Sunshine Act Meetings

Federal Register

Vol. 51, No. 224

Thursday, November 20, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:37 p.m. on Friday, November 14, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution: (1) Making funds available for the payment of insured deposits made in First National Bank of Temple, Temple Oklahoma, which was closed by the Deputy Comptroller of the Currency on Friday, November 14, 1986, (2) accepting the bid of Union National Bank of Oklahoma, Temple, Oklahoma, a newly-chartered national bank subsidiary of The Union of Arkansas Corp., Little Rock, Arkansas, for the transfer of the insured and fully secured or preferred deposits of the closed bank, and (3) designating Union National Bank of Oklahoma as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank.

At that same meeting, the Board of Directors also: (1) Accepted the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of assets of end the assumption of the liability to pay deposits made in The Bank of Northern California, San Jose, California, an insured State nonmember bank scheduled for closing later in the day by the Superintendent of Banks for the State of California, or (2) in the event no acceptable bid for a purchase and sssumption transaction is submitted, accepted the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, made funds available for the payment of the insured deposits of the closed bank.

In calling the meeting, the board determined, on motin of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(g)(A)(ii), and (c)(9)(B)).

Dated: November 17, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-26258 Filed 11-18-86; 12:06 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 17, 1986.

TIME AND DATE: 10:00 a.m., Thursday, December 18, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Cases heard for oral argument on December 16, 1986, and December 17, 1986, including: NACCO Mining Co., LAKE 85-87-R, Greenwich Collieries, PENN 85-188-R, White County Coal Corporation, LAKE 86-58-R, and Emerald Mines Corporation, PENN 85-298-R. (Issues include whether an enforcement action under section 104(d) of the Mine Act, 30 U.S.C. 814(d), can be taken only when a violation is discovered during the course of an investigation and where the inspector actually observes the violation.)

It was determined by a unanimous vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-26238 Filed 11-18-86; 10:24 am]

BILLING CODE 6735-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (51 FR 40370 November 6, 1986).

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Friday, October 31, 1986.

CHANGES IN THE MEETING: Additional meetings.

A closed meeting was held on Wednesday, November 12, 1986, at 9:15 a.m., to consider the following items.

Formal orders of investigation.
Administrative matter.

A closed meeting was held on Thursday, November 13, 1986, following the 10:00 a.m. open meeting, to considered the following item.

Consideration of *amicus* participation.

Chairman Shad and Commissioners Cox, Peters, Grundfest and Fleischman, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272-3077.

Jonathan G. Katz,

Secretary.

November 14, 1986.

[FR Doc. 86-26216 Filed 11-17-86; 4:18 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 24, 1986:

An open meeting will be held on Tuesday, November 25, 1986, at 10:00 a.m., followed by a closed meeting.

The Commissioners, Counsel to the Commissioner, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, November 25, 1986, at 10:00 a.m., will be:

1. Consideration of whether to adopt final amendments to the Industry Guides, "Statistical Disclosure by Bank Holding Companies". The amendments would call for disclosures regarding certain outstanding credits to borrowers in foreign countries experiencing liquidity problems that are expected to have a material impact on timely repayment of principal or interest, and certain restructurings of those outstanding credits. For further information, please contact Wayne G. Pentrack at (202) 272-2130.

2. Consideration of whether to issue an interpretive release regarding accounting for loan losses by registrants engaged in lending activities. The release would provide interpretive guidance regarding: (a) The need for procedural discipline in determining amounts of loan losses to be reported; (b) the requirement to account for loan collateral as repossessed, whether it is repossessed substantively or formally; and (c) valuation of substantively or formally repossessed loan collateral. For further information, please contact Wayne G. Pentrack at (202) 272-2130.

3. Consideration of whether to proposed for public comments Rules 11a-3 and 11c-1 under the Investment Company Act of 1940. Rule 11a-3 would allow open-end investment companies and their principal underwriters to make certain exchange offers to their own shareholders or to shareholders of another fund in the same family of funds. Rule 11c-1 would allow unit investment trusts and their sponsors to make certain exchange offers to unitholders of the same series or another series of the same trust or to unitholders of another unit investment trust having the same sponsor. For further information, please contact Brian P. Kindelan at (202) 272-2048.

4. Consideration of whether to adopt: (1) New Rule 14b-2, relating to banks' obligations in connection with forwarding communications to beneficial owners and supplying beneficial owners' names, addresses and securities positions to registrants; (2) corresponding and clarifying amendments to Rules 14a-1, 14a-13, 14b-1, 14c-1 and 14c-7; (3) a provision to new Rule 14b-2 and amendments to Rule 14b-1 excluding employee benefit plan participants from coverage of the shareholder communications rules; and (4) amendments to Rule 14a-3 regarding when and under what conditions registrants are no longer obligated to deliver annual reports or proxy statements to security holders. For further information, please contact Sarah A. Miller at (202) 272-2589.

The subject matter of the closed meeting scheduled for Tuesday, November 25, 1986, following the 10:00 a.m. open meeting, will be:

Formal order of investigation.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Mahaffey at (202) 272-2091.

Jonathan G. Katz,

Secretary.

November 14, 1986.

[FR Doc. 86-26217 filed 11-17-86; 4:18 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 51, No. 224

Thursday, November 20, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ACTION

Student Service-Learning Projects; Availability of Funds

Correction

In notice document 86–24885 beginning on page 40234 in the issue of Wednesday, November 5, 1986, make the following correction:

On page 40234, third column, twenty-third line from the bottom, "43,000" should read "3,000".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-356]

Availability of a Draft Environmental Impact Statement on the Rangeland Grasshopper Cooperative Management Program

Correction

In notice document 86–25392 appearing on page 40470 in the issue of Friday, November 7, 1986, make the following correction: In the second column, insert an asterisk after the fifteenth, twenty-first and twenty-seventh lines.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51646; FRL-3100-7]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

Correction

In notice document 86–24211 beginning on page 37969 in the issue of Monday, October 27, 1986, make the following corrections:

1. On page 37969, in the second column, in the fifth line under the caption **P 87–41**, "carbomonocyclic" was misspelled.

2. In the same column, in the eleventh line under the caption **P 87–42**, "date" should read "data".

3. On the same page, in the third column, the fourth line under the caption **P 87–44** should read "sulfo-6[(2-(sulfooxy)ethyl)sulfonyl],".

4. In the same column, in the last line under the caption **P 87–47**, insert a period after "oxo-".

5. On page 37970, in the second column, in the third line, "Confidential" was misspelled.

6. In the same column, in the sixth line under the caption **P 87–50**, insert ">" after "oral:".

7. On the same page, in the third column, in the first line, insert ">" after "oral:".

8. On page 37971, in the second column, in the eleventh line under the caption **P 87–70**, ">" should read "<".

9. In the same column, in the second line under the caption **P 87–71**, "Chemical" should read "Chemicals".

10. In the same column, in the ninth line under the caption **P 87–72**, insert a period after "submitted".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Wage Coverage

Correction

In proposed rule document 86–24221 beginning on page 39397 in the issue of Tuesday, October 28, 1986, make the following corrections:

On page 39398, in the first column, in the last complete paragraph, in the sixth line, insert "because" between "necessary" and "of"; and on the same page, in the second column, in the first complete paragraph, in the fourth line, "intended" should read "interned".

BILLING CODE 1505-01-D

federal register

Thursday
November 20, 1986

Part II

Securities and Exchange Commission

17 CFR Part 210, Etc.

Proxy Rules; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 239, 240, 249 and 270

[Release Nos. 33-6676; 34-23789; 35-24236; IC-15403; File No. S7-31-85]

Proxy Rules—Comprehensive Review

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today announced the adoption of amendments to its proxy rules and certain other rules. The amendments bring to the proxy context the benefits of the integrated disclosure system. The amendments also include a compensation plan disclosure item that simplifies the proxy disclosure previously required. The amendments also require new registrants to provide disclosure concerning prior changes in accountants and any related disagreements. In addition, certain changes update the rules to comport with current practice, interpretations and other changes in laws and rules.

DATES: *Effective Date:* These amendments are effective January 20, 1987, for proxy statements filed on or after that date.

Compliance Date: Registrants are permitted, however, to comply with the amendments immediately after publication of this Release in the **Federal Register**. Such compliance must be with the amended rules as a whole.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, Alexander G. Shtofman or Caroline W. Dixon, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. After the effective date, contact Cecelia D. Blye, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of revisions to the proxy and information statement rules [1] under the Securities Exchange Act of 1934 ("Exchange Act").[2] The Commission is adopting revisions to Regulation 14A,[3] including Schedules 14A [4] and 14B,[5] and Regulation 14C,[6] including Schedule 14C.[7] In addition, certain revisions have been made to Regulation S-K,[8] Form S-18,[9] Form S-4 [10] and Form 10-K.[11] Finally, corresponding amendments to a number of other rules, regulations, forms and schedules are being adopted in order to revise or correct references to Regulations and Schedules 14A and 14C.[12]

I. Executive Summary

In July 1985, the Commission proposed amendments to its proxy rules as part of its Proxy Review Program.[13] The proposed revisions were intended to simplify the proxy rules and to update the rules to accord with current practice, staff interpretations, new laws and other changes in Commission rules.[14] The Commission is now adopting certain of the proposals and is publishing for comment related proposals in a companion release, Securities Exchange Act Release No. 33-6675.

Among other things, the amendments adopted today apply the principles of the integrated disclosure system to proxy disclosure, streamline compensation plan disclosure and require disclosure by new registrants of changes in and disagreements with accountants. Consistent with the integrated disclosure system, the amendments as adopted allow certain company-specific (including financial) information required in connection with mergers, consolidations, acquisitions and similar matters to be incorporated by reference by eligible registrants pursuant to a system which is substantially the same as that contained in Form S-4. With respect to the authorization, issuance, modification or exchange of securities, the Commission has determined to retain the existing financial and related requirements applicable to these transactions and has adapted the principles of integrated disclosure in order to bring the proposed benefits to these transactions without an unintended increase in the information required. This has necessitated a modification of the rules as proposed. Pursuant to the modification, S-3 companies may incorporate by reference the required information from previously-filed documents and do not have to incorporate the entire annual report on Form 10-K and subsequent reports. The new rules also permit any registrant to incorporate by reference to documents delivered with the proxy statement.

Information with regard to compensation plans previously contained in three items is now condensed in a single item [15] and the disparities in disclosure requirements among different types of plans have been eliminated. The information required with respect to plans previously in effect is required only for plans in effect within the last three years, rather than five years. Registrants will no longer be required to disclose information concerning sales of securities subsequent to the exercise of options.

The Commission also is adopting proposals to require disclosure concerning changes in accountants and any related disagreements if a registrant was not subject to Exchange Act reporting requirements at the time a change in accountants occurred.[16] This would principally affect initial public offering registration statements and proxy statements of issuers newly registered under the Exchange Act.

The Commission has deferred consideration of the proposed requirement that a registrant disclose whether its independent auditor is a member of a voluntary self-regulatory organization which has both a peer review program and an independent oversight function. The Commission will reconsider this proposal after the completion of related private sector initiatives and review of the concept of mandatory peer review.

Part II of this release provides a synopsis of each of the proposed amendments to the proxy rules, which follows the structure of the regulations

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[1] 17 CFR 240.14a-1 through 240.14c-101.

[2] 15 U.S.C. 78a-78kk (1982).

[3] 17 CFR 240.14a-1 through 240.14b-1.

[4] 17 CFR 240.14a-101.

[5] 17 CFR 240.14a-102.

[6] 17 CFR 240.14c-1 through 240.14c-101.

[7] 17 CFR 240.14c-101.

[8] 17 CFR Part 229.

[9] 17 CFR 239.28.

[10] 17 CFR 239.25.

[11] 17 CFR 249.310.

[12] The corresponding amendments affect: Rule 3-05(b) of Regulation S-X (17 CFR 210.3-05(b)), Rule 14f-1 (17 CFR 240.14f-1), Rule 13e-3 (17 CFR 240.13e-3) and Schedule 13E-3 (17 CFR 240.13e-100) under the Exchange Act; Forms N-14, S-4 and F-4 (17 CFR 239.23, 239.25 and 239.34) under the Securities Act of 1933; and Rule 20a-3 (17 CFR 270.20a-3) under the Investment Company Act of 1940.

[13] Release No. 33-6592 (July 19, 1985) [50 FR 29409].

[14] The proposals generated 52 comment letters. The letters of comment, as well as a copy of the summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room (File No. S-731-85).

[15] New Item 10 of Schedule 14A contains requirements previously contained in Items 9, 10 and 11.

[16] These changes are contained in Item 9 of Schedule 14A, Item 304 of Regulation S-K (17 CFR 229.304) and Form S-18.

and schedules, and the Commission's action on such proposals.[17]

II. Discussion

A. *Regulations 14A and 14C*

1. Registrant/Issuer; Security Holder/Shareholder

The Commission is replacing the term "issuer" with "registrant" and "shareholder" with "security holder," as proposed.

2. Executive Officer/Officer

In order to be consistent with Regulation S-K the Commission is, as proposed, replacing "officer" with "executive officer" in Item 5, Interest of Certain Persons in Matters to be Acted Upon, and Item 8, Compensation of Directors and Executive Officers, of Schedule 14A.

B. *Rule 14a-1, Definitions*

1. Technical Revision

The Commission has adopted, as proposed, a technical amendment to the first paragraph of Rule 14a-1 [18] to replace the phrase "terms used in §§ 240.14a-1 to 240.14a-10 and in Schedule 14A" by "terms used in this regulation" to clarify that the definitions are intended to apply to Regulation 14A in its entirety.

2. Last Fiscal Year

The Commission has adopted the proposed definition of "last fiscal year" to clarify the applicability of the definition to consent solicitations. A registrant's last fiscal year will not only be defined in terms of the date of the meeting, as in former rules, but also in terms of the date as of which consents or authorizations may be used to effect corporate action.

3. Record Date

A new defined term, "record date," has been adopted as proposed.

4. Solicitation

After consideration of a proposed revision to the definition of "solicitation", the Commission has concluded that the current definition and its judicial construction have worked well and that there is no need to revise the existing definition.

C. *Rule 14a-2, Solicitations to Which § 240.14a-3 to § 240.14a-13 Apply*

1. Solicitation Pursuant to Chapter 11 of Bankruptcy Reform Act

The Commission has amended Rule 14a-2 [19] as proposed to conform to changes in bankruptcy laws pursuant to the Bankruptcy Reform Act of 1978.[20] The revision to paragraph (a)(4) of Rule 14a-2 [21] will exempt a solicitation pursuant to a reorganization under Chapter 11, if such solicitation is made subsequent to or concurrently with the transmittal of a court approved disclosure statement.

