21 to read as follows:

(Note Form C does not and this amendment will not appear in the Code of Federal Regulations)

Form C

* * * * *

Item 18. Information required for all other (non-small business) companies.

* * * * *

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a-3 or Rule 14c-3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a-3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (c).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.
2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial

statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.

3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

Item 21. Information required for all other small business issuers.

* * * * *

- (b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a-3 or Rule 14c-3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a-3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (b).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.
2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.
3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

18. In Form SB-3 (referenced in § 239.11) as proposed to be added in a document published elsewhere in this issue of the Federal Register, republish paragraph (b) of Item 16 and paragraph (c) of Item 19 to read as follows:

(Note Form SB-3 does not and this amendment will not appear in the Code of Federal Regulations)

Form SB-3

* * * * *

Item 16. Information required for all other small business issuers.

* * * * *

(b) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a-3 or Rule 14c-3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a-3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (b).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.
2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.
3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S.

GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

Item 19. Information required for all other companies.

* * * * *

(c) If the company being acquired is not subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), or has not furnished an annual report to its security holders under Rule 14a-3 or Rule 14c-3 for the latest fiscal year because of Exchange Act Section 12(i), furnish the financial statements that would be required in an annual report sent to security holders under Rules 14a-3(b)(1) and (b)(2) if one was required.

Instructions to paragraph (c).

1. If the registrant's security holders will not be voting on the transaction, financial statements for the two fiscal years before the latest fiscal year need be provided only to the extent that security holders of the company being acquired were previously furnished with financial statements (prepared in conformity with GAAP) for those periods.

2. The financial statements required by this paragraph for the latest fiscal year need be audited only to the extent practicable. The financial statements for the fiscal years before the latest fiscal year need not be audited if they were not previously audited.
3. If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

* * * * *

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

19. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

20. By removing and reserving §240.10b-13.

21. By revising the section heading and §240.13e-1 to read as follows:

§240.13e-1 Purchase of securities by the issuer during a third-party tender offer.

An issuer that has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Act (15 U.S.C. 78n), that has commenced under §240.14d-2 must not purchase any of its equity securities during the tender offer unless the issuer first:

(a) Files a statement with the Commission containing the following information:

- (1) The title and number of securities to be purchased;
- (2) The names of the persons or classes of persons from whom the issuer will purchase the securities;
- (3) The name of any exchange, inter-dealer quotation system or any other market on or through which the securities will be purchased;
- (4) The purpose of the purchase;
- (5) Whether the issuer will retire the securities, hold the securities in its treasury, or dispose of the securities. If the issuer intends to dispose of the securities, describe how it intends to do so; and
- (6) The source and amount of funds or other consideration to be used to make the purchase. If the issuer borrows any funds or other consideration to make the purchase or enters any agreement for the purpose of acquiring, holding, or trading the securities, describe the transaction and agreement and identify the parties;

(b) Sends the statement containing the information in paragraph (a) of this section to all of its equity security holders before purchasing any securities; and

(c) Pays the fee required by §240.0-11 when it files the initial statement.

Instruction to § 240.13e-1:

File eight copies if paper filing is permitted.

22. By amending § 240.13e-3 by revising paragraphs (d) and (e); revising the title of paragraph (f); removing the reference “Chapter X” in paragraph (g)(5) and in its place add “Chapter XI”; removing the reference “section 174” in paragraph (g)(5) and in its place add “section 1125(b)”; and removing the reference “section 175 of the Act” in paragraph (g)(5) and in its place add “section 1125(b) of that Act”, to read as follows:

§ 240.13e-3 Going private transactions by certain issuers or their affiliates.

* * * * *

(d) Material required to be filed. The issuer or affiliate engaging in a Rule 13e-3 transaction must file with the Commission:

(1) A Schedule 13E-3 (§240.13e-100), including all exhibits;

(2) An amendment to Schedule 13E-3 reporting promptly any material changes in the information set forth in the schedule previously filed; and

(3) A final amendment to Schedule 13E-3 reporting promptly the results of the Rule 13e-3 transaction.

(e) Disclosure of information to security holders.

(1) In addition to disclosing the information required by any other applicable rule or regulation under the federal securities laws, the issuer or affiliate engaging in a

Rule 13e-3 transaction must disclose to security holders of the class that is the subject of the transaction, as specified in paragraph (f) of this section, the following:

- (i) The information required by Item 1 of Schedule 13E-3 (§240.13e-100) (Summary Term Sheet);
- (ii) The information required by Items 7, 8 and 9 of Schedule 13E-3, which must be prominently disclosed in a “Special Factors” section in the front of the disclosure document;
- (iii) A prominent legend on the outside front cover page that indicates that neither the Securities and Exchange Commission nor any state securities commission has: approved or disapproved of the transaction; passed upon the merits or fairness of the transaction; or passed upon the adequacy or accuracy of the disclosure in the document. The legend also must make it clear that any representation to the contrary is a criminal offense;
- (iv) The information concerning appraisal rights required by §229.1016(f) of this chapter; and
- (v) The information required by the remaining items of Schedule 13E-3, except for §229.1016 of this chapter (exhibits), or a fair and adequate summary of the information.

Instructions to paragraph (e)(1):

1. If the Rule 13e-3 transaction also is subject to Regulation 14A (§§ 240.14a-1 through 240.14b-2) or 14C (§§ 240.14c-1 through 240.14c-101), the registration provisions and rules of the Securities Act of 1933, Regulation 14D or §240.13e-4, the information required by paragraph

(e)(1) of this section must be combined with the proxy statement, information statement, prospectus or tender offer material sent to security holders.

2. If the Rule 13e-3 transaction involves a registered securities offering, the legend required by §229.501(b)(7) of this chapter must be combined with the legend required by paragraph (e)(1)(iii) of this section.

3. The required legend must be written in clear, plain language.

(2) If there is any material change in the information previously disclosed to security holders, the issuer or affiliate must disclose the change promptly to security holders as specified in paragraph (f)(1)(iii) of this section.

(f) Dissemination of information to security holders. * * *

* * * * *

23. By amending §240.13e-4 by removing the reference:

a. “Schedule 13E-4 (§240.13E-101)” that appears in the introductory text of paragraph (a) and paragraph (a)(3) and in its place add “Schedule TO (§240.14d-100)”;

b. “Schedule 13E-4 Issuer Tender Offer Statement (§240.13e-101),” that appears in paragraph (f)(12) and in its place add “Schedule TO (§240.14d-100),”; “paragraph (a) of Item 9 of that Schedule” that appears in paragraph (f)(12) and in its place add “Item 1016(a)(1) of Regulation M-A (§229.1016(a)(1) of this chapter)”;

c. “Schedule 13E-4” that appears in the introductory text of paragraph (g) and in its place add “Schedule TO (§240.14d-100)”.

24. By amending §240.13e-4 by redesignating paragraph (b) as paragraph (i); removing the reference “paragraph (b)(1)” in newly redesignated paragraph (i)(2)(ii) and in its place add

“paragraph (i)(1)”; adding new paragraph (b); revising paragraph (a)(4); and revising the title and text of paragraphs (c), (d) and (e) to read as follows:

§ 240.13e-4 Tender offers by issuers.

(a) Definitions.

* * * * *

(4) The term commencement means 12:01 a.m. on the date that the issuer or affiliate has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

* * * * *

(b) As soon as practicable on the date of commencement of the issuer tender offer, the issuer or affiliate making the issuer tender offer must comply with:

- (1) The filing requirements of paragraph (c)(2) of this section;
- (2) The disclosure requirements of paragraph (d)(1) of this section; and
- (3) The dissemination requirements of paragraph (e)(1) of this section.

(c) Material required to be filed. The issuer or affiliate making the issuer tender offer must file with the Commission:

(1) All written communications made by the issuer or affiliate relating to the issuer tender offer, from and including the first public announcement, as soon as practicable on the date of the communication;

(2) A Schedule TO (§240.14d-100), including all exhibits;

(3) An amendment to Schedule TO (§240.14d-100) reporting promptly any material changes in the information set forth in the schedule previously filed; and

(4) A final amendment to Schedule TO (§240.14d-100) reporting promptly the results of the issuer tender offer.

Instructions to § 240.13e-4(c):

1. Pre-commencement communications must be filed under cover of Schedule TO (§240.14d-100) and the box on the cover page of the schedule must be marked.
2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under §230.425 of this chapter and will be deemed to have been filed under this section as well.
3. Each pre-commencement communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the SEC's web site and explain which documents are free from the issuer.
4. See §§ 230.135, 230.166, 230.167, 230.168 and 230.169 of this chapter for pre-commencement communications made in connection with registered exchange offers.
5. Communications of the type described under § 230.169 of this chapter need not be filed under this section.
 - (d) Disclosure of tender offer information to security holders.
 - (1) The issuer or affiliate making the issuer tender offer must disclose, in a manner prescribed by paragraph (e)(1) of this section, the following:
 - (i) The information required by Item 1 of Schedule TO (§ 240.14d-100) (summary term sheet); and

(ii) The information required by the remaining items of Schedule TO for issuer tender offers, except for Item 12 (exhibits), or a fair and adequate summary of the information.

(2) If the issuer or affiliate is registering securities under the Securities Act of 1933 in connection with the issuer tender offer, the prospectus must contain the information specified in paragraph (d)(1) of this section in addition to the information required to be disclosed under the Securities Act and the rules and regulations.

(3) If there are any material changes in the information previously disclosed to security holders, the issuer or affiliate must disclose the changes promptly to security holders in a manner specified in paragraph (e)(2) of this section.

(4) If the issuer or affiliate disseminates the issuer tender offer by means of summary publication as described in paragraph (e)(1)(ii) of this section, the summary advertisement must not include a transmittal letter that would permit security holders to tender securities sought in the offer and must disclose at least the following information:

(i) The identity of the issuer or affiliate making the issuer tender offer;

(ii) The information required by § 229.1004(a)(1) and § 229.1006(a) of this chapter;

(iii) Instructions on how security holders can obtain promptly a copy of the statement required by paragraph (d)(1) of this section, at the issuer or affiliate's expense; and

(iv) A statement that the information contained in the statement required by paragraph (d)(1) of this section is incorporated by reference.

(e) Dissemination of tender offers to security holders.

(1) An issuer tender offer will be deemed to be published, sent or given to security holders if the issuer or affiliate making the issuer tender offer complies fully with one or more of

the methods described in paragraph (e)(1)(i) or (e)(2)(ii) of this section. For purposes of paragraph (e)(1)(ii) of this section, adequate publication of the issuer tender offer may require publication in a newspaper with a national circulation, a newspaper with metropolitan or regional circulation, or a combination of the two, depending upon the facts and circumstances involved.

(i) Dissemination of any issuer tender offer by use of stockholder and other lists:

(A) By mailing or otherwise furnishing promptly a statement containing the information required by paragraph (d)(1) of this section to each security holder whose name appears on the most recent stockholder list of the issuer;

(B) By contacting each participant on the most recent security position listing of any clearing agency within the possession or access of the issuer or affiliate making the issuer tender offer, and making inquiry of each participant as to the approximate number of beneficial owners of the securities sought in the offer that are held by the participant;

(C) By furnishing to each participant a sufficient number of copies of the statement required by paragraph (d)(1)(ii) of this section for transmittal to the beneficial owners; and

(D) By agreeing to reimburse each participant promptly for its reasonable expenses incurred in forwarding the statement to beneficial owners.

(ii) Dissemination of certain cash issuer tender offers by summary publication:

(A) If the issuer tender offer is not subject to § 240.13e-3 (§240.13e-3), by making adequate publication of a summary advertisement containing the information required by paragraph (d)(4) of this section in a newspaper or newspapers, on the date of commencement of the issuer tender offer; and

(B) By mailing or otherwise furnishing promptly the statement required by paragraph (d)(1) of this section and a transmittal letter to any security holder who requests a copy of the statement or transmittal letter.

(2) If a material change occurs in the information published, sent or given to security holders, the issuer or affiliate must disseminate promptly disclosure of the change in a manner reasonably calculated to inform security holders of the change.

* * * * *

25. By revising § 240.13e-100 to read as follows:

§240.13e-100 Schedule 13E-3, Transaction statement under section 13(e) of the Securities Exchange Act of 1934 and Rule 13e-3 (§ 240.13e-3) thereunder.

Securities and Exchange Commission,
Washington, D.C. 20549

Rule 13e-3 Transaction Statement under Section 13(e) of the Securities Exchange Act of 1934

(Amendment No. ____)

(Name of the Issuer)

(Names of Persons Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of the Persons Filing Statement)

This statement is filed in connection with (check the appropriate box):

a. () The filing of solicitation materials or an information statement subject to Regulation 14A (§§ 240.14a-1 through 240.14b-2), Regulation 14C (§§ 240.14c-1 through 240.14c-101) or Rule 13e-3(c) (§ 240.13e-3(c)) under the Securities Exchange Act of 1934 (“the Act”).

b. () The filing of a registration statement under the Securities Act of 1933.

c. () A tender offer.

d. () None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies: ()

Check the following box if the filing is a final amendment reporting the results of the transaction: ()

Calculation of Filing Fee

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

() Check the box if any part of the fee is offset as provided by §240.0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid:_____

Form or Registration No.:_____

Filing Party:_____

Date Filed:_____

General Instructions:

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. This filing must be accompanied by a fee payable to the Commission as required by §240.0-11(b).

- C. If the statement is filed by a general or limited partnership, syndicate or other group, the information called for by Items 3, 5, 6, 10 and 11 must be given with respect to: (i) each partner of the partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the 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 items specified above must be given with respect to: (a) each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.
- D. Depending on the type of Rule 13e-3 transaction (§240.13e-3(a)(3)), this statement must be filed with the Commission:
1. At the same time as filing preliminary or definitive soliciting materials or an information statement under Regulations 14A or 14C of the Act;
 2. At the same time as filing a registration statement under the Securities Act of 1933;
 3. As soon as practicable on the date a tender offer is first published, sent or given to security holders; or
 4. At least 30 days before any purchase of securities of the class of securities subject to the Rule 13e-3 transaction, if the transaction does not involve a solicitation, an information statement, the registration of securities or a tender offer, as described in paragraphs 1, 2 or 3 of this Instruction; and
 5. If the Rule 13e-3 transaction involves a series of transactions, the issuer or affiliate must file this statement at the time indicated in paragraphs 1 through 4 of this Instruction for the first transaction and must amend the schedule promptly with respect to each subsequent transaction.
- E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses, except that responses to Items 7, 8 and 9 of this schedule must be provided in full. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.
- F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the

answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Act.