D. *Rule 14a-3, Information to be Furnished to Security Holders*

1. Technical Revisions

The Commission has amended paragraph (b) of Rule 14a-3 [22] (and Rule 14c-3(a),[23] with regard to information statements) as proposed to clarify that the annual report to security holders is required whether the registrant is soliciting proxies or consents in connection with the annual election of directors.[24]

The proposed relocation of Paragraph (d) of Rule 14a-3 [25] to Rule 14a-13, Obligations of Registrants in Communicating with Beneficial Owners,[26] was adopted in a prior release with respect to the shareholder communications rules.[27]

2. Annual Report to Security Holders

The Commission is adopting, with a minor revision,[28] the proposed amendment to paragraph (b) of Rule 14a-3, to clarify that, if the registrant convenes a special meeting to elect directors in lieu of an annual meeting, the registrant must furnish an annual report to security holders in connection with such special meeting. This provision is intended to assure that the annual report be furnished in connection with the first meeting held during the year to elect directors. The Commission also solicited comment as to whether the rule should be modified to apply to elections of directors that take place either before or after the annual election in a given year. After consideration of the current requirement and of the public comment, the Commission believes that furnishing the annual report more than once per year is not necessary.

3. Rule 14a-3(b)(10), Furnishing of Information in Documents Filed Pursuant to Exchange Act Section 13(a) Subsequent to the Form 10-K.

The proposed amendments to Rule 14a-3 would have required an undertaking in the annual report to security holders or in the registrant's proxy statement for an annual meeting (or special meeting in lieu of the annual meeting) to provide, upon written request, information in addition to a copy of the annual report on Form 10-K.[29] A registrant would have been required to provide a copy of any information contained in Exchange Act Section 13(a) [30] reports filed during the period between the filing of the Form 10-K and the date a response was made to the request. Upon further consideration, the Commission has determined that the current requirement in Note D.2 of Schedule 14A that the registrant must undertake to furnish, upon request, copies of information incorporated by reference is adequate and responsive to investors' needs.

E. *Rule 14a-4, Requirements as to Proxy*

1. Rule 14a-4(d)(3)

As proposed, the Commission has added paragraph (d)(3) to Rule 14a-4 [31] to codify current interpretations that a proxy may not confer authority to vote at more than one meeting or consent solicitation.

2. Rule 14a-4(d)(4)

The Commission has revised Rule 14a-4 [32] to clarify that paragraph (d) applies to consent solicitations. The language of proposed paragraph (d)(4) has been revised to avoid any possible conflict with Rule 14a-4(c).[33] This

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[17] The discussion of Schedule 14A includes changes to Items 304 and 403 of Regulation S-K (17 CFR 229.403) and Form S-18, as well as of a clarifying instruction to Item 11 of Form 10-K. Technical revisions to Items 202 and 601 of Regulation S-K (17 CFR 229.202, 601) and to Forms S-4 and F-4 are noted in the last paragraph of Part II.

[18] 17 CFR 240.14a-1.

[19] 17 CFR 240.14a-2.

[20] 11 U.S.C. 101-151326, as amended by Act of November 6, 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978).

[21] 17 CFR 240.14a-2(a)(4).

[22] 17 CFR 240.14a-3(b).

[23] 17 CFR 240.14c-3(a).

[24] Because paragraph 11 of Rule 14a-3(b) repeats the substance of the note following paragraph 7, the note has been deleted as proposed.

[25] 17 CFR 240.14a-3(d).

[26] 17 CFR 240.14a-13.

[27] Securities Exchange Act Release No. 34-22533 (October 15, 1985) [50 FR 42672].

[28] The references to "special" meetings have been rephrased, but the substance remains the same.

[29] The registrant is currently required to provide an undertaking to furnish the Form 10-K upon request to security holders of record as of the date of the annual meeting. This remains unchanged.

[30] 15 U.S.C. 78m(a).

[31] 17 CFR 240.14a-4.

[32] 17 CFR 14a-4(d)(4).

[33] 17 CFR 240.14a-4(c). Rule 14a-4(c) permits the proxy to be drafted to give the proxy holder discretionary power to vote on certain matters enumerated in the provision. As proposed, the amendment to Rule 14a-4(d) would have provided in pertinent part that "no proxy shall confer authority . . . to consent to or authorize any action other than action proposed to be taken in the proxy

Continued

addresses a concern raised by commentators.

Questions also have been raised about paragraph 14a-4(c)(1),[34] which permits a proxy statement or form of proxy to confer discretionary authority with respect to matters that the soliciting party does not know, a reasonable time prior to the solicitation, will be presented at the meeting. The purpose of this provision is only to allow the party filing the proxy statement to respond to proposals initiated by others.

3. Sufficiency of Current Requirements With Respect to Telegraphic Proxies

Rule 14a-4 applies to any form of written proxy, authorization or consent, including telexes, telegrams or cablegrams.[35] The Commission requested comment as to whether the current proxy card requirements are sufficient with respect to telegraphic proxies. After weighing various suggestions made by commentators and the fact that there is no indication of problems today, the Commission has determined not to change the current proxy card requirements.

F. Rule 14a-5, Presentation of Information in Proxy Statement

1. Technical Revision

As proposed, the requirements of paragraph (e) of Rule 14a-5 [36] have been moved to new Item 1 of Schedule 14A.

2. Standard With Regard to Information in Proxy Statement Not Known to Soliciting Persons

In the proposing release, the Commission inquired whether the standard in Rule 14a-5(b),[37] concerning information required in the proxy statement but not known to persons making a solicitation, should be revised to conform to the standard applied to Exchange Act reports [38] and registration statements filed pursuant to the Securities Act of 1933 ("Securities Act").[39] The Commission has determined not to change Rule 14a-5(b) because the current standard has worked well and there was little commentator support for the change.

G. Rule 14a-6, Filing Requirements

1. Technical Revisions [40]

Former paragraph (e) of Rule 14a-6 [41] has been divided as proposed into two paragraphs—paragraph (e), Release Dates, and paragraph (f), Public Availability of Information.

Paragraph (h),[42] Speeches, Press Releases and Scripts, has been amended as proposed to clarify that it also applies to material filed pursuant to Rule 14a-12, Solicitation Prior to Furnishing Required Proxy Statement.[43]

The proposed amendment to implement provisions of Exchange Act Section 14(g) (statutory filing fees for proxy solicitation material involving business combinations)[44] was adopted in an earlier release.[45] Pursuant to the amendment, paragraph (j), filing fees, refers to Rule 0-11 of the Securities Exchange Act.[46]

A new paragraph (1), Computing Time Periods, has been added as proposed to notify registrants that the filing date of a document shall be counted as the first day of the time period and that midnight of the last day shall constitute the end of the period.

2. New Note—Fundamental Changes in Preliminary Material

The Commission is adopting a proposed note to Rule 14a-6 [47] to make clear that the filing of revised preliminary proxy material will not recommence the ten day time period for which information must be on file with the Commission prior to the date definitive copies of such material are first sent or given to security holders, unless such revised material contains fundamental changes.

While Rule 14a-6 deals with the time periods for filing information with the Commission, questions have also been raised concerning time periods required for adequate dissemination of material changes. When there have been material changes in the proxy soliciting material or material subsequent events (in contrast to routine updating), an additional proxy card, along with revised or additional proxy soliciting material, should be furnished to security holders.[48] A sufficient period of time should be allowed for adeqluate dissemination of the material information to security holders prior to the meeting of security holders or the date on which the consents or authorizations may be used to effect the proposed action to permit security holders to assess the information and to change their voting decisions if desired.[49]

If a registrant is furnishing information at the S-3 level and incorporates by reference subsequently-filed documents, it may provide material information through such forward incorporation unless the incorporated information is a change to information previously delivered to all security holders.[50] However, the registrant must

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statement." Commentators suggested that the proposal be revised to make clear that paragraph (d) is not intended to prohibit a registrant's management from voting proxies on matters for which discretionary authority may be given pursuant to 14a-4(c), such as a matter presented at a meeting by a security holder. The language has been refined to provide that "no proxy shall confer authority . . . to consent to or authorize any action other than the action proposed to be taken in the proxy statement or matters referred to in paragraph (c) of this rule."

[34] 17 CFR 240.14a-4(c)(1).

[35] The validity of these forms, however, is a matter of state law.

[36] 17 CFR 240.14a-5(e).

[37] 17 CFR 240.14a-5(b).

[38] Rule 12b-21, 17 CFR 240.12b-21.

[39] Rule 409, 17 CFR 230.409 (identical to Rule 12b-21).

[40] The technical revisions made to Rule 14a-6 also include changing the title from "Material to be Filed" to "Filing Requirements" and adding captions to clarify the rule and make it easier to read. These changes are being adopted as proposed.

[41] 17 CFR 240.14a-6(e).

[42] Paragraph (g) has been redesignated Paragraph (h).

[43] 17 CFR 240.14a-12.

[44] 15 U.S.C. 78n(g) (1982).

[45] Securities Exchange Act Release No. 22781 (January 9, 1986) [51 FR 2472].

[46] 17 CFR 240.0-11.

[47] 17 CFR 240.14a-6.

[48] Where additional proxy soliciting material relating to the same meeting or subject matter is furnished to security holders subsequent to the proxy statement, Rule 14a-6(b) requires that such material be furnished to the Commission at least two business days prior to the date of furnishing the material to security holders.

[49] *See Bear, Stearns & Co. v. Anderson Clayton & Co.*, No. 8501, Del. Ch. Ct. (June 10, 1986) (three business day solicitation period not sufficient to allow security holders a reasonable opportunity to receive and consider additional soliciting material prior to the meeting). *See also, Smith v. Van Gorkom*, 488 A.2d 858, 893 (Del. 1985) ("in an appropriate case, an otherwise candid proxy statement may be so untimely as to defeat its purpose of meeting the needs of a fully informed electorate"). *Cf. Electronic Specialty Co. v. International Controls Corp.*, 409 F.2d 937, 944 (2d Cir. 1969) (describing district court opinion declining to order divestiture of shares acquired in tender offer or to enjoin voting and holding that withdrawal offer lasting for eight days afforded equivalent relief to rescission offer); *Allied Stores Corporation v. Campeau Acquisition Corp., et. al.*, No. 86 Civ. 7841 (S.D.N.Y. Oct. 10, 1986) (temporary restraining order issued for period of 10 days to allow shareholders reasonable opportunity to make informed choice in light of change in terms of tender offer); *Nicholson File Co. v. H.K. Porter Co.*, 341 F. Supp. 508, 513-514, 522 (D.R.I. 1972) aff'd 482 F.2d 421 (1st Cir. 1973) (curative letter and rescission offer mailed within seven days of a tender offer withdrawal date sufficient to counter any effect of misstatement); Securities Exchange Act Release No. 16343 (November 15, 1979) (Commission report under Exchange Act Section 21(a), stating that when facts change prior to meeting, appropriate steps should be taken to disseminate complete and accurate information to security holders; possibilities to be considered include postponing the meeting, sending a letter to all security holders advising them of the changes that have been made, revising the proxy statement and resoliciting proxies, and/or offering new proxy cards).

[50] See discussion in companion release of proposed Rule 14a-14.

furnish security holders with an additional proxy card, accompanied by a brief identification of the material information. While the entire 20 business day period specified in Note D.3 to Schedule 14A need not recommence, the registrant must allow sufficient time to afford security holders an opportunity to obtain and then consider the document containing the information incorporated by reference. It would not be necessary to provide as much time if the additional information is set forth in full in the material accompanying the proxy card.[51]

3. Identification of Changes From Prior Year

The Commission has determined to modify Note 1 to paragraph (a) of Rule 14a-6 [52] and Note 2 to paragraph (a) of Rule 14c-5 (with respect to information statements).[53] These modifications, suggested by a commentator, will eliminate the administrative requirement to submit a marked copy of the preliminary proxy statement identifying the changes from the prior year's proxy statement and the requirement that a cover letter indicate whether the current preliminary material includes material changes from the prior year's material. These requirements have not proved useful to the staff in reviewing proxy materials and elimination of the requirement should benefit registrants. Registrants must continue to comply with paragraph (i) of Rule 14a-6 [54] or paragraph (e) of Rule 14c-5,[55] which provide that, where amendments or revisions alter the text of the preliminary material, the changes are to be indicated by means of underscoring or in some other appropriate manner.

4. Proposed Rules 14a-6(f) and 14c-5(d), Public Availability of Released or Abandoned Proxy Material

The Commission had proposed to revise paragraph (f) of Rule 14a-6 [56] and paragraph (d) of Rule 14c-5 [57] to provide that preliminary proxy material "may be deemed available for public inspection when the staff determines that the registrant has released the proxy material to security holders or has abandoned the intention of releasing the proxy material." As the substance of the proposal is already mandated by the Freedom of Information Act ("FOIA"),[58] the Commission has determined that the proposed revisions are unnecessary. Under the FOIA, the Commission maintains that preliminary proxy material is confidential until definitive material is filed, the material has been released to security holders or no filing of definitive material is anticipated.[59] After definitive material has been filed, or in instances in which no filing of definitive material is anticipated, preliminary proxy material is made available to persons requesting the information under the FOIA.

H. Rule 14a-7, Mailing Communications for Security Holders.

The first paragraph of Rule 14a-7 [60] has been revised as proposed to make clear that the rule applies to Regulation 14A in its entirety.

I. Rule 14a-8, Proposals of Security Holders

1. Eligibility

Rule 14a-8(a)(1) [61] has been revised as proposed to make clear that the securities owned by the proponent must be entitled to be voted "on the proposal."

2. Six Copies

Paragraph (d) of Rule 14a-8 [62] has been amended as proposed to require the registrant to submit six instead of five copies of security holder proposals, no-action requests and all related materials.

J. Rule 14a-13, Obligations of Registrants in Communicating with Beneficial Owners

The proposed amendment to Rule 14a-13 to address the specific circumstances of solicitations and the election of directors at special meetings in lieu of annual meetings was adopted in a prior release.[63]

K. Headnotes to Schedule 14A, Information Required in Proxy Statement

Note A to Schedule 14A is being adopted as proposed. The first sentence continues to provide that where any item calls for information with respect to any matter to be acted upon and such matter involves other matters with respect to which information is called for by other items of Schedule 14A, registrants are required to give the information called for by such other items. A new example concerning authorization of securities in connection with an acquisition has been added to better illustrate application of the headnote.

New Note D, concerning incorporation by reference, has been adopted substantially as proposed. A revision based on a commentator's suggestion has been made to require a statement, located on the last page(s) of the proxy statement, listing all of the documents or portions of documents that are incorporated by reference. Listing the information in one place should facilitate security holder requests for information. Such treatment is consistent with Form S-4.