- G. If the Rule 13e-3 transaction also involves a transaction subject to Regulation 14A (§§ 240.14a-1 through 240.14b-2) or 14C (§§ 240.14c-1 through 240.14c-101) of the Act, the registration of securities under the Securities Act of 1933 and the General Rules and Regulations of that Act, or a tender offer subject to Regulation 14D (§§ 240.14d-1 through 240.14d-101) or § 240.13e-4, this statement must incorporate by reference the information contained in the proxy, information, registration or tender offer statement in answer to the items of this statement.
- H. The information required by the items of this statement is intended to be in addition to any disclosure requirements of any other form or schedule that may be filed with the Commission in connection with the Rule 13e-3 transaction. If those forms or schedules require less information on any topic than this statement, the requirements of this statement control.
- I. If the Rule 13e-3 transaction involves a tender offer, then a combined statement on Schedules 13E-3 and TO may be filed with the Commission under cover of Schedule TO (§240.14d-100). See Instruction J of Schedule TO (§240.14d-100).
- J. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Summary Term Sheet.

Furnish the information required by Item 1001 of Regulation M-A (§229.1001 of this chapter).

Item 2. Subject Company Information.

Furnish the information required by Item 1002 of Regulation M-A (§229.1002 of this chapter).

Item 3. Identity and Background of Filing Person.

Furnish the information required by Item 1003(a) through (c) of Regulation M-A (§229.1003 of this chapter).

Item 4. Terms of the Transaction.

Furnish the information required by Item 1004(a) and (c) through (f) of Regulation M-A (§229.1004 of this chapter).

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

Furnish the information required by Item 1005(a) through (c) and (e) of Regulation M-A (§229.1005 of this chapter).

Item 6. Purpose of the Transaction and Plans or Proposals.

Furnish the information required by Item 1006(b) and (c)(1) through (8) of Regulation M-A (§229.1006 of this chapter).

Instruction to Item 6:

In providing the information specified in Item 1006(c) for this item, discuss any activities or transactions that would occur after the Rule 13e-3 transaction.

Item 7. Purposes, Alternatives, Reasons and Effects.

Furnish the information required by Item 1013 of Regulation M-A (§229.1013 of this chapter).

Item 8. Fairness of the Transaction.

Furnish the information required by Item 1014 of Regulation M-A (§229.1014 of this chapter).

Item 9. Reports, Opinions, Appraisals and Negotiations.

Furnish the information required by Item 1015 of Regulation M-A (§229.1015 of this chapter).

Item 10. Source and Amounts of Funds or Other Consideration.

Furnish the information required by Item 1007 of Regulation M-A (§229.1007 of this chapter).

Item 11. Interest in Securities of the Subject Company.

Furnish the information required by Item 1008 of Regulation M-A (§229.1008 of this chapter).

Item 12. The Solicitation or Recommendation.

Furnish the information required by Item 1012(d) and (e) of Regulation M-A (§229.1012 of this chapter).

Item 13. Financial Statements.

Furnish the information required by Item 1010(a) through (b) of Regulation M-A (§229.1010 of this chapter) for the issuer of the subject class of securities.

Instructions to Item 13:

1. The disclosure materials disseminated to security holders may contain the summarized financial information required by Item 1010(c) of Regulation M-A (§229.1010 of this chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M-A must be disclosed directly or incorporated by reference in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 2.
2. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§249.220f of this chapter).
3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) the financial statements substantially meet the requirements of this Item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the matter incorporated by reference is not filed with this Schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may 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. See General Instruction F to this Schedule.

Item 14. Persons/Assets, Retained, Employed, Compensated or Used.

Furnish the information required by Item 1009 of Regulation M-A (§229.1009 of this chapter).

Item 15. Additional Information.

Furnish the information required by Item 1011(b) of Regulation M-A (§229.1011 of this chapter).

Item 16. Exhibits.

File as an exhibit to the Schedule all documents specified in Item 1016(a) through (d), (f) and (g) of Regulation M-A (§229.1016 of this chapter).

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.

(Signature)

(Name and title)

(Date)

Instruction to Signature:

The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See §240.12b-11 with respect to signature requirements.

26. By removing and reserving §240.13e-101.

27. By amending §240.14a-4, paragraph (f), remove the words “, or mailed for filing to,”.

28. By amending §240.14a-6 to remove the phrase “, or mailed for filing to,” from the first sentence of paragraph (b) and paragraph (c); remove the note following paragraph (b); revise paragraphs (e) and (j); remove the phrase “Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34),” from paragraph (l) and in its place add “Forms C (§239.6 of this chapter) or SB-3 (§239.11 of this chapter)”;

and add paragraph (o) to read as follows:

§ 240.14a-6 Filing requirements.

* * * * *

(e) Public availability of information. All copies of preliminary proxy statements and forms of proxy filed under paragraph (a) of this section must be clearly marked “Preliminary Copies,” and will be deemed immediately available for public inspection.

* * * * *

(j) Merger proxies. Any proxy statement, form of proxy or other soliciting material required to be filed by this section that also is included in a registration

statement filed under the Securities Act of 1933 on Forms C (§239.6 of this chapter), SB-3 (§239.11 of this chapter) or N-14 (§239.23 of this chapter) or filed under §§ 230.424 or 230.425 of this chapter may be filed only under the Securities Act, and will be deemed to be filed under this section. In that case, the fee required under paragraph (i) of this section need not be paid.

* * * * *

(o) Solicitations before furnishing a definitive proxy statement. Solicitations that are published, sent or given to security holders before they have been furnished a definitive proxy statement must be made in accordance with §§ 240.14a-11 or 240.14a-12.

29. By amending §240.14a-11 in paragraph (c) remove the words “, or mailed for filing to,” from the first sentence.

30. By revising the section heading and §240.14a-12 to read as follows:

§ 240.14a-12 Solicitation before furnishing written proxy statement.

(a) Notwithstanding the provisions of §240.14a-3(a), a solicitation (other than one subject to §240.14a-11) may be made before furnishing security holders with a written proxy statement meeting the requirements of §240.14a-3(a) if:

(1) No form of proxy is furnished to security holders before a definitive written proxy statement required by §240.14a-3(a) is furnished to security holders;

(2) Each communication made in connection with the solicitation includes:

(i) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 4 of Schedule 14A (§240.14a-101)) and a description of their interests direct or indirect, by security holdings or otherwise; and

(ii) A prominent legend in clear, plain language advising security holders to read the proxy statement when it is available because it contains important information. The legend also must advise investors that they can get the proxy statement and other filed documents for free at the SEC's web site and explain which documents are free from the issuer; and

(3) A written proxy statement meeting the requirements of this regulation is sent or given to security holders solicited pursuant to this section at the earliest practicable date.

(b) Any soliciting material published, sent or given to security holders in accordance with paragraph (a) of this section must be filed with the Commission no later than the date the material is published, sent or given to security holders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14A (§240.14a-101) and the appropriate box on the cover page must be marked. Soliciting material in connection with a registered offering must be filed only under §230.425 of this chapter, and will be deemed to be filed under this section.

Instructions to §240.14a-12:

1. Communications of the type described by §230.169 of this chapter need not be filed under this section.
2. If paper filing is permitted, file eight copies of the soliciting material with the Commission.

3. Any communications made under this rule after the definitive proxy statement is on file but before it is disseminated also must specify that the proxy statement is publicly available and the anticipated date of dissemination.

31. By amending §240.14a-101 on the cover page by removing the box and accompanying text “Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))”; removing Notes D.3 and D.4; in Note G, redesignate the second paragraph (2)(e) and paragraphs (2)(f), (2)(g) and (2)(h) as paragraphs (2)(f), (2)(g), (2)(h) and (2)(i), in newly redesignated paragraph (2)(f) and paragraph (3)(f), revising the reference “Items 13 or 14” to read “Item 13”, removing newly redesignated paragraphs (2)(h) and (2)(i) and paragraphs (3)(h) and (3)(i), adding the word “and” after newly redesignated paragraph (2)(f) and paragraph (3)(f), and removing the semicolons after newly redesignated paragraph (2)(g) and paragraph (3)(g) and in their place add a period; and revising Item 14 to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 14. Mergers, consolidations, acquisitions and similar matters. (See Notes A and D at the beginning of this Schedule.)

Instructions to Item 14.

1. In transactions in which the consideration consists wholly or in part of securities registered under the Securities Act of 1933, furnish the information required by Form C (§239.6 of this chapter) or Form SB-3 (§239.11 of this chapter), as applicable, instead of this Item. Only a Form C (or Form SB-3) must be filed in accordance with §240.14a-6(j).
2. In transactions in which the consideration consists wholly of cash, information about the acquiring company required by paragraph (c)(1) of this Item need not be provided unless the information is material to an informed voting decision (e.g., the security holders of the target company are voting and financing is not assured). Additionally, if only the security holders of the target company are voting:
 - i. Financial information in paragraphs (b)(8) - (11) of this Item need not be provided; and

- ii. Information about the target company in paragraph (c)(2) of this Item need not be provided. However, the information required by paragraph (c)(2) of this Item must be provided if the transaction is a going-private (as defined by §240.13e-3) or roll-up (as described by Item 901 of Regulation S-K (§229.901 of this chapter)) transaction.
3. In transactions in which the consideration consists wholly of securities exempt under the Securities Act of 1933 or partially of exempt securities and partially of cash, information about the acquiring company required by paragraph (c)(1) of this Item need not be provided if only the security holders of the acquiring company are voting, unless the information is material to an informed voting decision. Additionally, if only the security holders of the target company are voting, information about the target company in paragraph (c)(2) of this Item need not be provided. However, the information required by paragraph (c)(2) of this Item must be provided if the transaction is a going-private (as defined by §240.13e-3) or roll-up (as described by Item 901 of Regulation S-K (§229.901 of this chapter)) transaction.
4. The information required by paragraphs (b)(8) - (11) and (c) need not be provided if the plan being voted on involves only the acquiring company and one or more of its totally held subsidiaries and does not involve a liquidation or a spin-off.
5. To facilitate compliance with Rule 2-02(a) of Regulation S-X (§210.2-02(a) of this chapter) (technical requirements relating to accountants' reports), one copy of the definitive proxy statement filed with the Commission must include a signed copy of the accountant's report. If the financial statements are incorporated by reference, a signed copy of the accountant's report must be filed with the definitive proxy statement.
6. Notwithstanding the provisions of Regulation S-X, no schedules other than those prepared in accordance with §§210.12-15, 210.12-28 and 210.12-29 of this chapter (or, for management investment companies, §§210.12-12 through 210.12-14 of this chapter) of that regulation need be furnished in the proxy statement.
7. If the preliminary proxy material incorporates by reference financial statements required by this Item, a draft of the financial statements must be furnished to the Commission staff upon request if the document from which they are incorporated has not been filed with or furnished to the Commission.

8. Unless registered on a national securities exchange or otherwise required to furnish such information, registered investment companies need not furnish the information required by paragraphs (b)(8) and (b)(9) of this Item or paragraphs (h), (i) and (j) of Item 14 of Form C (§239.6).
9. A registered management investment company need not comply with paragraphs (a), (d), (h), (i), (j) and (l) of Item 14 of Form C (§239.6).
 - (a) Applicability. If action is to be taken with respect to any of the following transactions, provide the information required by this Item:
 - (1) A merger or consolidation;
 - (2) An acquisition of securities of another person;
 - (3) An acquisition of any other going business or the assets of a going business;
 - (4) A sale or other transfer of all or any substantial part of assets; or
 - (5) A liquidation or dissolution.
 - (b) Transaction information. Provide the following information for each of the parties to the transaction unless otherwise specified:
 - (1) Summary term sheet. The information required by Item 1001 of Regulation M-A (§229.1001 of this chapter).
 - (2) Contact information. The name, complete mailing address and telephone number of the principal executive offices.
 - (3) Business conducted. A brief description of the general nature of the business conducted.
 - (4) Terms of the transaction. The information required by Item 1004(a)(2) of Regulation M-A (§229.1004 of this chapter).
 - (5) Regulatory approvals. A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and, if so, the status of the compliance or approval.

- (6) Reports, opinions, appraisals. If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the information required by Item 1015(b) of Regulation M-A (§229.1015 of this chapter).
- (7) Past contacts, transactions or negotiations. The information required by Items 1005(b) and 1011(a)(1) of Regulation M-A (§229.1005 of this chapter and §229.1011 of this chapter), for the parties to the transaction and their affiliates during the periods for which financial statements are presented or incorporated by reference under this Item.
- (8) Selected financial data. The selected financial data required by Item 301 of Regulation S-K (§229.301 of this chapter).
- (9) Pro forma selected financial data. If material, the information required by Item 301 of Regulation S-K (§229.301 of this chapter), showing the pro forma effect of the transaction.
- (10) Pro forma information. In a table designed to facilitate comparison, historical and pro forma per share data of the acquiring company and historical and equivalent pro forma per share data of the target company for the following Items:
 - (i) Book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S-K (§229.301 of this chapter);
 - (ii) Cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S-K (§229.301 of this chapter); and
 - (iii) Income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S-K (§229.301 of this chapter).

Instructions to paragraphs (b)(9) and (b)(10):

1. For a business combination accounted for as a purchase, present the financial information required by paragraphs (b)(9) and (b)(10) only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, present the financial information required by paragraphs (b)(9) and (b)(10) (except for information with regard to book value) for the most recent three fiscal years and interim period. For purposes of these paragraphs, book value information need only be provided for the most recent balance sheet date.

2. Calculate the equivalent pro forma per share amounts for one share of the company being acquired by multiplying the exchange ratio times each of:
 - (i) The pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction;
 - (ii) The pro forma book value per share; and
 - (iii) The pro forma dividends per share of the acquiring company.
- (11) Financial information. If material, financial information required by Article 11 of Regulation S-X (§210.10-01 through §229.11-03 of this chapter) with respect to this transaction.