The Commission has adopted Note E substantially as proposed with a change in language to retain consistency with Forms S-2-3-4. The Commission notes that investment companies, and business development companies as defined in Section 2(a)(48) of the Investment Company Act of 1940,[64] are required to file on registration forms other than Forms S-2 and S-3. These companies, therefore, would not be considered to "meet the requirements" of Form S-2 or S-3 within the meaning of Note E, for purposes of Items 13(b)(1), 14(b)(1) and 14(b)(2).

L. Item 1, of Schedule 14A, Date, Time and Place Information [65]

1. Date, Time, Place and Mailing Address

The first sentence of paragraph (a) of Item 1 has been adopted as proposed to require a statement of the date, time and place of the security holders' meeting, and mailing address of registrant's executive offices.

2. Deadline for Submission of Consents

As proposed, the second sentence of paragraph (a) of Item 1 would have required the registrant to state the date, time and place of counting consents, if action was to be taken by written consent. This sentence, as adopted, has been clarified to require instead that the registrant specify the deadline for submitting consents, if state law requires that such a date be set or if the soliciting person intends to set such a date. The modification is intended to better reflect the actuality of consent solicitations and to make clear that Item

[51] See supra n. 49.
[52] 17 CFR 240.14a-6(a).
[53] 17 CFR 240.14c-5(a).
[54] 17 CFR 240.14a-6(i).
[55] 17 CFR 240.14c-5(e).
[56] 17 CFR 240.14a-6(f).
[57] 17 CFR 240.14c-5(d).
[58] 5 U.S.C. 552 (1977 and Supp. 1986).
[59] *See* Securities Exchange Act Release No. 13030 (December 2, 1976) [41 FR 53784].
[60] 17 CFR 240.14a-7.
[61] 17 CFR 240.14a-8(a)(1).
[62] 17 CFR 240.14a-8(d).
[63] Securities Exchange Act Rel. No. 22533, October 15, 1985 [50 FR 42672].
[64] 15 U.S.C. 80a-2(a)(48).
[65] The addition of this new Item has neccessitated redesignation of former Items 1-8 as Items 2-9.

1 does not require that a deadline be set in the absence of a state law requirement to do so.

3. Date of Mailing Proxy Statement and Form of Proxy and Date for Receipt of Security Holder Proposals

New paragraphs (b) (requiring a statement of the approximate date on which the proxy statement and form of proxy are first sent or given to security holders) and (c) (requiring a statement of the date by which security holder proposals must be received) have been relocated from Rule 14a–5(e) to Item 1 as proposed.

M. Item 2, Revocability of Proxy

In the proposing release, comment was solicited as to whether a specific note with regard to the revocability of written consents was necessary. The Commission believes that Item 2 adequately addresses questions of disclosure with regard to consents and thus has determined that no change to Item 2 is necessary.

N. Item 6, Voting Securities and Principal Holders Thereof; Item 403 of Regulation S–K, Securities Ownership

1. Technical Revision

Paragraphs (d), (e) and (g) of Item 6 have been consolidated as proposed and paragraph (d) has been corrected to call for information required by "Item 403," rather than "Item 403(a)," of Regulation S–K.[66]

2. Item 6(b), Criteria for Entitling Security Holders To Vote or Give Consent

A revision to the first sentence of Item 6(b) is being adopted as proposed. The previous reference to the record date for security holders entitled to vote "at the meeting" has been changed to a reference to the record date "with respect to this solicitation."

A commentator recommended, and the Commission is adopting, a similar refinement to the language of the second sentence of Item 6(b) to clarify the required disclosure. The second sentence of Item 6(b) formerly required disclosure of the "conditions" under which security holders other than holders on the record date were entitled to vote. The sentence has been revised to refer specifically to consents. It provides that, if the right to vote or give consent is not to be determined, in whole or in part, by reference to a record date, the registrant should indicate the criteria for determining which security holders are entitled to vote or give consent.[67]

3. Directors and Officers

The Commission has retained the reference in Item 403 of Regulation S–K to beneficial ownership by "directors and officers of the registrant," rather than amend the rule to apply to "directors and executive officers of the registrant." [68] For purposes of determining security ownership that management may be in a position to influence or control, the Commission believes that it is appropriate to continue to include all officers.

4. Address of Beneficial Owner

The Commission has amended Item 403 of Regulation S–K as proposed to permit a beneficial owner of more than 5% of a registrant's voting securities to provide a business or mailing address when an address must be disclosed.

O. Item 7, Directors and Executive Officers

1. Technical Revisions

Information required by Instruction 4 to Item 103 of Regulation S–K, Legal Proceedings,[69] has been relocated from Item 8, Compensation of Directors and Executive Officers, to Item 7 as proposed. Paragraphs (b) and (c) of Item 7 have been consolidated into one paragraph (c), as proposed. In addition, an inadvertent error, whereby it appeared that investment companies no longer had to disclose the information required by paragraphs (a), Transactions with Management and Others, and (c), Indebtedness of Management, of Item 404 of Regulation S–K,[70] was corrected.

2. Item 7 (e) and (f), Committees of Board of Directors; Number of Meetings and Directors Attendance

Although the Commission proposed no substantive change, it solicited comment as to whether the disclosure called for by paragraphs (e) and (f) of Item 7 (committees of the Board of Directors; number of meetings and director attendance) should be revised. As there was little support for such revision, no indication of undue burden and a number of comments supporting the interest of investors in such information, the current requirements have not been revised.

3. Item 7(h), Votes Cast Against or Withheld From Directors

In the proposing release, the Commission solicited comment as to whether the disclosure required by paragraph (h) of Item 7 (regarding directors with respect to whom 5% or more of the security holder vote was cast against or withheld) should be revised or should be retained. After consideration of the commentator response and review of the disclosure obtained pursuant to this requirement, the Commission has concluded that the information is not particularly useful to security holders and has determined to eliminate the requirement.

P. Item 8, Compensation of Directors and Executive Officers

1. Technical Revision

The title has been changed as proposed to reflect a previous change from "remuneration" to "compensation" in Item 402 of Regulation S–K.[71]

2. Compensation Plan Payment

As suggested by a commentator, an instruction has been added to Item 8 to codify a staff interpretation concerning the disclosure required by Item 402(b) of Regulation S–K (description of a compensation plan to which cash or noncash compensation was paid or distributed during the last fiscal year to executive officers).[72] The instruction provides that, where: (1) The plan became subject to disclosure because of an acquisition or merger and (2) within one year of the acquisition or merger such plan was terminated for purposes of prospective eligibility, the registrant need not provide a full description of the plan but instead may furnish disclosure limited to its obligations to individuals under the compensation plan.

Q. Item 9, Independent Public Accountants Peer Review

The Commission has determined not to adopt at this time the proposed revisions to Item 9 concerning disclosure with regard to the membership of the registrant's auditor in an organization that has a peer review program and an independent oversight function. This proposal as well as others are being examined in light of related private sector initiatives under consideration.[73]

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[66] 17 CFR 229.403(a).

[67] While the definition of "proxy" includes "consent", the Commission has added specific references to "consents" in instances where the absence of such language could cause confusion, as in Item 6(b).

[68] Commentary was solicited on the advisability of such a change.

[69] 17 CFR 229.103.

[70] 17 CFR 229.404 (a) and (c).

[71] 17 CFR 229.402.

[72] 17 CFR 229.402(b).

[73] The report of the Special Committee on Standards of Professional Conduct for Certified

Continued

R. Item 304 of Regulation S–K; Item 9, Independent Public Accountants

1. Item 304 of Regulation S–K

Prior to the proposal, Item 304 of Regulation S–K only required disclosure of recurring transactions or events that were the subject of a disagreement with a previous accountant. As proposed, the existing provisions of Item 304 have been designated as 304(b) [74] and new paragraph (a) has been added to the Item.[75] Pursuant to new paragraph (a), information concerning changes in and disagreements with accountants will now be provided wherever Item 304 disclosure is required, unless disclosure has previously been made. As proposed, these requirements will extend to those engaging in initial public offerings [76] and registrants newly subject to Exchange Act reporting requirements.[77]

2. Item 9 of Schedule 14A

In addition to requiring information concerning changes in accountants, Item 9 [78] of Schedule 14A required proxy statement disclosure concerning disagreements previously reported on Form 8–K. The Item called for a description of such disagreement and provided that the former accountant be afforded an opportunity to respond to the registrant's description.

The Commission proposed to amend Item 9 to require disclosure of disagreements in connection with changes in accountants since the last proxy statement for the most recent annual meeting, even though they have not been previously reported on Form 8–K.[79] The Commission has adopted that proposal and further modified the language to simply refer to the requirements of Item 304(a).[80]

Item 9 as proposed required disclosure of disagreements, notwithstanding prior disclosure. In contrast, proposed Item 304, which also required disclosure of disagreements, specified that the disclosure need not be provided if previously reported. Because the proposal called for information pursuant to both Item 9 and Item 304 in connection with proposed actions requiring financial statements, there was an ambiguity. The Commission is clarifying that the information need not be furnished if previously disclosed.[81] Accordingly, Item 9 as adopted no longer calls for information concerning disagreements because a proposed action requires the furnishing of financial statements.[82] Item 9 continues, however, to require the information, notwithstanding prior disclosure, when the annual election of directors or the election, approval or ratification of the accountant is involved.[83]

T. Item 10, Compensation Plans

1. Major Revisions

Former Items 9, 10 and 11 have been consolidated and simplified. Information with respect to plans previously in effect is to be required only for plans in effect within the last three years, rather than five years. In addition, the Commission has deleted the requirement to disclose information concerning the sale of securities subsequent to the exercise of options as unnecessary and unduly burdensome.

2. Clarifying Revisions

Certain clarifying revisions have been made throughout Item 10 to clarify that the disclosure required with respect to: (1) Directors who are not executive officers and (2) all employees is to be made on a group rather than individual basis. In addition, disclosure concerning executive officers is required only as to those in office at the time the proxy statement is distributed.

3. Disclosure of Accounting Treatment of Compensation Plan

In the proposing release, the Commission solicited comment on whether Item 10 should require disclosure of the accounting treatment to be accorded a compensation plan subject to approval. The Commission believes it is appropriate to await completion of the Financial Accounting Standards Board's project evaluating the measurement of compensation costs for stock option or stock award plans and accordingly has not amended Item 10 to require such disclosure.

4. Item 10(a)(3) of Schedule 14A; Item 11 of Form 10–K; Item 402(b) of Regulation S–K

Certain commentators highlighted a potential conflict between disclosure requirements of Item 10 of Schedule 14A and Item 11 of Form 10–K.

Item 10(a)(3) of Schedule 14A requires disclosure of the executive compensation information called for by Item 402(b) of Regulation S–K with respect to compensation plans currently in effect or in effect during the last three years, with certain specified exceptions. The information to be provided is aggregated for the three year period.

Public Accountants ("Anderson Committee"), entitled "Restructuring Professional Standards to Achieve Professional Excellence in a Changing Environment," included a recommendation to the American Institute of Certified Public Accountants ("AICPA") that, in effect, would require peer review of member firms. On October 18, 1986, the AICPA Council voted in favor of submitting the recommendation to the AICPA membership. The full membership of the AICPA will have to vote to approve the proposal before it can be implemented. In addition, Price Waterhouse has suggested that there be mandatory membership in a new statutory self-regulatory organization that would operate the peer review program currently being conducted by the SEC Practice Section of the AICPA. Other major accounting firms, in a document entitled "Recommendations to the AICPA Board of Directors," have recommended that all auditors of registrants filing with the Commission be members of the AICPA's SEC Practice Section and be subject to its peer review requirements. Finally, the National Commission on Fraudulent Financial Reporting has initially concluded that mandatory membership in a professional quality assurance program should be required by the SEC.

[74] Item 304(b) requires disclosure of the financial statement effect of subsequently accounting for similar transactions in a manner different than that preferred by the former accountant. This requirement has been amended as proposed to remove the threshold requirement of prior disclosure of the disagreement on Form 8–K.

[75] Item 304(a) requires the information called for by Item 4 of Form 8–K, if a change in accountants has taken place within 24 months prior to, or in any period subsequent to, the most recent financial statements. The changes subject to the disclosure requirements of Item 304 are those described in Form 8–K.

[76] As proposed, Form S–18 has been amended to require Item 304 disclosure. Item 11 of Form S–1 continues to require Item 304 information.

[77] Item 304 disclosure is required by Item 14 of Form 10 and Item 9 of Form 10–K.

[78] Item 9 was formerly designated Item 8.

[79] Removal of the 8–K trigger results in disclosure by those registrants that reported the disagreement on Forms 10–Q or N–SAR and those not subject to Exchange Act reporting requirements at the time the change occurred.

[80] The revised Item extends the rule to those registrants that have not previously engaged in solicitations subject to Regulation 14A, notwithstanding the fact that they may have held annual meetings previously or solicited proxies not subject to the Regulation. Thus, registrants having their first meeting subject to Regulation 14A must provide disclosure concerning disagreements that occurred in the most recent fiscal year and any subsequent period.

[81] Similar clarifying amendments have been made to Form S–4.

[82] Because Item 9 contains the requirement to state whether or not representatives of the accountants are expected to be present at the security holders' meeting with the opportunity to make a statement and to respond to appropriate questions, the Commission is adding the provision to items requiring financial statements (Items 13 and 14). This will assure that the information concerning the accountant's presence at the meeting will continue to be provided in the event that financial statements are required in connection with the action to be taken. This requirement also will continue to be required pursuant to Item 9(d), as adopted.

[83] Because Item 9 requires disclosure pursuant to Item 304(a), a sentence has been added to the instructions to Item 304 to clarify that, when required by Item 9, the disclosure is needed notwithstanding prior disclosure.

Item 11 of Form 10–K also calls for disclosure of Item 402(b) information. The information required by Item 11 is ordinarily incorporated by reference from the registrant's definitive proxy statement or definitive information statement. Because the Form 10–K information is required for the most recent fiscal year, a question has arisen as to whether separate disclosure of plan payments for the last fiscal year only would be required even when Item 10 of Schedule 14A has been complied with. However, the instruction to Item 11 of Form 10–K will make clear that a registrant incorporating by reference the three year aggregated history of plan compensation required by Item 10(a)(3) of Schedule 14A will be deemed to have complied with the requirement of Item 11 of Form 10–K.

U. Item 11, Authorization or Issuance of Securities Otherwise than for Exchange, and Item 12, Modification or Exchange of Securities

No substantive changes have been made to these Items as proposed, except that the proposed requirement to provide the disclosure called for by Item 201 of Regulation S–K [84] has not been adopted.

V. Item 13, Financial and Company Information, and Item 14, Mergers, Consolidations, Acquisitions and Similar Matters

As proposed, Item 13 would have specified disclosure requirements for mergers, consolidations and acquisitions, and Item 14 would have specified the company specific requirements (including financial statements), common to Items 11, 12 and 13.