Instructions to paragraph (b)(11):

1. Present any Article 11 information required by the other Items of this schedule (where not incorporated by reference) together with the information provided under this Item. In presenting this information, you must clearly distinguish between this transaction and any other.
 2. You need only show the pro forma effect that this transaction has on any pro forma financial information that:
 - (i) Is incorporated by reference; and
 - (ii) Reflects all prior transactions.
- (c) Information about the parties to the transaction.
- (1) Acquiring company. Furnish the information required by Part II (Registrant Information) of Form C (§239.6 of this chapter) or Form SB-3 (§239.11 of this chapter) for the acquiring company. However, financial statements need only be presented for the latest two fiscal years and interim period.
 - (2) Acquired company. Furnish the information required by Part III (Information with Respect to the Company Being Acquired) of Form C (§239.6 of this chapter).

Instruction to paragraph (c):

Information may be incorporated by reference to the same extent as permitted by Forms C (§239.6 of this chapter) and SB-3 (§239.11 of this chapter).

32. By amending the introductory text in paragraph (a) of §240.14c-2 by removing the reference “Form S-4 or F-4 (§239.25 or §239.34 of this chapter)” and in its place add “Form C or SB-3 (§239.6 or §239.11 of this chapter)”; removing the reference “Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34)” in paragraph (c) and in its place add “Form C or SB-3 (§239.6 or §239.11 of this chapter)”.

33. By amending §240.14c-5 by removing the phrase “, or mailed for filing to,” from the first sentence of paragraph (b); removing the note following paragraph (b); revising paragraph (d); removing the reference in paragraph (f) “Form N-14, S-4, or F-4 (§239.23, §239.25 or §239.34 of this chapter)” and in its place add “Form C, SB-3, or N-14 (§239.6, §239.11 or §239.23 of this chapter)”; removing the reference in paragraph (f) “Form N-14, S-4, or F-4” and in its place add “Form C, SB-3, or N-14 (§239.6, §239.11 or §239.23 of this chapter)” to read as follows:

§ 240.14c-5 Filing requirements.

(d) Public availability of information. All copies of material filed under paragraph (a) of this section must be clearly marked “Preliminary Copies,” and will be deemed immediately available for public inspection.

* * * * *

34. By amending the cover page of §240.14c-101 by removing the box and accompanying text “Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))”.

35. By amending §240.14d-1 by removing the reference “Schedules 14D-1” in the introductory text of paragraph (b) and adding in its place “Schedules TO”; redesignating paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(5), (e)(6) and (e)(7) as paragraphs (e)(2), (e)(7), (e)(5), (e)(1), (e)(9), (e)(3) and (e)(6), respectively; in newly redesignated paragraph (e)(1) remove the reference “Rule 14d-3, Rule 14d-9(d) and Item 6 of Schedule 14D-1” and in its place add “Rule 14d-3 and Rule 14d-9(d)”; and adding new paragraphs (e)(4) and (e)(8) to read as follows:

§240.14d-1 Scope of and definitions applicable to regulations 14D and 14E.

* * * * *

(e) Definitions.

(4) The term initial offering period means the period from the time the offer commences until all minimum time periods, including extensions, required by Regulations 14D (§§240.14d-1 through 240.14d-103) and 14E (§§240.14e-1 through

240.14e-8) have been satisfied and all conditions to the offer have been satisfied or waived within these time periods.

* * * * *

(8) The term “subsequent offering period” means the ten business day period immediately following the initial offering period meeting the conditions specified in §240.14d-11.

* * * * *

36. By revising the section heading and §240.14d-2 to read as follows:

§240.14d-2 Commencement of a tender offer.

(a) Date of commencement. A bidder will have commenced its tender offer for purposes of section 14(d) of the Act (15 U.S.C. 78n) and the rules promulgated thereunder at 12:01 a.m. on the date when the bidder has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

(b) Pre-commencement communications. A communication by the bidder will not be deemed to constitute commencement of a tender offer if:

(1) It does not include the means for security holders to tender their shares into the offer; and

(2) All written communications relating to the tender offer, from and including the first public announcement, are filed under cover of Schedule TO (§240.14d-100) with the Commission as soon as practicable on the date of the communication. The bidder also must deliver to the subject company and any other bidder for the same class

of securities the first communication that discloses the identities of the bidder and the subject company, the amount and class of securities sought, and the price or range of prices offered, as soon as practicable on the date of the communication.

Instructions to paragraph (b)(2): 1. The box on the front of Schedule TO indicating that the filing contains pre-commencement communications must be checked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under §230.425 of this chapter and will be deemed to have been filed under this section as well.

3. Each pre-commencement communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the SEC's web site and explain which documents are free from the issuer.

4. For pre-commencement communications in connection with registered exchange offers, also see §§ 230.135, 230.166, 230.167, 230.168 and 230.169 of this chapter.

5. Communications of the type described under § 230.169 need not be filed under this section.

(c) Filing and other obligations triggered by commencement. As soon as practicable on the date of commencement, a bidder must comply with the filing requirements of § 240.14d-3(a), the dissemination requirements of § 240.14d-4(a) or (b), and the disclosure requirements of § 240.14d-6(a).

37. By amending §240.14d-3 by removing the reference “Schedule 14D-1” in paragraphs (a)(1), (a)(2), (a)(2)(ii), the introductory text of (a)(3), and paragraph (c) each time it appears and adding in its place “Schedule TO”; removing the word “ten copies of” in paragraphs (a)(1); and revising paragraph (b) to read as follows:

§ 240.14d-3 Filing and transmission of tender offer statement.

* * * * *

(b) Post-commencement amendments and additional materials. The bidder making the tender offer must file with the Commission:

- (1) An amendment to Schedule TO (§240.14d-100) reporting promptly any material changes in the information set forth in the schedule previously filed and including copies of any additional tender offer materials as exhibits; and
- (2) A final amendment to Schedule TO (§240.14d-100) reporting promptly the results of the tender offer.

Instruction to paragraph (b):

A copy of any additional tender offer materials or amendment filed under this section must be sent promptly to the subject company and to any exchange and/or NASD, as required by paragraph (a) of this section, but in no event later than the date the materials are first published, sent or given to security holders.

* * * * *

38. Amend §240.14d-4 by revising the section heading and introductory text to § 240.14d-4; revising the introductory text of paragraph (a); removing paragraph (a)(1); redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2); revising newly

redesignated paragraph (a)(2); adding an Instruction to paragraph (a); redesignating paragraphs (b) and (c) as paragraphs (c) and (d)(1) and adding a new paragraph (b); in the first sentence of newly redesignated paragraph (d)(1) remove the phrase “paragraph (a) of”; and adding paragraph (d)(2) to read as follows:

§ 240.14d-4 Dissemination of tender offers to security holders.

As soon as practicable on the date of commencement of a tender offer, the bidder must publish, send or give the disclosure required by §240.14d-6 to security holders of the class of securities that is the subject of the offer, by complying with all of the requirements of any of the following:

(a) Cash tender offers and exempt securities offers. For tender offers in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77c):

(1) Summary Publication. * * *

(2) Use of stockholder lists and security position listings. Any bidder using stockholder lists and security position listings under § 240.14d-5 must comply with paragraph (a)(1) of this section on or before the date of the bidder’s request for such lists or listing under § 240.14d-5(a).

Instruction to paragraph (a): Tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication and the use of stockholder lists and security position listings under § 240.14d-5, paragraphs (a)(1) and (a)(2) of this section are exclusive.

(b) Registered securities offers. For tender offers in which the consideration consists solely or partially of securities registered under the Securities Act

of 1933, a registration statement containing all of the required information, including pricing information, has been filed and a preliminary or final prospectus is delivered to security holders. However, for going-private transactions (as defined by §240.13e-3) and roll-up transactions (as described by Item 901 of Regulation S-K (§229.901 of this chapter)), a registration statement registering the securities to be offered must have become effective and only a final prospectus may be delivered to security holders on the date of commencement.

Instructions to paragraph (b): 1. If the prospectus is being delivered by mail, mailing on the date of commencement is sufficient.

2. A preliminary prospectus used under this section may not omit information under §230.430 and 230.430A of this chapter.

3. If a preliminary prospectus is used under this section and the bidder must disseminate material changes, the tender offer must remain open for the period specified in paragraph (d)(2) of this section.

4. If a preliminary prospectus is used under this section, tenders may be requested in accordance with §230.162 of this chapter.

(c) Adequate publication. * * *

(d) Publication of changes and extension of the offer.

(1) * * *

(2) In a registered securities offer where the bidder disseminates the preliminary prospectus as permitted by paragraph (b) of this section, the offer must remain open from the date that material changes to the tender offer materials are disseminated to security holders, as follows:

- (i) Five business days for a supplement containing a material change other than price or share levels;
- (ii) Ten business days for a supplement containing a change in price, the amount of securities sought, the dealer's soliciting fee, or other similarly significant change;
- (iii) Ten business days for a supplement included as part of a post-effective amendment; and
- (iv) Twenty business days for a revised prospectus when the initial prospectus was materially deficient.

39. By amending § 240.14d-5 by revising paragraph (c)(1) to read as follows:

§ 240.14d-5 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

* * * * *

(c) * * *

(1) No later than the third business day after the date of the bidder's request, the subject company must furnish to the bidder at the subject company's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in paragraph (a)(2) of this section; the names and addresses of participants identified on the most recent security position listing of any clearing agency that is within the access of the subject company; and the most recent list of names, addresses and security positions of beneficial owners as specified in §240.14a-13(b), in the possession of the subject company, or that subsequently comes into its possession. All security holder list information must be in the format requested by the

bidder to the extent the format is available to the subject company without undue burden or expense.

* * * * *

40. By revising the section heading and §240.14d-6 to read as follows:

§ 240.14d-6 Disclosure of tender offer information to security holders.

(a) Information required on date of commencement.

(1) Summary publication. If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication under §240.14d-4(a)(1):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials furnished by the bidder upon request of any security holder must include the information required by paragraph (d)(1) of this section.

(2) Use of stockholder lists and security position listings. If a tender offer is published, sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings under §240.14d-4(a)(2):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder must include the information required by paragraph (d)(1) of this section.

3. Other tender offers. If a tender offer is published or sent or given to security holders other than pursuant to §240.14d-4(a), the tender offer materials that are

published or sent or given to security holders on the date of commencement of such offer must include the information required by paragraph (d)(1) of this section.

(b) Information required in other tender offer materials published after commencement. Except for tender offer materials described in paragraphs (a)(1)(ii) and (a)(2)(ii) of this section, additional tender offer materials published, sent or given to security holders after commencement must include:

- (1) The identities of the bidder and subject company;
- (2) The amount and class of securities being sought;
- (3) The type and amount of consideration being offered; and
- (4) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer.

Instruction to paragraph (b): If the additional tender offer materials are summary advertisements, they also must include the information required by paragraphs (d)(2)(v) of this section.

(c) Material changes. A material change in the information published or sent or given to security holders must be promptly disclosed to security holders in additional tender offer materials.

(d) Information to be included.

(1) Tender offer materials other than summary publication. The following information is required by paragraphs (a)(1)(ii), (a)(2)(ii) and (a)(3) of this section:

- (i) The information required by Item 1 of Schedule TO (§240.14d-100) (Summary Term Sheet); and

(ii) The information required by the remaining items of Schedule TO (§240.14d-100) for third-party tender offers, except for Item 12 (exhibits) of Schedule TO (§240.14d-100), or a fair and adequate summary of the information.

(2) Summary Publication. The following information is required in a summary advertisement under paragraphs (a)(1)(i) and (a)(2)(i) of this section:

(i) The identity of the bidder and the subject company;

(ii) The information required by Item 1004(a)(1) of Regulation M-A (§229.1004(a)(1) of this chapter);

(iii) If the tender offer is for less than all of the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject company;

(iv) A statement that the information required by paragraph (d)(1) of this section is incorporated by reference into the summary advertisement;

(v) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(vi) In a tender offer published or sent or given to security holders by use of stockholder lists and security position listings under §240.14d-4(a)(3), a statement that a request is being made for such lists and listings. The summary publication also must state that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of security holders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities. If the list furnished to the bidder also included beneficial owners pursuant to

§240.14d-5(c)(1) and tender offer materials will be mailed directly to beneficial holders, a statement to that effect also should be included.

(3) No transmittal letter. Neither the initial summary advertisement nor any subsequent summary advertisement may include a transmittal letter (the letter furnished to security holders for transmission of securities sought in the tender offer) or any amendment to the transmittal letter.

41. By amending §240.14d-7 to redesignate paragraph (a) as (a)(1) and to add paragraph (a)(2) to read as follows:

§240.14d-7 Additional withdrawal rights.

* * * * *

(a)(2) Exemption during subsequent offering period. Notwithstanding the provisions of Section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)) and paragraph (a) of this section, the bidder need not offer withdrawal rights during a subsequent offering period.

* * * * *

42. By amending §240.14d-9 by revising the section heading; redesignating paragraphs (a) through (f) as paragraphs (b) through (g); adding new paragraph (a); and revising the introductory text of newly redesignated paragraph (b) to read as follows:

§240.14d-9 Recommendation or solicitation by the subject company and others.

(a) Pre-commencement communications.

A communication by persons described in paragraph (e) of this section with respect to a tender offer will not be deemed to constitute a recommendation or solicitation under this section if:

- (1) The tender offer has not commenced under §240.14d-2; and
- (2) The communications are filed under cover of Schedule 14D-9 (§240.14d-101) with the Commission as soon as practicable on the date of the communication.

Instructions to paragraph (a)(2):

1. The box on the front of Schedule 14D-9 (§240.14d-101) indicating that the filing contains pre-commencement communications must be checked.
2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under §230.425 of this chapter and will be deemed to have been filed under this section as well.
3. For pre-commencement communications in connection with registered exchange offers, also see §§ 230.135, 230.166, 230.167, 230.168 and 230.169 of this chapter.
4. Communications of the type described under § 230.169 need not be filed under this section.

(b) Post-commencement communications.