The Commission, upon reconsideration, has determined that the proposed Item 14 requirements unintentionally and unduly increased the disclosure requirements for registrants electing S–2 or S–3 level disclosure for Item 11 and 12 transactions. Therefore, the Commission has restructured Items 13 and 14.

Item 13, as adopted, provides the financial and other company-specific information required for Items 11 and 12 transactions, which parallel those formerly required by Item 15 of Schedule 14A. Item 13 also specifies the extent to which such information may be incorporated by reference from previously-filed documents or from the annual report to security holders. To avoid increasing substantially the disclosure obligations of registrants incorporating by reference, the proposal has been modified so that a registrant need not incorporate an entire document, but rather only those specific sections that provide the required information. Nor will Item 13 require a registrant incorporating by reference from a Form 10–K to incorporate subsequently filed reports.

New Item 13 also permits a registrant to incorporate by reference information meeting the requirements from its annual report to security holders or any previously-filed document, if the report or document is delivered with the proxy statement. Registrants meeting the requirements of Form S–3 may incorporate by reference without delivery of documents.[85]

New Item 14, Mergers, Consolidations, Acquisitions and Similar Matters, specifies both the required transaction-related disclosure (proposed in Item 13) and the financial and other company-specific information (proposed in Items 13 and 14) for such transactions.[86] The requirements are not materially different from those proposed, and are intended to bring the proxy disclosures into conformity with the Form S–4 disclosures [87] for the same types of transactions.[88] Consistent with Forms S–2–3–4, registrants electing to incorporate by reference must incorporate into the proxy statement the entire annual report on Form 10–K and subsequently filed reports.[89]

The Commission has, as proposed, retained the ability of registrants to incorporate by reference the required information from an annual report sent to security holders pursuant to Rule 14a–3 with respect to the same meeting as that to which the proxy statement relates. Thus, registrants providing information at the S–1 level may incorporate any of the required company-specific information contained in such an annual report.

An instruction to both Items 13 and 14 has been added that requires a registrant to furnish a draft of the financial statements incorporated in preliminary proxy material if the document containing the financial statements (*e.g.*, annual report on Form 10–K) has not yet been filed with or furnished to the Commission.[90]

W. Item 19, Amendment of Charter, Bylaws or Other Documents

As proposed, an instruction has been added that directs the registrant's attention to Release No. 34–15230 [91] regarding proxy disclosure of defensive corporate charter and bylaw amendments.

X. Schedule 14B

As proposed, the Commission is substituting in Schedule 14B the term "registrant" for "issuer" and is permitting the use of a business or mailing address rather than a residence address.

Y. Regulation 14C

The revisions being adopted as proposed to Regulation 14C correspond to revisions to Regulation 14A with the following exceptions:

(1) Rule 14c–2, Distribution of Information Statement

The Commission is adopting a proposed revision to paragraph (a) of Rule 14c–2 [92] that modifies the language

[84] 17 CFR 229.201, Market price of and dividends on the registrant's common equity and related stockholder matters.

[85] If Rule 14a–3 applies to the solicitation, S–3 registrants must continue to deliver the annual report to security holders.

[86] Questions have been raised with respect to the applicability of Rule 3–12 of Regulation S–X, 17 CFR 210.3–12, "Age of financial statements at effective date of registration statement or at mailing date of proxy statement" to the incorporation by reference of financial statements in satisfaction of a requirement to provide S–X financials. It is the Commission's view that whenever financial statements are so incorporated, including Forms S–2–3–4 as well as Items 13 and 14 of Schedule A, Rule 3–12 is deemed to apply.

[87] While Item 14 does not specifically require the description of the securities that would be required by Item 202 of Regulation S–K (17 CFR 229.202) if securities were being registered, in the event that a transaction subject to Item 14 involves the issuance of securities exempt from registration, a description of the new securities can be information material to the plan and thus required by Item 14. The Commission is today seeking comment as to whether Item 14 should be amended to specifically require Item 202 information. *See* companion Release 33–6675.

[88] If a preliminary proxy statement is filed meeting the requirements of Item 14 and the filing of a Form S–4 is contemplated for the transaction, the requirements of Form S–4 must be satisfied. The Commission is today proposing to amend Item 14 to conform its requirements to those of Form S–4 for S–1 level disclosure. *See* companion Release 33–6675.

[89] These requirements do not apply to registrants incorporating from an annual report sent to security holders pursuant to Rule 14a–3 with respect to the same meeting.

[90] The Commission has determined not to adopt a proposed instruction to proposed Item 14 that would have required a statement that the accountant was aware its report was to be made part of the proxy material, when that report was incorporated by reference. The Commission is clarifying the application of the existing requirement to file one manually signed copy of the accountant's report to situations where the financial statements are incorporated by reference. One manually signed copy of the report must be filed with the definitive proxy material, notwithstanding the fact that the financial statements do not appear in the proxy statement itself. The accountant's review obligations are unchanged.

[91] (October 13, 1978) [43 FR 49863].

[92] 17 CFR 240.14c–2(a).

to state more clearly its position that a registrant must furnish an information statement to every holder of a class of securities registered under Securities Exchange Act Section 12 [93] that is entitled to vote or to give consents or authorizations, if a proxy is not solicited from the security holder. The amendment makes clear that if the registrant solicits consents from a few security holders who have enough shares to approve the transaction, the registrant must furnish information statements to the remaining security holders as required by Rule 14c-2.[94]

(2) Rule 14c-3, Annual Report To Be Furnished Security Holders

As proposed, to avoid needless repetition, paragraphs (a)(1) through (a)(11), which formerly set forth the required annual report to security holders disclosure, will now require that the information specified in paragraph (b)(1) through (b)(11) of Rule 14a-3 [95] be provided in the annual report. As proposed, conforming references have been made to indicate which paragraphs are applicable to investment companies registered under the Investment Company Act of 1940.

Z. Schedule 14C, Information Required in Information Statement

Technical revisions to Schedule 14C that are being adopted as proposed are: (1) Renumbering of items to reflect deletion of Item 3, which is now part of new Item 1 of Schedule 14A; (2) revision of the list of Schedule 14A items that are not required in information statements to reflect new numbering of Schedule 14A items; (3) addition of Item 1(c) of Schedule 14A to the list of Schedule 14A items excluded from Schedule 14C; and (4) addition of a note to Item 1, stating that the notes at the beginning of Schedule 14A also apply to Schedule 14C.

AA. Other Technical Revisions

The Commission also is adopting additional technical changes: (1) The references to provisions of the Internal Revenue Code ("Code") in Item 202 of Regulation S-K are being changed to conform to corresponding changes in the Code; (2) certain portions of the exhibit table in Item 601 of Regulation S-K are being corrected to reflect accurately which exhibits should be supplied in connection with various filings or to clarify language used in the footnotes; and (3) references to Item 1 of Schedule 14A have been added to Item 18 of Form S-4 and to Item 18 of Form F-4.

III. Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, which relates to amendments to the proxy rules and certain other rules, has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis is contained in the proposing release.

The Need for, and Objectives of the Comprehensive Revisions to the Proxy Rules

The Commission has recognized the need to clarify, to provide certainty by codifying staff interpretation, and to simplify the proxy rules. The principal purpose of the proxy rules, to ensure that information is made available to security holders being asked to vote on or consent to corporate action, is furthered by such clarification, codification and simplification. In addition, the revisions to Item 9 of Schedule 14A, Form S-18 and to Item 304 of Regulation S-K will assure that disclosure concerning changes in accountants and any related disagreements will be made in registration statements by registrants engaged in initial public offerings and in proxy statements and periodic filings by registrants not subject to Exchange Act filing requirements at the time a change in accountants occurred.

Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis

One commentator, the American Bar Association, commented on the Initial Regulatory Flexibility Analysis contained in the proposing release. This commentator expressed the view that the proposed provisions, if adopted, would not have an adverse effect on competition or impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

The commentator also noted that, whereas it was conscious of the benefits of encouraging small businesses by minimizing their regulatory burden, it shared the Commission's view that exemption from the provisions of the proxy rules or Item 304 of Regulation S-K would not be justified. This commentator stated:

> It is fundamental to the capital formation process that investors who fund new enterprises be treated fairly and be given reasonable information concerning the businesses in which they invest. Moreover, requiring small businesses to live with appropriate regulations as a *quid pro quo* for access to public markets will doubtless have the salutary side effect of accustoming their managers to an ordered approach to the conduct of their businesses thus facilitating their future access to the capital markets.

Significant Alternatives

Pursuant to section 604 of the Regulatory Flexibility Act, the following types of alternatives were considered:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation or simplification of compliance and reporting requirements under the rules for such small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the rules, or any part thereof, for small entities.

The Commission does not believe that the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities would be consistent with the Commission's statutory mandate to protect investors. The revisions to the proxy rules will, however, streamline and simplify reporting requirements under these rules for such small entities as well as for large entities. With respect to the amendments to Item 9 of Schedule 14A, Form S-18 and to Item 304 of Regulation S-K, an alternative would have been to exempt small entities that were not subject to Exchange Act filing requirements at the time of a change in accountants from furnishing the disclosure. Such an exemption, however, would not serve the purposes of the Commission's statutory mandate to protect investors. In the Commission's view, alternative (3) is not appropriate since the amendments are not related to either performance or design standards. Similarly, the Commission does not believe that other alternatives, such as exempting small entities from all or part of the proxy rules, would be consistent with the objectives of investor protection.

IV. Statutory Basis and Text of Amendments

The amendments to Items 202, 304, 403 and 601 of Regulation S-K, Rule 3-05 of Regulation S-X, Forms S-4, F-4, N-14, 10-K and S-18, Rule 13e-3, Schedule 13E-3, Rule 14f-1, Rule 20a-3 of the Investment Company Act of 1940 and to the proxy and information statement rules are being adopted by the Commission pursuant to Sections 6, 7, 8, 10, and 19(a) of the Securities Act of

[93] 15 U.S.C. 78(*l*).

[94] 17 CFR 240.14c-2.

[95] 17 CFR 240.14a-3(b)(1) through 240.14a-3(b)(11).

1933, Sections 3, 10, 12, 13, 14, 15(d), 17 and 23(a) of the Securities Exchange Act of 1934, and Sections 20(a) and 38(a) of the Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 210, 229, 239, 240, 249 and 270

Reporting and recordkeeping requirements, Securities.

V. Text of Amendments

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

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 12, 13, 15, 19, 23, 48 Stat. 78, 79, amended, 81, as amended, 85, as amended, 892, as amended, 894, 895, as amended, 901, as amended, secs. 5, 14, 20, 49 Stat. 812, 827, 833, secs. 8, 30, 31, 38, 54 Stat. 803, 836, 838, 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78l, 78m, 78o, 78w, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, § 210.3–05 also issued under 15 U.S.C. 77aa, 78n and 80a–20.

§ 210.3–05 [Amended]

2. In paragraph (b)(1), introductory text, of § 210.3–05 the reference to "Item 15" is removed and replaced with the words "Item 14."

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

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

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78l(d), 78w(a). * * *

4. In § 229.202, paragraph (b)(9) is revised to read as follows:

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

* * * * *

(b) * * *

* * * * *

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in paragraph (a) of section 1273 of the Internal Revenue Code (26 U.S.C. 1273), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to sections 1271–1278;

* * * * *

5. By revising § 229.304 to read as follows:

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a) If a change in accountants has taken place within 24 months prior to, or in any period subsequent to, the date of the most recent financial statements, the information called for by Item 4 of Form 8–K (§ 249.308 of this chapter) or, with respect to registered investment companies, Items 77K or 102J of Form N–SAR (§ 274.101 of this chapter) shall be disclosed.

(b) If, (1) in connection with a change in accountants subject to paragraph (a) of this section, there was any disagreement of the type described in Item 4(b) of Form 8–K or Item 77K or 102J of Form N–SAR; (2) during the fiscal year in which the change in accountants took place or during the subsequent fiscal year, there have been any transactions or events similar to those which involved such disagreement; and (3) such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, state the existence and nature of the disagreement and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

Instructions to Item 304: 1. The disclosure called for by paragraph (a) of this section need not be provided if it has been previously reported (as that term is defined in Rule 12b–2 under the Exchange Act (§ 240.12b–2 of this chapter)); the disclosure called for by paragraph (a) must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A (§ 240.14a–101 of this chapter). The disclosure called for by paragraph (b) of this section must be furnished, where applicable, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this section the accountant's letter referred to in Item 4(d) of Form 8–K or Item 77K or 102J of Form N–SAR shall be filed as an exhibit to the report or registration statement. When the document is an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3 of this chapter) or Rule 14c–3 (§ 240.14c–3 of this chapter), or is a proxy or information statement filed pursuant to the requirements of Schedules 14A or 14C (§ 240.14a–101 and § 240.14c–101 of this chapter), no such exhibit shall be required, and in lieu of a letter pursuant to Item 4(d) of Form 8–K or Item 77K or 102J of Form N–SAR, the registrant, prior to filing such materials with or furnishing such materials to the Commission, shall furnish the disclosure required by this section to any former accountant engaged by the registrant during the period set forth in paragraph (a) of this section. If that accountant believes that the statements made in response to this section are incorrect or incomplete, he may present his views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the registrant within ten business days of the date the accountant receives the registrant's disclosure.

3. The information required by this section need not be provided for companies being acquired by the registrant that are not subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act.

6. By amending paragraph (a) of § 229.403 by adding a sentence after the first complete sentence. The first complete sentence is republished.

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

(a) *Security ownership of certain beneficial owners.* Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Exchange Act) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities. The address given in column (2) may be a business, mailing or residence address. * * *

* * * * *

7. By revising the Exhibit Table of § 229.601 to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

EXHIBIT TABLE

	Securities Act forms											Exchange Act forms			
	S-1	S-2	S-3	S-4 [3]	S-8	S-11	S-18	F-1	F-2	F-3	F-4 [3]	10	8-K	10-Q	10-K
(1) Underwriting agreement	X	X	X	X		X	X	X	X	X	X		X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X		X		X	X	X	X	X	X	X	
(3) Articles of incorporation and by-laws	X			X		X	X			X	X			X	
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	X				
(6) Opinion re discount on capital shares	X	X		X		X	X	X	X		X	X			
(7) Opinion re liquidation preference	X	X		X		X	X	X	X		X	X			
(8) Opinion re tax matters	X	X	X	X		X	X	X	X	X	X				
(9) Voting trust agreement	X			X		X	X	X			X	X			X
(10) Material contracts	X	X		X		X	X	X	X		X	X			X
(11) Statement re computation of per share earnings	X	X		X		X		X	X		X	X		X	X
(12) Statements re computation of ratios	X	X	X	X		X		X	X		X	X			X
(13) Annual report to security holders, Form 10-Q or quarterly report to security holders [1]		X		X											X
(14) Material foreign patents	X			X			X	X			X	X			
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	X			X	
(16) Letter re change in certifying accountant	X [4]	X [4]		X [4]		X [4]	X [4]					X [4]	X		X [4]
(17) Letter re director resignation													X		
(18) Letter re change in accounting principles														X	X
(19) Previously unfiled documents														X	X
(20) Report furnished to security holders														X	
(21) Other documents or statements to security holders													X		
(22) Subsidiaries of the registrant	X			X		X		X			X	X			X
(23) Published report regarding matters submitted to vote of security holders														X	X
(24) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	X		X [2]	X [2]	X [2]
(25) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee	X	X	X	X		X	X	X	X	X	X				
(27) Invitations for competitive bids	X	X	X	X			X	X	X	X	X				
(28) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(29) Information from reports furnished to State insurance regulatory authorities	X	X	X	X	X							X			X

[1] Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10-K, where the annual report to security holders is incorporated by reference into the text of the Form 10-K.