After commencement by a bidder under § 240.14d-2, no solicitation or recommendation to security holders may be made by any person described in paragraph (e) of this section with respect to a tender offer for such securities unless as soon as practicable on the date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following:

(1) * * *

* * * * *

43. By amending §240.14d-9 by removing the words “eight copies of” in newly redesignated paragraph (b)(1); removing the reference “14D-1” in newly redesignated paragraphs (b)(2)(i) and (b)(3)(i) and in its place add “TO”, removing the reference

“Items 2 and 4(a) of Schedule 14D-9” in newly redesignated paragraph (b)(2)(ii) and in its place add “Items 1003(d) and 1012(a) of Regulation M-A (§229.1003(d) and §229.1012(a))”; removing the reference “paragraph (a)(2) or (3)” in newly redesignated paragraph (c)(2) and in its place add “paragraph (b)(2) or (3)”; removing the reference “Items 1, 2, 3(b), 4, 6, 7 and 8” in newly redesignated paragraph (d) and in its place add “Items 1 through 8”; removing the reference “paragraphs (d)(2) and (e)” in the introductory text of newly redesignated paragraph (e)(1) and in its place add “paragraphs (e)(2) and (f)”; removing the reference “14D-1 (§240.14d-101)” in newly redesignated paragraph (e)(2)(i) and in its place add “TO (§240.14d-100)”; and removing the reference to “paragraph (e)(3)” in newly redesignated paragraph (f)(4) and in its place add “paragraph (f)(3)”.

44. By adding §240.14d-11 to read as follows:

§240.14d-11. Subsequent offering period.

A bidder may elect to provide a ten business day subsequent offering period during which tenders will be accepted if:

- (a) The initial offering period has expired;
- (b) The offer is for all outstanding securities of the class that is the subject of the tender offer;
- (c) When the initial offering period expires, the bidder immediately accepts and promptly pays for all securities tendered during the initial offering period;
- (d) The bidder immediately accepts and promptly pays for all securities as they are tendered during the subsequent offering period;

(e) The bidder discloses its intention to offer a subsequent offering period and describes the subsequent offering period in the initial tender offer materials filed and disseminated to security holders. If the bidder elects to offer a subsequent offering period after the initial tender offer materials have been disseminated to security holders, it must amend the tender offer materials to reflect this decision, disseminate the information to security holders in a manner reasonably calculated to inform security holders of this change, and give shareholders a sufficient period of time to consider the information; and

(f) The bidder intends to acquire all securities remaining after the tender offer through a merger or similar transaction, and discloses this intention in the initial or supplemental tender offer materials filed and disseminated to security holders.

45. By revising §240.14d-100 to read as follows:

§240.14d-100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

Securities and Exchange Commission,
Washington, D.C. 20549

Schedule TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No. ____)*

(Name of Subject Company (issuer))

(Names of Filing Persons (identifying status as offeror, issuer or other person))

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

Calculation of Filing Fee

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- third-party tender offer subject to Rule 14d-1.
- issuer tender offer subject to Rule 13e-4.
- going-private transaction subject to Rule 13e-3.
- amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: ()

General Instructions:

- A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.
- B. This filing must be accompanied by a fee payable to the Commission as required by §240.0-11.
- C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 3 and 5 - 9 for a third-party tender offer and Items 5 - 8 for an issuer tender offer must be given with respect to: (i) each partner of the partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the 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 items specified above must be given with respect to: (a) each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.
- D. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature or filing fee is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.
- E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.
- F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule,

- all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Securities Exchange Act of 1934 (“the Act”).
- G. A filing person may amend its previously filed Schedule 13D (§240.13d-101) on Schedule TO (§240.14d-100) if the appropriate box on the cover page is checked to indicate a combined filing and the information called for by the fourteen disclosure items on the cover page of Schedule 13D (§240.13d-101) is provided on the cover page of the combined filing with respect to each filing person.
- H. The final amendment required by §§240.14d-3(b)(2) and 240.13e-4(c)(4) will satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the offeror in the tender offer.
- I. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.
- J. If the tender offer disclosed on this statement involves a going-private transaction, a combined Schedule TO (§240.14d-100) and Schedule 13E-3 (§240.13e-100) may be filed with the Commission under cover of Schedule TO. The Rule 13e-3 box on the cover page of the Schedule TO must be checked to indicate a combined filing. All information called for by both schedules must be provided except that Items 1 - 3, 5, 8 and 9 of Schedule TO may be omitted to the extent those items call for information that duplicates the item requirements in Schedule 13E-3.
- K. For purposes of this statement, the following definitions apply:
- (1) The term offeror means any person on whose behalf a tender offer is made;
 - (2) The term issuer tender offer has the same meaning as in Rule 13e-4(a)(2); and
 - (3) The term third-party tender offer means a tender offer that is not an issuer tender offer.

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE TO:

Under Sections 13(e), 14(d) and 23 of the Act and the rules and regulations of the Act, the Commission is authorized to solicit the information required to be supplied by this schedule.

Disclosure of the information specified in this schedule is mandatory, except for I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of disclosing tender offer and going-private transactions. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing tender offer and going-private statements.

Failure to disclose the information required by this schedule, except for I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules.

Item 1. Summary Term Sheet.

Furnish the information required by Item 1001 of Regulation M-A (§229.1001 of this chapter).

Item 2. Subject Company Information.

Furnish the information required by Item 1002(a) through (c) of Regulation M-A (§229.1002 of this chapter).

Item 3. Identity and Background of Filing Person.

Furnish the information required by Item 1003(a) through (c) of Regulation M-A (§229.1003 of this chapter) for a third-party tender offer and the information required by Item 1003(a) of Regulation M-A (§229.1003 of this chapter) for an issuer tender offer.

Item 4. Terms of the Transaction.

Furnish the information required by Item 1004(a) of Regulation M-A (§229.1004 of this chapter) for a third-party tender offer and the information required by Item 1004(a) through (b) of Regulation M-A (§229.1004 of this chapter) for an issuer tender offer.

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

Furnish the information required by Item 1005(a) and (b) of Regulation M-A (§229.1005 of this chapter) for a third-party tender offer and the information required by Item 1005(e) of Regulation M-A (§229.1005) for an issuer tender offer.

Item 6. Purpose of the Transaction and Plans or Proposals.

Furnish the information required by Item 1006(a) and (c)(1) through (7) of Regulation M-A (§229.1006 of this chapter) for a third-party tender offer and the information required by Item 1006(a) through (c) of Regulation M-A (§229.1006 of this chapter) for an issuer tender offer.

Item 7. Source and Amount of Funds or Other Consideration.

Furnish the information required by Item 1007(a), (b) and (d) of Regulation M-A (§229.1007 of this chapter).

Item 8. Interest in Securities of the Subject Company.

Furnish the information required by Item 1008 of Regulation M-A (§229.1008 of this chapter).

Item 9. Persons/Assets, Retained, Employed, Compensated or Used.

Furnish the information required by Item 1009(a) of Regulation M-A (§229.1009 of this chapter).

Item 10. Financial Statements.

If material, furnish the information required by Item 1010(a) and (b) of Regulation M-A (§229.1010 of this chapter) for the issuer in an issuer tender offer and for the offeror in a third-party tender offer.