[2] Where the opinion of the expert of counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[3] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Forms S-4 of F-4 to provide information about such company at a level prescribed by Forms S-2, S-3, F-2 or F-3 and (2) the form, the level of which has been elected under Forms S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

[4] If required pursuant to Item 304 of Regulation S-K.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Authority: The Securities Act of 1933, 15 U.S.C. 77a, et seq., * * *

9. Paragraph (i) of Item 11 of Form S-1 (§ 239.11) is revised to read as follows [note that the text of Form S-1 does not appear in the Code of Federal Regulations]:

§ 239.11 Form S-1, General form of registration statement.

* * * * *

Form S-1

* * * * *

Part I. Information Required in Prospectus.

* * * * *

Item 11. Information With Respect to the Registrant.

* * * * *

(i) Information required by Item 304 of Regulation S-K (§ 229.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure;

* * * * *

10. Paragraph (b)(8) of Item 11 of Form S-2 (§ 239.12) is revised to read as follows [note that the text of Form S-2 does not appear in the Code of Federal Regulations]:

§ 239.12 Form S-2, For registration under the Securities Act of 1933 of securities of certain issuers.

* * * * *

Form S-2

* * * * *

Part I. Information Required in Prospectus.

* * * * *

Item 11. Information With Respect to the Registrant.

* * * * *

(b) * * *

(8) Furnish information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304) of this chapter.

* * * * *

11. Item 27 of Form S-11 (§ 239.18) is revised to read as follows [note that the text of Form S-11 does not appear in the Code of Federal Regulations]:

§ 239.18 Form S-11, For securities of certain real estate companies.

* * * * *

Form S-11

* * * * *

Part I. Information Required in Prospectus.

* * * * *

Item 27. Financial Statements and Information

Include in the prospectus the financial statements required by Regulation S-X, the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter) and the information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304 of this chapter). * * *

* * * * *

12. Section 239 23 is amended by revising Item 7 of Form N-14 (§ 239.23) to read as follows (the Instruction following (c)(1) remains unchanged) [note that the text of Form N-14 does not appear in the Code of Federal Regulations]:

§ 239.23 Form N-14, for the registration of securities issued in business combination transactions.

* * * * *

Form N-14

* * * * *

Item 7. Voting Information

(a) If proxies are to be solicited, include, where applicable, the information called for by Items 2 and 4 of Schedule 14A (17 CFR

240.14a-101) of Regulation 14A under the 1934 Act.

(b) If the transaction is an exchange offer or if proxies are not to be solicited, include, where applicable, the information called for by Item 2 of Schedule 14C (17 CFR 240.14c-101) under the 1934 Act, and state the date, time and place of the meeting of the security holders, unless such information is otherwise disclosed in material furnished to security holders with the information statement.

(c) In addition to the information called for by paragraphs (a) and (b) above, include:

(1) the information called for by Item 3 of Schedule 14A (17 CFR 240.14a-101) of Regulation 14A under the 1934 Act; * * *

(2) the information called for by Item 21 of Schedule 14A (17 CFR 240.14a-101) of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;

(3) the information called for by Items 6(a) and (b) of Schedule 14A (17 CFR 240.14a-101) of Regulation 14A under the 1934 Act about both the registrant and the company being acquired;

* * * * *

13. Section 239.25 is amended by revising paragraph (b)(3)(vi) of Item 12, paragraphs (a)(1)-(6) of Item 18 and paragraphs (a)(2), (3), and (5)-(7) of Item 19 of Form S-4 (§ 239.25) to read as follows [note that the text of Form S-4 does not appear in the Code of Federal Regulations]:

§ 239.25 Form S-4, for the registration of securities issued in business combination transactions.

* * * * *

Form S-4

* * * * *

Part I. Information Required in the Prospectus.

* * * * *

Item 12. Information with Respect to S-2 or S-3 Registrants.

* * * * *

(b) * * *

(3) * * *

(vi) Item 304 of Regulation S-K (§ 229.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure.

* * * * *

D. Voting and Management Information

Item 18. Information if Proxies, Consents or Authorizations are to be Solicited.

(a) If proxies, consents or authorizations are to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 1 of Schedule 14A, date, time and place information;

(2) The information required by Item 2 of Schedule 14A, revocability of proxy;

(3) The information required by Item 3 of Schedule 14A, dissenters' rights of appraisal;

(4) The information required by Item 4 of Schedule 14A, persons making the solicitation;

(5) With respect to both the registrant and the company being acquired, the information required by:

(i) Item 5 of Schedule 14A, interest of certain persons in matters to be acted upon; and

(ii) Item 6 of Schedule 14A, voting securities and principal holders thereof;

(6) The information required by Item 21 of Schedule 14A, vote required for approval; and

(7) With respect to each person * * *

* * * * *

Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Offer.

(a) If the transaction is an exchange offer or if proxies, consents or authorizations are not to be solicited, furnish the following information, except as provided by paragraph (c) of this Item;

(1) The information required by Item 2 of Schedule 14C, statement that proxies are not to be solicited;

(2) The date, time and place of the meeting of security holders, unless such information is otherwise disclosed in material furnished to security holders with the prospectus.

(3) The information required by Item 3 of Schedule 14A, dissenters' rights of appraisal;

* * * * *

(5) With respect to both the registrant and the company being acquired, the information required by Item 6 of Schedule 14A, voting securities and principal holders thereof;

(6) The information required by Item 21 of Schedule 14A, vote required for approval; and

(7) With respect to each person * * *

* * * * *

14. Section 239.28 is amended by revising Item 21 of Form S-18 (§ 239.28) to add new paragraph (k) to read as follows [note that the text of Form S-18 does not appear in the Code of Federal Regulations]:

§ 239.28 Form S-18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $7,500,000.

* * * * *

Form S-18

* * * * *

Item 21. Financial statements

* * * * *

(k) Furnish the information required by Item 304 of Regulation S-K (§ 239.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure.

* * * * *

15. Section 239.34 is amended by revising paragraphs (a) (1)-(6) including the Instruction following paragraph (a)(4) of Item 18 and paragraphs (a) (2), (3) and (5)-(7), including the Instruction following paragraph (a)(5) of Item 19 of Form F-4 (§ 239.34 of this chapter) to read as follows [note that the text of Form F-4 does not appear in the Code of Federal Regulations]:

§ 239.34 Form F-4, for registration of securities of certain foreign private issuers issued in certain business combination transactions.

* * * * *

Form F-4

* * * * *

D. *Voting and Management Information.*

* * * * *

Item 18. Information if Proxies, Consents or Authorizations Are To Be Solicited

(a) If proxies, consents or authorizations are to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 1 of Schedule 14A, date, time and place information;

(2) The information required by Item 2 of Schedule 14A, revocability of proxy;

(3) The information required by Item 3 of Schedule 14A, dissenters' rights of appraisal;

(4) The information required by Item 4 of Schedule 14A, persons making the solicitation;

(5) With respect to both the registrant and the company being acquired, the information required by;

(i) Item 5 of Schedule 14A, interests of certain persons in matters to be acted upon; and

(ii) Item 6 of Schedule 14A, voting securities and principal holders thereof.

Instruction

The information specified in Item 4 of Form 20-F may be provided in lieu of the information specified in Item 6(d) of Schedule 14A.

(6) The information required by Item 9 of Schedule 14A, independent public accountants;

(7) The information required by Item 21 of Schedule 14A, vote required for approval;

* * * * *

Item 19. Information if Proxies, Consents or Authorizations Are Not To Be Solicited in an Exchange Offer

(a) If the transaction is an exchange offer or if proxies, consents or authorizations are not to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 2 of Schedule 14C, statement that proxies are not to be solicited:

(2) The date, time and place of the meeting of security holders, unless such information is otherwise disclosed in material furnished to security holders with or preceding the prospectus.

(3) The information required by Item 3 of Schedule 14A, dissenters' rights of appraisal;

* * * * *

(5) With respect to both the registrant and the company being acquired, the information required by Item 6 of Schedule 14A, voting securities and principal holders thereof.

Instruction

The information specified in Item 4 of Form 20-F may be provided in lieu of the information specified in Item 6(d) of Schedule 14A.

(6) The information required by Item 9 of Schedule 14A, independent public accountants;

(7) The information required by Item 21 of Schedule 14A, vote required for approval, and

* * * * *

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

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

Authority: Sec. 23, 48 Stat. 901, as amended U.S.C. 78w. * * *

§ 240.13e-3 [Amended]

17. In § 240.13e-3 in paragraphs (a)(3)(i)(C), (c)(2) and (e)(1) the reference to "240.14a-103" is removed and replaced with the reference "240.14b-1" and in paragraph (f)(1)(ii) the reference to "Rule 14a-3(d) [§ 240.14a-3(d)]" is removed and replaced with "Rule 14a-13(a) [§ 240.14a-13(a)]."

§ 240.13e-100 [Amended]

18. By amending § 240.13e-100 by removing the reference to "240.14a-103" and replacing it with "240.14b-1" in paragraph (a) and General Instructions F and G.

19. By revising § 240.14a-1 to read as follows:

§ 240.14a-1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

(a) *Associate.* The term "associate," used to indicate a relationship with any person, means (1) any corporation or organization (other than the registrant or a majority owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities; (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(b) *Last fiscal year.* The term "last fiscal year" of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting for which proxies are to be solicited or, if the solicitation involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

(c) *Proxy.* The term "proxy" includes every proxy, consent or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(d) *Proxy statement.* The term "proxy statement" means the statement required by § 240.14a-3(a) whether or not contained in a single document.

(e) *Record date.* The term "record date" means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(f) *Registrant.* The term "registrant" means the issuer of the securities in respect of which proxies are to be solicited.

(g) *Solicitation.* (1) The terms "solicit" and "solicitation" include:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy:

(ii) Any request to execute or not to execute, or to revoke, a proxy; or

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

(2) The terms do not apply, however to the furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder, the performance by the registrant of acts required by § 240.14a-7, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

20. Section 240.14a-2 is amended by revising the section heading, introductory paragraph, and paragraphs (a) introductory text, (a)(4), (a)(6),(b) introductory text, (b)(1) and (b)(2)(ii) to read as follows:

§ 240.14a-2 Solicitations to which § 240.14a-3 to § 240.14a-13 apply.

Sections 240.14a-3 to 240.14a-13 apply to every solicitation of a proxy with respect to securities registered pursuant to section 12 of the Act, whether or not trading in such securities has been suspended, except that:

(a) Sections 240.14a-3 to 240.14a-13 do not apply to the following:

* * * * *

(4) Any solicitation with respect to a plan of reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, as amended, if made after the entry of an order approving the written disclosure statement concerning a plan of reorganization pursuant to section 1125 of said Act and after, or concurrently with, the transmittal of such disclosure statement as required by section 1125 of said Act;

* * * * *

(6) Any solicitation through the medium of a newspaper advertisement which informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than (i) name the registrant, (ii) state the reason for the advertisement, and (iii) identify the proposal or proposals to be acted upon by security holders.

(b) Sections 240.14a-3 to 240.14a-8 and 240.14a-10 to 240-14a-13 do not apply to the following:

(1) Any solicitation made otherwise than on behalf of the registrant where the total number of persons solicited is not more than ten; and

(2) * * *

(ii) The advisor discloses to the recipient of the advice any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests of the advisor in such matter.

* * * * *

21. Section 240-14a-3 is amended by revising paragraph (b) introductory text, revising the heading of "NOTE 1" after paragraph (b)(1) to read "NOTE," revising (b)(4), and (b)(6) through (b)(10), and Notes after (b)(10) and (b)(11), revising (b)(13), (c), and the Note following paragraph (c), removing the Note after paragraph (b)(7), removing paragraph (d) and redesignating and revising paragraphs (e) and (f) as paragraphs (d) and (e) to reads as follows:

§ 240.14a-3 Information to be furnished to security holders.

* * * * *

(b) If the solicitation is made on behalf of the registrant and relates to an annual (or special meeting in lieu of the annual) meeting of security holders, or written consent in lieu of such meeting, at which directors are to be elected, each proxy statement furnished pursuant to paragraph (a) of this section shall be accompanied or preceded by an annual report to security holders as follows:

* * * * *

(4) The report shall contain information concerning changes in and disagreements with accountants on accounting and financial disclosure

required by Item 304 of Regulation S-K (§ 229.304 of this chapter).

* * * * *

(6) The report shall contain a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the registrant and its subsidiaries.

(7) The report shall contain information relating to the registrant's industry segments, classes of similar products or services, foreign and domestic operations and exports sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S–K (§ 229.101 of this chapter).

(8) The report shall identify each of the registrant's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is employed.

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

(10) The registrant's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited upon the written request of any such person, a copy of the registrant's annual report of Form 10–K, including the financial statements and the financial statement schedules, required to be filed with the Commission pursuant to Rule 13a–1 under the Act for the registrant's most recent fiscal year, and shall indicate the name and address (including title or department) of the person to whom such a written request is to be directed. In the discretion of management, a registrant need not undertake to furnish without charge copies of all exhibits to its Form 10–K provided the that copy of the annual report on Form 10–K furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the registrant will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the registrant's reasonable expenses in furnishing such exhibit. If the registrant's annual report to security holders complies with all of the disclosure requirements of Form 10–K and is filed with the Commission in satisfaction of its Form 10–K filing requirements, such registrant need not furnish a separate Form 10–K to security holders who receive a copy of such annual report.

Note.—Pursuant to the undertaking required by paragraph (b)(10) of this section, a registrant shall furnish a copy of its annual report on Form 10–K (§ 249.310 of this chapter) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (b) of this section, the person making the request was a beneficial owner of securities entitled to vote.

(11) * * *

Note.—Registrants are encouraged to utilize tables, schedules, charts and graphic illustrations of present financial information in an understandable manner. Any presentation of financial information must be consistent with the data in the financial statements contained in the report and, if appropriate, should refer to relevant portions of the financial statements and notes thereto.

* * * * *

(13) Paragraph (b) of this section shall not apply, however, to solicitations made on behalf of the registrant before the financial statements are available if a solicitation is being made at the same time in opposition to the registrant and if the registrant's proxy statement includes an undertaking in bold face type to furnish such annual report to all persons being solicited at least 20 calendar days before the date of the meeting or, if the solicitation refers to a written consent or authorization in lieu of a meeting, at least 20 calendar days prior to the earliest date on which it may be used to effect corporate action.

(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies of solicitation material are filed with the Commission pursuant to Rule 14a–6(a), whichever date is later. The report is not deemed to be "soliciting material" or to be "filed" with the Commission or subject to this regulation otherwise than as provided in this Rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

Note.—To assist the staff, managements of registrants are requested to indicate in a letter transmitting to the Commission copies of their annual reports to security holders or in a separate letter at or about the time the annual report is furnished to the Commission, whether the financial statements in the report reflect a change from the preceding year in any accounting principles or practices or in the method of applying any such principles or practices.

(d) An annual report to security holders prepared on an integrated basis pursuant to General Instruction H to Form 10–K (§ 249.310) may also be submitted in satisfaction of this rule. When filed as the annual report on Form 10–K, responses to the Items of that form are subject to section 18 of the Act notwithstanding paragraph (c).

(e) Notwithstanding paragraphs (a) and (b) of this section:

(1) A registrant is not required to send an annual report to a security holder of record having the same address as another security holder of record, provided that (i) such security holders are not holding such registrant's securities in nominee name, (ii) at least one report is sent to a holder of record at that address and (iii) the holders of record to whom a report is not sent agree thereto in writing; and

(2) Unless state law requires otherwise, a registrant is not required to send an annual report or proxy statement to a security holder if (i) an annual report and a proxy statement for two consecutive annual meetings or (ii) all, and at least two, checks (if sent by first class mail) in payment of dividends or interest on securities during a twelve month period have been mailed to such security holder's address and have been returned undeliverable. However, a registrant's obligation to deliver an annual report or a proxy statement under this section is reinstated once it has such security holder's current address.

22. Section 240.14a–4 is amended by removing the words "issuer's" and "issuer" and replacing them with the words "registrant's" and "registrant" in paragraph (a) and in Instruction 2 after paragraph (b)(2)(iv), by removing the word "shareholder" and replacing it with the words "security holder" in paragraphs (b)(2) (iii) and (iv), by revising paragraphs (c)(4) and (d) to read as follows:

§ 240.14a–4 Requirements as to proxy.

* * * * *

(c) * * *

(4) Any proposal omitted from the proxy statement and form of proxy pursuant to § 240.14a–8 or § 240.14a–9 of this chapter.

* * * * *

(d) No proxy shall confer authority (1) to vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement, (2) to vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to security holders, (3) to vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation or (4) to consent to or authorize any action other than the action proposed to be taken in the proxy statement, or matters referred to in paragraph (c) of this rule. A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected.

* * * * *

23. Section § 240.14a–5 is amended by revising paragraph (c), removing the word "leading" and replacing it with "leaded" in paragraph (d), removing paragraph (e), removing the words "issuer" and "issuer's" and replacing them with "registrant" and "registrant's" in paragraph (f) and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 240.14a–5 Presentation of information in proxy statement.

* * * * *

(c) Any information contained in any other proxy soliciting material which has been furnished to each person solicited in connection with the same meeting or subject matter may be omitted from the proxy statement, if a clear reference is made to the particular document containing such information.

* * * * *

24. Section § 240.14a–6 is amended by revising the section heading, paragraph (a)(1), adding new NOTE 1 after paragraph (a), revising "NOTE:" after (a) to read "NOTE 2:" and revising the word "company" to read "registrant" in Note 2 and removing the last three sentences of Note 2, revising paragraphs (b), (c), and (d), removing the Note after paragraph (c), by redesignating paragraphs (e) through (j) as (f) through (k) and adding a new paragraph (e), revising newly redesignated paragraphs (f), (h), (j) and (k), by adding paragraph headings to newly redesignated paragraphs (g) *"Communications not required to be filed"* and (i) *"Revised material"* and adding new paragraph (l) to read as follows:

§ 240.14a–6 Filing requirements.

(a) *Preliminary proxy statement.* Five preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to security holders concurrently therewith shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause thereunder.

Note 1.—The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

Note 2.—The official responsible for the preparation of the preliminary material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the Commission at the earliest practicable date.

(b) *Preliminary additional materials.* Five preliminary copies of any additional soliciting material relating to the same meeting or subject matter furnished to security holders subsequent to the proxy statement shall be filed with the Commission at least 2 business days prior to the date copies of such material are first sent or given to security holders, or such shorter period prior to such date as the Commission may authorize upon a showing of good cause therefor.

(c) *Definitive proxy statement.* Eight definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holders. Three copies of such material shall 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.

(d) *Personal solicitation materials.* If the solicitation is to be made in whole or in part by personal solicitation, three copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Commission by the person on whose behalf the solicitation is made at least five calendar days prior to the date copies of such material are first sent or given to such individuals, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor.

(e) *Release dates.* All preliminary material filed pursuant to paragraph (a) or (b) of this section shall be accompanied by a statement of the date on which definitive copies therefor filed pursuant to paragraph (c) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (d) of this section shall be accompanied by a statement of the date on which copies thereof are intended to be released to the individual who will make the actual solicitation.

(f) *Public availability of information.* All copies of preliminary material filed pursuant to this Regulation shall be clearly marked "Preliminary Copies," shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission except that such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

* * * * *

(h) *Speeches, press releases and scripts.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, of § 240.14a–11(e) and of § 240.14a–12(b), copies of soliciting material in the form of speeches, press releases and radio or television scripts may, but need not, be filed with the Commission prior to use or publication. Definitive copies, however, shall be filed with or mailed for filing to the Commission as required by paragraph (c) of this section not later than the date such material is used or published. The provisions of paragraphs (a) and (b) of this section and of § 240.14a–11(e) and of § 240.14a–12(b) shall apply, however, to any reprints or reproductions of all or any part of such material.

* * * * *

(j) *Fees.* At the time of filing the preliminary proxy solicitation material, the persons upon whose behalf the solicitation is made, other than companies registered under the Investment Company Act of 1940, or where an application or declaration under the Public Utility Holding Company Act of 1935 is involved, shall pay to the Commission the following applicable fee: (1) For preliminary proxy material which solicits proxies for election of directors or other business for which a stockholder vote is necessary, but apparently no controversy is involved, a fee of $125; (2) for proxy material where a contest as set forth in Rule 14a-11 is involved, a fee of $500 from each party to the controversy; and (3) for proxy material involving acquisitions, mergers, spinoffs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0-11 (§ 240.0-11 of this chapter) shall be paid. No refund shall be given.

(k) *Merger proxies.* Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form N-14, S-4 or F-4 (§ 239.23, 25 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (j) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form N-14, S-4 or F-4 shall be filed in accordance with this section unless separate copies of such material are required to be filed as an amendment of such registration statement.

(l) *Computing time periods.* In computing time periods beginning with the filing date specified in Regulation 14A (§§ 240.14a-1 to 240.14b-1 of this chapter), the filing date shall be counted as the first day of the time period and midnight of the last day shall constitute the end of the specified time period.

25. Section 240.14a-7 is amended by revising the introductory text, in paragraphs (a) through (c) removing the word "issuer" and replacing it with the word "registrant," and in paragraph (b)(2) removing the word "solicited" and replacing it with the word "soliciting" to read as follows:

§ 240.14a-7 Mailing communications for security holders.

If the registrant has made or intends to make any solicitation subject to this regulation, the registrant shall perform such of the following acts as may be duly requested in writing with respect to the same subject matter or meeting by any security holder who is entitled to vote on such matter or to vote at such meeting and who shall defray the reasonable expenses to be incurred by the registrant in the performance of the act or acts requested.

* * * * *

26. Section 240.14a-8 is amended by revising paragraph (a)(1)(i), (a)(3)(i), (c)(3), and (d), and in the following paragraphs of § 240.14a-8 removing the words "an issuer," "issuer's" and "issuer" and replacing them with the words "a registrant," "registrant's" and "registrant" in paragraphs: (a) introductory text, (a)(1)(ii), (a)(2), (a)(3), the Note following (a)(3)(ii), (a)(4), (b)(1), (b)(2), (c) introductory text, the Note to (c)(1), (c)(2), (c)(4) through (c)(12), (e), and the last paragraph.

§ 240.14a-8 Proposals of security holders.

(a) * * *

Eligibility. (i) At the time he submits the proposal, the proponent shall be a record or beneficial owner of at least 1% or $1000 in market value of securities entitled to be voted on the proposal at the meeting and have held such securities for at least one year, and he shall continue to own such securities through the date on which the meeting is held. If the registrant requests documentary support for a proponent's claim that he is the beneficial owner of at least $1000 in market value of such voting securities of the registrant or that he has been a beneficial owner of the securities for one or more years, the proponent shall furnish appropriate documentation within 14 calendar days after receiving the request. In the event the registrant includes the proponent's proposal in its proxy soliciting material for the meeting and the proponent fails to comply with the requirement that he continuously hold such securities through the meeting date, the registrant shall not be required to include any proposals submitted by the proponent in its proxy material for any meeting held in the following two calendar years.

* * * * *

(3) * * *

(i) *Annual Meetings.* A proposal to be presented at an annual meeting shall be received at the registrant's principal executive offices not less than 120 calendar days in advance of the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting of security holders except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, a proposal shall be received by the registrant a reasonable time before the solicitation is made.

* * * * *

(c) * * *

(3) If the proposal or the supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a-9 [§ 240.14a-9 of this chapter], which prohibits false or misleading statements in proxy soliciting materials;

(d) Whenever the registrant asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Commission, not later than 60 calendar days prior to the date the preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a-6(a) § 240.14a-6(a) of this chapter], or such shorter period prior to such date as the Commission or its staff may permit, six copies of the following items: (1) The proposal; (2) any statement in support thereof as received from the proponent; (3) a statement of the reasons why the registrant deems such omission to be proper in the particular case; and (4) where such reasons are based on matters of law, a supporting opinion of counsel. The registrant shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the registrant deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

* * * * *

§ 240.14a-11 [Amended]

27. Section 240.14a-11 is amended by removing the word "issuer" and replacing it with the word "registrant" in paragraphs (b)(1), (b)(2), (b)(6), (c)(1), through (c)(3).

28. Section 240.14a-13 is amended by revising paragraph (a) introductory text and paragraphs (a)(1) and (a)(2) to read as follows:

§ 240.14a-13 Obligation of registrants in communicating with beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the registrant intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, bank or voting trustee, or their nominees, the registrant shall:

(1) By first class mail or other equally prompt means, inquire of such record holder whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy, and other soliciting material necessary to supply such material to beneficial

owners; and, in the case of an annual (or special meeting in lieu of the annual) meeting, or writtent consent in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such material to beneficial owners if such reports are to be distributed by the broker, dealer, bank voting trustee or their nominees;

(2) Make the inquiry at least 20 calendar days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 calendar days prior to the record date of a special meeting, as many days before such meeting as is practicable or, (ii) if consents or authorizations are solicited and such inquiry is impracticable 20 calendar days before the earliest date on which they may be used to effect corporate action, as many days as is practicable, or (iii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; and

* * * * *

29. By revising § 240.14a-101 to read as follows:

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

Notes.—A. Where any item calls for information with respect to any matter to be acted upon and such matter involves other matters with respect to which information is called for by other items of this schedule, the information called for by such other items also shall be given. For example, where a solicitation of security holders is for the purpose of approving the authorization of additional securities which are to be used to acquire another specified company, and the registrants' security holders will not have a separate opportunity to vote upon the transaction, the solicitation to authorize the securities is also a solicitation with respect to the acquisition. Under those facts, information required by Items 11, 13 and 14 shall be furnished.

B. Where any item calls for information with respect to any matter to be acted upon at the meeting, such item need be answered in the registrant's soliciting material only with respect to proposals to be made by or on behalf of the registrant.

C. Except as otherwise specifically provided, where any item calls for information for a specified period with regard to directors, executive officers, officers or other persons holding specified positions or relationships, the information shall be given with regard to any person who held any of the specified positions or relationships at any time during the period. Information need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.

D. Information may be incorporated by reference only in the manner and to the extent specifically permitted in the items of this schedule. Where incorporation by reference is used, the following shall apply:

1. Any incorporation by reference of information pursuant to the provisions of this schedule shall be subject to the provisions of Rule 24 of the Commission's Rules of Practice (§ 201.24 of this chapter) restricting incorporation by reference of documents which incorporate by reference other information. A registrant incorporating any documents, or portions of documents, shall include a statement on the last page(s) of the proxy statement as to which documents, or portions of documents, are incorporated by reference. Information shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

2. If a document is incorporated by reference but not delivered to security holders, include an undertaking to provide, without charge, to each person to whom a proxy statement is delivered, upon written or oral request of such person and by first class mail or other equally prompt means within one business day of receipt of such request, a copy of any and all of the information that has been incorporated by reference in the proxy statement (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the proxy statement incorporates), and the address (including title or department) and telephone numbers to which such a request is to be directed. This includes information contained in documents filed subsequent to the date on which definitive copies of the proxy statement are sent or given to security holders, up to the date of responding to the request.

3. If a document or portion of a document other than an annual report sent to security holders pursuant to the requirements of Rule 14a-3 (§ 240.14a-3 of this chapter) with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates is incorporated by reference in the manner permitted by Item 13(b) or 14(b) of this schedule, the proxy statement must be sent to security holders no later than 20 business days prior to the date on which the meeting of such security holders is held, or if no meeting is held, the earlier of 20 business days prior to (1) the date of such vote, consent or authorization, or (2) the date the transaction is consummated or the votes, consents or authorizations may be used to effect the corporate action.

E. In Items 13 and 14 of this Schedule, the reference to "meets the requirements of Form S-2" shall refer to a registrant or to an "other person" specified in Item 14(a) of this Schedule which meets the requirements for use of Form S-2 (§ 239.12 of this chapter) and the reference to "meets the requirement of Form S-3" shall refer to a registrant or to an "other person" specified in Item 14(a) of this Schedule which meets the following requirements:

(1) The registrant or other person meets the requirements of General Instruction I.A. of Form S-3 (§ 239.13 of this chapter); and

(2) One of the following is met:

(i) The registrant or other person meets the aggregate market value requirement of General Instruction I.B.1 of Form S-3; or

(ii) Action is to be taken as described in Items 11, 12 and 14 of this schedule which concerns non-convertible debt or preferred securities which are "investment grade securities" as defined in General Instruction I.B.2 of Form S-3, except that the time by which the rating must be assigned shall be the date on which definitive copies of the proxy statement are first sent or given to security holders; or

(iii) The registrant or other person is a majority-owned subsidiary and one of the conditions of General Instruction I.C. of Form S-3 is met.