Instructions to Item 10:

1. Financial statements must be provided when the offeror's financial condition is material to security holder's decision whether to sell, tender or hold the securities sought. The facts and circumstances of a tender offer, particularly the terms of the

- tender offer, may influence a determination as to whether financial statements are material, and thus required to be disclosed.
2. Financial statements are not considered material when: (a) the consideration offered consists solely of cash; (b) the offer is not subject to any financing condition; and either: (c) the offeror is a public reporting company under Section 13(a) or 15(d) of the Act, or (d) the offer is for all outstanding securities of the subject class.
 3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) the financial statements substantially meet the requirements of this item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the matter incorporated by reference is not filed with this schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may 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. See General Instruction F to this schedule.
 4. If the offeror in a third-party tender offer is a natural person, and such person's financial information is material, disclose the net worth of the offeror. If the offeror's net worth is derived from material amounts of assets that are not readily marketable or there are material guarantees and contingencies, provide appropriate disclosure.
 5. If the offeror in a third-party cash tender offer intends to engage in a merger or similar transaction with the subject company after the tender offer and non-tendering security holders will receive securities in the subsequent transaction, the offeror must disclose the financial information specified in Item 3(f), (g) and (h) and Item 5 of Form C (§239.6 of this chapter) or Form SB-3 (§229.11 of this chapter), as applicable. The disclosure document sent to security holders may include only the information specified in Items 3(f), (g) and (h) so long as the schedule filed with the Commission contains all information required by this instruction and the disclosure document advises security holders where the full financial information can be found.
 6. The disclosure materials disseminated to security holders may contain the summarized financial information specified by Item 1010(c) of Regulation M-A (§229.1010 of this chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M-A must be disclosed directly or incorporated by reference in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S.

GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 8 of this Item.

7. If the offeror is not subject to the periodic reporting requirements of the Act, the financial statements required by this Item need not be audited if audited financial statements are not available or obtainable without unreasonable cost or expense. Make a statement to that effect and the reasons for their unavailability.
8. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§249.220f of this chapter), unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

Item 11. Additional Information.

Furnish the information required by Item 1011 of Regulation M-A (§229.1011 of this chapter).

Item 12. Exhibits.

File as an exhibit to the Schedule all documents specified by Item 1016(a), (b), (d), (g) and (h) of Regulation M-A (§229.1016 of this chapter).

Item 13. Information Required by Schedule 13E-3.

If the Schedule TO is combined with Schedule 13E-3 (§240.13e-100), set forth the information required by Schedule 13E-3 that is not included or covered by the items in Schedule TO.

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.

(Signature)

(Name and title)

(Date)

Instruction to Signature:

The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See §§240.12b-11 and 240.14d-1(f) with respect to signature requirements.

46. By revising §240.14d-101 to read as follows:

§240.14d-101 Schedule 14D-9.

Securities and Exchange Commission,
Washington, D.C. 20549

Schedule 14D-9

Solicitation/Recommendation Statement under Section 14(d)(4) of the Securities
Exchange Act of 1934

(Amendment No. ____)

(Name of Subject Company)

(Names of Persons Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address, and telephone numbers of person authorized to receive notices and
communications on behalf of the persons filing statement)

() Check the box if the filing relates solely to preliminary communications made before
the commencement of a tender offer.

General Instructions:

- A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.
- B. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.
- C. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.
- D. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Securities Exchange Act of 1934 (“the Act”).
- E. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Subject Company Information.

Furnish the information required by Item 1002(a) and (b) of Regulation M-A (§229.1002 of this chapter).

Item 2. Identity and Background of Filing Person.

Furnish the information required by Item 1003(a) and (d) of Regulation M-A (§229.1003 of this chapter).

Item 3. Past Contacts, Transactions, Negotiations and Agreements.

Furnish the information required by Item 1005(d) of Regulation M-A (§229.1005 of this chapter).

Item 4. The Solicitation or Recommendation.

Furnish the information required by Item 1012(a) through (c) of Regulation M-A (§229.1012 of this chapter).

Item 5. Person/Assets, Retained, Employed, Compensated or Used.

Furnish the information required by Item 1009(a) of Regulation M-A (§229.1009 of this chapter).

Item 6. Interest in Securities of the Subject Company.

Furnish the information required by Item 1008(b) of Regulation M-A (§229.1008 of this chapter).

Item 7. Purpose of the Transaction and Plans or Proposals.

Furnish the information required by Item 1006(d) of Regulation M-A (§229.1006 of this chapter).

Item 8. Additional Information.

Furnish the information required by Item 1011(b) of Regulation M-A (§229.1011 of this chapter).

Item 9. Exhibits.

File as an exhibit to the Schedule all documents specified by Item 1016(a), (e) and (g) of Regulation M-A (§229.1016 of this chapter).

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.

(Signature)

(Name and title)

(Date)

Instruction to Signature:

The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See §240.14d-1(f) with respect to signature requirements.

47. By amending §240.14e-1 by revising paragraph (c) to read as follows:

§240.14e-1 Unlawful tender offer practices.

* * * * *

(c) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer. This paragraph does not prohibit a bidder electing to offer a subsequent offering period under §240.14d-11 from paying for securities during the subsequent offering period in accordance with that section.

* * * * *

47. By adding §240.14e-5 to read as follows:

§240.14e-5 Prohibiting purchases outside the tender offer.

(a) Unlawful activity. As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with a tender offer for equity securities, no covered person may directly or indirectly purchase or arrange to purchase any subject securities or any related securities, except as part of the offer. This prohibition applies from the time the offer is first publicly announced or otherwise made known to holders of the subject securities until the offer expires.

(b) Excepted activity. The following transactions in subject securities or related securities are not prohibited by paragraph (a) of this section:

(1) Exercises of securities. Transactions by covered persons to convert, exchange, or exercise related securities into subject securities, if the covered person owned the related securities before the offer was first publicly announced or otherwise made known to security holders;

(2) Purchases for plans. Purchases or arrangements to purchase by or for a plan that are made by an agent independent of the issuer;

(3) Purchases during odd-lot offers. Purchases or arrangements to purchase if the offer is exempt under §240.13e-4(h)(5); and

(4) Unsolicited purchases. Unsolicited purchases by a dealer-manager that are made on an agency basis.

(c) Definitions. For purposes of this section, the term:

(1) Affiliate means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the offeror;

- (2) Agent independent of the issuer has the same meaning as in §242.100(b);
- (3) Covered person means:
 - (i) The offeror and its affiliates;
 - (ii) The offeror's dealer-manager(s) and other advisors; and
 - (iii) Any person acting, directly or indirectly, in concert with any of the persons specified in this paragraph (c)(3) in connection with any purchase or arrangement to purchase any subject securities or any related securities;
- (4) Plan has the same meaning as in §242.100(b) of this chapter;
- (5) Related securities means securities that are immediately convertible into, exchangeable for, or exercisable for subject securities; and
- (6) Subject securities has the same meaning as in §229.1000 of this chapter.
- (d) Exemptive Authority. Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms or conditions, to any transaction or class of transactions.

49. By adding §240.14e-8 to read as follows:

§240.14e-8 Prohibited conduct in connection with pre-commencement communications.

It is a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act (15 U.S.C. 78n) for any person to publicly announce that the person (or a party on whose behalf the person is acting) plans to make a tender offer that has not yet been commenced, if the person:

- (a) Is making the announcement of a potential tender offer without the intention to commence and complete the offer;

(b) Intends, directly or indirectly, for the announcement to manipulate the market price of the stock of the bidder or subject company; or

(c) Does not have the reasonable belief that the person will have the means to purchase securities to complete the offer.

By the Commission.

Jonathan G. Katz
Secretary

Dated: November 3, 1998