Item 1. Date, time and place information. (a) State the date, time and place of the meeting of security holders, and the complete mailing address, including ZIP Code, of the principal executive offices of the registrant, unless such information is otherwise disclosed in material furnished to security holders with or preceding the proxy statement. If action is to be taken by written consent, state the date by which consents are to be submitted if state law requires that such a date be specified or if the person soliciting intends to set a date.

(b) On the first page of the proxy statement, state the approximate date on which the proxy statement and form of proxy are first sent or given to security holders.

(c) Furnish the information required to be in the proxy statement by Rule 14a-5(e) (§ 240.14a-5(e) of this chapter).

Item 2. Revocability of proxy. State whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limited or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 3. Dissenters' right of appraisal. Outline briefly the rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment or other similar act, state whether the persons solicited will be notified of such date.

Instruction. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to these matters.

Item 4. Persons Making the Solicitation—(a) Solicitations not subject to Rule 14a-11 (§ 240.14a-11 of this chapter.) (1) If the solicitation is made by the registrant, so state. Give the name of any director of the registrant who has informed the registrant in writing that he intends to oppose any action intended to be taken by the registrant and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the registrant, so state and give the

names of the persons by whom and on whose behalf it is made.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially, engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) *Solicitations subject to Rule 14a-11 (§ 240.14a-11 of this chapter).* (1) State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the registrant or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation and the identity of the parties, (ii) the cost or anticipated cost thereof and (iii) the approximate number of such employees of employees or any other person (naming such other person) who will solicit security holders).

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. If such cost is to be borne initially by any person other than the registrant, state whether reimbursement will be sought from the registrant, and, if so, whether the question of such reimbursement will be submitted to a vote of security holders.

(6) If any such solicitation is terminated pursuant to a settlement between the registrant and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the registrant.

Instructions. 1. With respect to solicitations subject to Rule 14a-11 (§ 240.14a-11 of this chapter), costs and expenditures within the meaning of this Item 4 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the registrant may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

2. The information required pursuant to paragraph (b)(6) of this Item should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the registrant subsequent to the date of settlement.

Item 5. Interest of certain Persons in Matters To Be Acted Upon—(a) *Solicitations not subject to Rule 14a-11 (§ 240.14a-11 of this chapter).* Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of the registrant, each person who has been a director or executive officer of the registrant at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the registrant, each person on whose behalf the solicitation is made.

Any person who would be a participant in a solicitation for purposes of Rule 14a-11 (§ 240.14a-11 of this chapter), as defined in paragraph (b) (3), (4), (5) and (6) thereof, shall be deemed a person on whose behalf the solicitation is made for purposes of this paragraph (a).

(3) Each nominee for election as a director of the registrant.

(4) Each associate of any of the foregoing persons.

Instruction. Except in the case of a solicitation subject to this regulation made in opposition to another solicitation subject to this regulation, this sub-item (a) shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) *Solicitation subject to Rule 14a*-11 (§ 240.14a-11 of this chapter). (1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in Rule 14a-11 (§ 240.14a-11 of this chapter), paragraph § 240.14a-11(b) (2), (3), (4), (5) and (6) (Rule X-14a-11), in any matter to be acted upon at the meeting, and include with respect to each participant the information, or a fair and adequate summary thereof, required by Items 2(a), 2(d), 3, 4(b) and 4(c) of Schedule 14B (§ 240.14a-102 of this chapter).

(2) With respect to any person, other than a director or executive officer of the registrant acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that he has in any matter to be acted upon at the meeting, and furnish the information called for by Item 4 (b) and (c) of Schedule 14B.

Item 6. Voting securities and principal holders thereof. (a) As to each class of voting securities of the registrant entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held), state the number of shares outstanding and the number of votes to which each class is entitled.

(b) State the record date, if any, with respect to this solicitation. If the right to vote or give consent is not to be determined, in whole or in part, by reference to a record date, indicate the criteria for the determination of security holders entitled to vote or give consent.

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights: (1) Make a statement that they have such rights, (2) briefly describe such rights, (3) state briefly the conditions precedent to the exercise thereof, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

(d) Furnish the information required by Item 403 of Regulation S-K (§ 229.403 of this chapter) to the extent known by the persons on whose behalf the solicitation is made.

(e) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the registrant has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Commission.

Instruction. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters should be described.

Item 7. Directors and executive officers. If action is to be taken with respect to the election of directors, furnish the following information in tabular form to the extent practicable. If, however, the solicitation is made on behalf of persons other than the registrant, the information required need be furnished only as to nominees of the persons making the solicitation.

(a) The information required by instruction 4 to Item 103 of Regulation S-K (§ 229.103 of this chapter) with respect to directors and executive officers.

(b) The information required by Items 401 and 404 (a) and (c) of Regulation S-K (§ 229.401 and § 229.404 of this chapter).

(c) With respect to registrants other than investment companies registered under the Investment Company Act of 1940, furnish the information required by Item 404(b) of Regulation S-K (§ 229.404 of this chapter).

(d) With respect to investment companies registered under the Investment Company Act of 1940, indicate by an asterisk any nominee or director who is or would be an "interested person" within the meaning of section 2(a)(19) of the Investment Company Act of 1940 and briefly describe the relationships by reason of which such person is deemed an "interested person."

(e)(1) State whether or not the registrant has standing audit, nominating and compensation committees of the Board of Directors, or committees performing similar functions. If the registrant has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees. In the case of investment companies registered under the Investment Company Act of 1940, indicate by an asterisk whether that member is an "interested person" as defined in section 2(a)(19) of that Act. Information concerning compensation committees is not required of registered investment companies whose management functions are performed by external managers.

(2) If the registrant has a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting such recommendations.

(f) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1) the total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board on which he served (during the periods that he served).

(g) If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of security holders because of a disagreement with the registrant on any matter relating to the registrant's operations, policies or practices, and if the director has furnished the registrant with a letter describing such disagreement and requesting that the matter be disclosed, the registrant shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement.

If the registrant believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its view of the disagreement.

Item 8. Compensation of directors and executive officers. (See Note C at the beginning of Schedule 14A).

Furnish the information required by Item 402 (§ 229.402 of this chapter) of Regulation S-K if action is to be taken with regard to (i) the election of directors, (ii) any bonus, profit sharing or other compensation plan, contract, or arrangement in which any director, nominee for election as a director, or executive officer of the registrant will participate, (iii) any pension or retirement plan in which any such person will participate or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the registrant the information required need to be furnished only as to nominees of the persons making the solicitation and associates of such nominees.

Instruction. If an otherwise reportable compensation plan became subject to such requirements because of an acquisition or merger and, within one year of the acquisition or merger, such plan was terminated for purposes of prospective eligibility, the registrant may furnish a description of its obligation to the designated individuals pursuant to the compensation plan. Such description may be furnished in lieu of a description of the compensation plan in the proxy statement.

Item 9. Independent public accountants. If the solicitation is made on behalf of the registrant and relates to: (1) The annual (or special meeting in lieu of annual) meeting of security holders at which directors are to be elected, or a solicitation of consents or authorizations in lieu of such meeting or (2) the election, approval or ratification of the registrant's accountant, furnish the following information describing the registrant's relationship with its independent public accountant:

(a) The name of the principal accountant selected or being recommended to security holders for election, approval or ratification for the current year. If no accountant has been selected or recommended, so state and briefly describe the reasons therefor.

(b) The name of the principal accountant for the fiscal year most recently completed if different from the accountant selected or recommended for the current year or if no accountant has yet been selected or recommended for the current year.

(c) The proxy statement shall indicate: (1) Whether or not representatives of the principal accountant for the current year and for the most recently completed fiscal year are expected to be present at the security holders' meeting, (2) whether or not they will have the opportunity to make a statement if they desire to do so, and (3) whether or not such representatives are expected to be available to respond to appropriate questions.

(d) If a change or changes in accountants have taken place since the date of the proxy statement for the most recent annual meeting of security holders (or, if this is the first meeting for which a proxy statement is required, within 12 months prior to, and any period subsequent to, the date of the end of most recent fiscal year), notwithstanding any previous disclosure, provide the information required by Item 304(a) of Regulation S-K (§ 229.304 of this chapter).

Item 10. Compensation Plans. If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid, furnish the following information with respect to any such plan.

(a) *All Plans.*

(1) Describe briefly the material features of the plan, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class and state the basis of such participation.

(2) State the benefits or amounts which will be received by or allocated to each of the following under the plan, if such benefits or amounts are determinable: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 402 of Regulation S-K (§ 229.402 of this chapter); (ii) all current executive officers as a group; (iii) all directors who are executive officers as a group; (iv) all employees as a group. If such benefits or amounts are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last fiscal year if the plan had been in effect, if such benefits or amounts may be determined: (i) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 402 of Regulation S-K (§ 229.402 of this chapter); (ii) all current executive officers as a group; (iii) all directors who are not executive officers as a group; (iv) all employees as a group.

(3) Furnish the information called for by Item 402(b) of Regulation S-K (§ 229.402 of this chapter) with respect to all compensation plans now in effect or in effect during the last three years except that information called for in subparagraphs (b)(1) (vi) and (vii) and (b)(4) of Item 402(b) of Regulation S-K (§ 229.402 of this chapter) should be furnished with respect to the last three fiscal years for the following: (i) Each person (stating name and position) specified in Item 402(a)(1)(i) of Regulation S-K (§ 229.402 of this chapter); (ii) all current executive officers as a group; (iii) all directors who are not executive officers as a group, if such persons may participate in the plan; and (iv) all employees as a group, if such persons may participate in the plan. Such information is in lieu of the information otherwise called for by Item 402(b) of Regulation S-K (§ 229.402 of this chapter) in connection with the disclosure required by Item 8 of this schedule.

(4) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the registrant or to alter the allocation of the benefits as between the groups specified in paragraph (a)(3), state the nature of the amendments which can be so made.

(b) *Specific Plans.*

(1) With respect to any pension or retirement plan submitted for security holder action, state: (i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and (ii) the estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraphs (b) (2) and (3) of Item 402 of Regulation S-K (§ 229.402 of this chapter).

(2) With respect to options, warrants or rights submitted for security holder action: (i) state: (A) The title and amount of securities called for or to be called for by such options, warrants or rights; (B) the prices, expiration dates and other material conditions upon

which the options, warrants or rights may be exercised; (C) the consideration received or to be received by the registrant or subsidiary for the granting or extension of the options, warrants or rights; (D) the market value of the securities called for or to be called for by the options, warrants or rights as of the latest practicable date; and (E) in the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and to the registrant; and (ii) state separately the amount of such options by the following persons if such benefits or amounts are determinable: (A) Each person (stating name and position) specified in paragraph (a)(1)(i) of Item 402 of Regulation S-K (§ 229.402 of this chapter); (B) all current executive officers as a group; (C) all directors who are not executive officers as a group; (D) each nominee for election as a director; (E) each associate of any of such directors, executive officers or nominees; (F) each other person who received or is to receive 5 percent of such options, warrants or rights; and (G) all employees as a group.

Instructions

1. The term "plan" as used in this Item means any plan as defined in Instruction 3 of paragraph (b) of Item 402 of Regulation S-K (§ 229.402 of this chapter).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to paragraph (a) of Rule 14a-6 (§ 229.14a-6 of this chapter).

4. Paragraphs (a)(3) and (b)(2)(ii) do not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

5. The Commission should be informed, as supplemental information, when the proxy statement in preliminary form is filed, as to when the options, warrants or rights and the shares called for thereby will be registered under the Securities Act or, if such registration is not contemplated, the section of the Securities Act or rule of the Commission under which exemption from such registration is claimed and the facts relied upon to make the exemption available.

Item 11. Authorization or issuance of securities otherwise than for exchange. If action is to be taken with respect to the authorization or issuance of any securities otherwise than for exchange for outstanding securities of the registrant, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish the information required by Item 202 of Regulation S-K (§ 229.202 of this chapter). If the terms of the securities cannot be stated or estimated with respect to any or all of the securities to be authorized, because no offering thereof is contemplated in the proximate future, and if no further authorization by security holders for the issuance thereof is to be obtained, it should be stated that the terms of the securities to be authorized, including dividend or interest rates, conversion prices, voting rights, redemption prices, maturity dates, and similar matters will be determined by the board of directors. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any. Where the statutory provisions with respect to preemptive rights are so indefinite or complex that they cannot be stated in summarized form, it will suffice to make a statement in the form of an opinion of counsel as to the existence and extent of such rights.

(c) Describe briefly the transaction in which the securities are to be issued including a statement as to (1) the nature and approximate amount of consideration received or to be received by the registrant and (2) the approximate amount devoted to each purpose so far as determinable for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction in which the securities are to be issued, state the reason, indicate the purpose of the authorization of the securities, and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to such issuance.

(d) If the securities are to be issued otherwise than in a public offering for cash, state the reasons for the proposed authorization or issuance and the general effect thereof upon the rights of existing security holders.

(e) Furnish the information required by Item 13(a) of this schedule.

Item 12. Modification or exchange of securities. If action is to be taken with respect to the modification of any class of securities of the registrant, or the issuance or authorization for issuance of securities of the registrant in exchange for outstanding securities of the registrant furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be so issued, the title and amount of outstanding securities to be exchanged therefor and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in the description of the securities in Item 202 of Regulation S-K (§ 229.202 of this chapter).

(c) State the reasons for the proposed modification or exchange and the general effect thereof upon the rights of existing security holders.

(d) Furnish a brief statement as to arrears in dividends or as to defaults in principal or interest in respect to the outstanding securities which are to be modified or exchanged and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(e) Outline briefly any other material features of the proposed modification or exchange. If the plan of proposed action is set forth in a written document, file copies thereof with the Commission in accordance with § 240.14a-6.

(f) Furnish the information required by Item 13(a) of this Schedule.

Instruction. If the existing security is presently listed and registered on a national securities exchange, state whether the registrant intends to apply for listing and registration of the new or reclassified security on such exchange or any other exchange. If the registrant does not intend to make such application, state the effect of the termination of such listing and registration.

Item 13. Financial and other information. (*See* Notes D and E at the beginning of this Schedule.)

(a) Information required.

If action is to be taken with respect to any matter specified in Item 11 or 12, furnish the following information:

(1) Financial statements meeting the requirements of Regulation S-X, including financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which action is to be taken as described in this proxy statement;

(2) Item 302 of Regulation S-K, supplementary financial information;

(3) Item 303 of Regulation S-K, management's discussion and analysis of financial condition and results of operations;

(4) Item 304 of Regulation S-K, changes in and disagreements with accountants on accounting and financial disclosure; and

(5) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year:

(i) Are expected to be present at the security holders' meeting;

(ii) Will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) Incorporation by reference.

The information required pursuant to paragraph (a) of this Item may be incorporated by reference into the proxy statement as follows:

(1) S-3 registrants.

If the registrant meets the requirements of Form S-3(*see* Note E to this Schedule), it may incorporate by reference to previously-filed documents any of the information required by paragraph (a) of this Item, provided that the requirements of paragraph (c) are met. Where the registrant meets the requirements of Form S-3 and has elected to furnish the required information by incorporation by reference, the registrant may elect to update the information so incorporated by reference to information in subsequently-filed documents.

(2) All registrants.

The registrant may incorporate by reference any of the information required by paragraph (a) of this Item, provided that the information is contained in an annual report to security holders or a previously-filed statement or report, such report or statement is delivered to security holders with the proxy statement and the requirements of paragraph (c) are met.

(c) Certain conditions applicable to incorporation by reference.

Registrants eligible to incorporate by reference into the proxy statement the information required by paragraph (a) of this Item in the manner specified by paragraphs (b)(1) and (b)(2) may do so only if:

(1) The information is not required to be included in the proxy statement pursuant to the requirement of another Item;

(2) The proxy statement identifies on the last page(s) the information incorporated by reference; and

(3) The material incorporated by reference substantially meets the requirements of this Item or the appropriate portions of this Item.

Instructions to Item 13.

1. Notwithstanding the provisions of this Item, any or all of the information required by paragraph (a) of this Item not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. In the usual case the information is deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but the information is not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction, the authorization of preferred stock without present intent to issue or the authorization of preferred stock for issuance for cash in an amount constituting fair value.

2. In order to facilitate compliance with Rule 2–02(a) of Regulation S–X, one copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

3. Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with Rules 12–15, 12–28 and 12–29 (or, for management investment companies, Rules 12–12 through 12–14) of that regulation need be furnished in the proxy statement.

4. 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 (a)(2) or (3) of this Item.

5. If the registrant submits preliminary proxy material incorporating by reference financial statements required by this Item, the registrant should furnish a draft of the financial statements if the document from which they are incorporated has not been filed with or furnished to the Commission.

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

If action is to be taken with respect to any transaction involving: (i) The merger or consolidation of the registrant into or with any other person or of any other person into or with the registrant, (ii) the acquisition by the registrant or any of its security holders of securities of another person, (iii) the acquisition by the registrant of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the registrant, or (v) the liquidation or dissolution of the registrant, furnish the following information:

(a) Information about the transaction.

Furnish the following information concerning the registrant and (unless otherwise indicated) each other person: Which is to be merged into the registrant or into or with which the registrant is to be merged or consolidated; the business or assets of which are to be acquired; which is the issuer of securities to be acquired by the registrant in exchange for all or a substantial part of the registrant's assets; or which is the issuer of securities to be acquired by the registrant or its security holders:

(1) The name, complete mailing address (including the ZIP Code) and telephone number (including the area code) of the principal executive offices.

(2) A brief description of the general nature of the business conducted by the other person.

(3) A summary of the material features of the proposed transaction. If the transaction is set forth in a written document, file three copies thereof with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6(a)(§ 240.14a–6(a) of this chapter). The summary shall include, where applicable:

(i) A brief summary of the terms of the transaction agreement;

(ii) The reasons for engaging in the transaction;

(iii) An explanation of any material differences in the rights of security holders of the registrant as a result of this transaction;

(iv) A brief statement as to the accounting treatment of the transaction; and

(v) The federal income tax consequences of the transaction.

(4) A brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the registrant or of such other person and as to the effect of the transaction thereon and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(5) The information required by Item 301 of Regulation S–K (§ 229.301 of this chapter) (selected financial data) for (i) the registrant; (ii) the other person; and (iii) 1 if material, the registrant or the other person on a pro forma basis, giving effect to the transaction.

(6) In comparative columnar form, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the other person 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) (selected financial data);

(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) (selected financial data); 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) (selected financial data).

Instruction to paragraph (a)(6).

For a business combination accounted for as a purchase, the pro forma and equivalent pro forma income (loss) from continuing operations per share and equivalent pro forma cash dividends declared per share shall be presented only for the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the other person.

(7) Financial information required by Article 11 of Regulation S–X (§ 210.11–01 et seq. of this chapter) with respect to this transaction.

Instructions to paragraph (a)(7).

1. Any other Article 11 information that is presented (rather than incorporated by reference) pursuant to other Items of this schedule shall be presented together with the information provided pursuant to paragraph (a)(7), but the presentation shall clearly distinguish between this transaction and any other.

2. If pro forma financial information with respect to all other transactions is incorporated by reference pursuant to paragraph (b) of this Item, only the pro forma results need be presented as part of the pro forma financial information required by this Item.

(8) 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 such compliance or approval.

(9) 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 same information as would be required by Item 9(b)(1) through (6) of Schedule 13E–3 (§ 240.13e–100 of this chapter).

(10) A description of any past, present or proposed material contracts, arrangements, understandings, relationships, negotiations or transactions during the periods for which financial statements are presented or incorporated by reference pursuant to this Item between the other person or its affiliates and the registrant or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

(11) As to each class of securities of the registrant or of the other person which is admitted to trading on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the transaction, state the high and low sale prices (or in the absence of trading in a particular period, the

range of the bid and asked prices) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement or resolution with respect to the action was made.

(12) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year

(i) Are expected to be present at the security holders' meeting;

(ii) Will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) Information about the registrant and the other person.

Furnish the information specified below for the registrant and for the other person designated in paragraph(a) of this Item, if applicable (hereinafter all references to the registrant should be read to include a reference to such other person unless the context otherwise indicates):

(1) Information with respect to S–3 registrants.

If the registrant meets the requirements of Form S–3 (See Note E to this Schedule) and elects to furnish information in accordance with the provisions of this paragraph, furnish information as required below.

(i) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and that have not been described in a report on Form 10–Q (§ 249.308(a) of this chapter) or Form 8–K(§ 249.308 of the chapter) filed under the Exchange Act;

(ii) Include in the proxy statement, if not incorporated by reference from the reports filed under the Exchange Act specified in paragraph (b)(1)(iii) of this Item, from a proxy or information statement filed pursuant to section 14 of the Exchange Act, from a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter) or from a Form 8–K filed during either of the two preceding fiscal years:

(A) Financial information required by Rule 3–05(§ 210.3–05 of this chapter) and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which action is to be taken as described in this proxy statement.

(B) Restated financial statements prepared in accordance with Regulation S–X (Part 210 of this chapter), if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(C) Restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§ 210.11(b) of this chapter); or

(D) Any financial information required because of a material disposition of assets outside the normal course of business.

(iii) Incorporate by reference into the proxy statement the documents listed in paragraphs (A) and (B) below:

(A) The registrant's latest annual report on Form 10–K(§ 249.310 of this chapter) filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed;

(B) All other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph(b)(1)(iii)(A) of this Item.

(iv) The proxy statement also shall state on the last page(s) that all documents subsequently filed by the registrant pursuant to sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the proxy statement:

(A) If a meeting of security holders is to be held, the date on which such meeting is held;

(B) If a meeting of security holders is not to held, the date on which the consents or authorizations are used to effect the proposed action.

(2) *Information with respect to S–2 or S–3 registrants.*

(i) *Information required to be furnished.*

If the registrant meets the requirements of Form S–2 or Form S–3 (*See* Note E of this Schedule) and elects to comply with this paragraph, furnish the information required by either paragraph (A) or (B) of this paragraph. However, the registrant shall not provide information in the manner allowed by paragraph (A) of this paragraph, if the financial statements in the registrant's latest annual report to security holders do not reflect: restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are signficant pursuant to Rule 11–01(b) of Regulation S–X; or any financial information required because of a material disposition of assets outside of the normal course of business.

(A) If the registrant elects to furnish information pursuant to this paragraph (b)(2)(i)(A) and delivers the proxy statement together with its latest annual report to security holders which, at the time of original preparation met the requirements of either Rule 14a–3 (§ 240.14a–3 of this chapter) or 14c–3 (§ 240.14c–3 of this chapter), or a complete and legible facsimile of such latest annual report to security holders:

(*1*) Indicate that the proxy statement is accompanied by the registrant's latest annual report to security holders.

(*2*) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10–Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which audited financial statements were included in the latest report to security holders and more than 45 days prior to the date the proxy statement is filed in definitive form (or as of a more recent date) by one of the following means:

(i) Including such information in the proxy statement;

(ii) Providing without charge to each person to whom a proxy statement is delivered a copy of the registrant's latest Form 10–Q; or

(iii) Providing without charge to each person to whom a proxy statement is delivered a copy of the registrant's latest quarterly report that was delivered to its security holders and that included the required financial information.

(*3*) If not reflected in the registrant's latest annual report to security holders, provide information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that as to which action is to be taken as described in the proxy statement.

(*4*) Describe any and all material changes in the registrant's affairs that have occurred between the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and the date the definitive proxy statement is filed and that were not described in a Form 10–Q or quarterly report delivered with the proxy statement in accordance with paragraph (b)(2)(i)(A)(*2*) (ii) or (iii).

(B) If the registrant does not elect to furnish information and deliver its latest annual report to security holders pursuant to paragraph (b)(2)(i)(A):

(*1*) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year as required by Rule 14a–3 (§ 240.14a–3 of this chapter) to be included in an annual report to security holders. The description also should take into account changes in the registrant's business that have occurred between the end of the last fiscal year and the filing of definitive proxy materials.

(*2*) Include financial statements and information as required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1) of this chapter) to be included in an annual report to security holders. In addition, provide:

(*i*) The interim financial information required by Rule 10–01 of Regulation S–X (§ 210.10–01 of this chapter) for a report on Form 10–Q;

(*ii*) Financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(*iii*) Restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(*iv*) Restated financial statements prepared in accordance with Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X (§ 210.11-01 of this chapter); and

(*v*) Any financial information required because of a material disposition of assets outside of the normal course of business.

(*3*) Furnish the information required by the following:

(*i*) Item 101 (b), (c)(1)(i) and (d) of Regulation S-K (§ 229.101 of this chapter), industry segments, classes of similar products or services, foreign and domestic operations and import sales;

(*ii*) Item 102 of Regulation S-K (§ 229.102 of this chapter) for any property involved in the transaction, if such disclosure is material to the security holder's understanding of the transaction;

(*iii*) Item 201 of Regulation S-K (§ 229.201 of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

(*iv*) Item 301 of Regulation S-K (§ 229.301 of this chapter), selected financial data;

(*v*) Item 302 of Regulation S-K (§ 229.302 of this chapter), supplementary financial information;

(*vi*) Item 303 of Regulation S-K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations; and

(*vii*) Item 304 of Regulation S-K (§ 229.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure.

(ii) *Incorporation of certain information by reference.* If the registrant meets the requirements of Form S-2 or S-3 (*See* Note E of this Schedule) and elects to furnish information in accordance with the provisions of paragraph (b)(2)(i) of this Item:

(A) Incorporate by reference into the proxy statement the documents listed in paragraphs (1) and (2) below and, if applicable, the portions of the documents listed in paragraphs (3) and (4) below.

(*1*) The registrant's latest annual report on Form 10-K filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 10-K was required to be filed.

(*2*) All other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(2)(i)(A)(*1*).

(*3*) If the registrant elects to deliver its latest annual report to security holders pursuant to paragraph(b)(2)(i)(A) of this Item, the information furnished in accordance with the following:

(*i*) Item 101 (b), (c)(1)(i) and (d) of Regulation S-K, industry segments, classes of similar products or services, foreign and domestic operations and export sales;

(*ii*) Item 201 of Regulation S-K, market price of and dividends on the registrant's common equity and related stockholder matters;

(*iii*) Item 301 of Regulation S-K, selected financial data;

(*iv*) Item 302 of Regulation S-K, supplementary financial information;

(*v*) Item 303 of Regulation S-K, management's discussion and analysis of financial condition and results of operations; and

(*vi*) Item 304 of Regulation S-K, changes in and disagreements with accountants on accounting and financial disclosure.

(*4*) If the registrant elects, pursuant to paragraph (b)(2)(i)(A)(*2*)(*iii*) of this Item, to provide a copy of its latest quarterly report which was delivered to security holders, financial information equivalent to that required to be presented in Part I of Form 10-Q.

(B) The registrant also may state, if it so chooses, that specifically described portions of its annual or quarterly report to security holders, other than those portions required to be incorporated by reference pursuant to paragraphs (b)(2)(ii)(A) (*3*) and (*4*) of this Item, are not part of the proxy statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

(3) *Information with respect to registrants other than S-2 or S-3 registrants.*

(i) If the registrant does not meet the requirements of Form S-2 or S-3 (*See* Note E of this Schedule), or elects to comply with this paragraph (b)(3) in lieu of (b)(1) or (b)(2), furnish the following information:

(A) In addition to the brief description of the other person's business required to be in the proxy statement by paragraph (a)(2) of this Item, a brief description of the business done by the registrant and the other person and their subsidiaries during the most recent fiscal year as required by Rule 14a-3 (§ 240.14a-3 of this chapter) to be included in an annual report to security holders. The description also shall take into account changes in the business that have occurred between the end of the latest fiscal year and the date the definitive proxy statement is filed.

(B) Information relating to industry segments, classes of similar products or services, foreign and domestic operations and export sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S-K (§ 229.101 of this chapter).

(C) Information relating to property required by Item 102 of Regulation S-K (§ 229.102 of this chapter) shall be provided for any property involved in the plan described pursuant to this Item, if such disclosure is material to the security holder's understanding of the transaction.

(D) Information required by Item 201 of Regulation S-K (§ 229.201 of this chapter), market price of and dividends on the registrants' common equity and related stockholder matters.

(E) Financial statements meeting the requirements of Regulation S-X, including financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that as to which action is to be taken as described in this proxy statement.

(F) Item 301 of Regulation S-K, selected financial data;

(G) Item 302 of Regulation S-K, supplementary financial information;

(H) Item 303 of Regulation S-K, management's discussion and analysis of financial condition and results of operations; and

(I) Item 304 of Regulation S-K, changes in and disagreements with accountants on accounting and financial disclosure.

(ii) If the other person is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act; or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a-3 (§ 240.14a-3 of this chapter) or Rule 14c-3 (§ 240.14c-3 of this chapter) for its latest fiscal year, furnish:

(A) the financial statements that would have been required to be included in an annual report to security holders pursuant to Rules 14a-3(b)(1) and (b)(2) had the company been required to furnish such a report; *provided, however,* that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal Year need not be audited if they have not previously been audited. In any case, such financial statements need be audited only to the extent practicable.

(B) The quarterly financial and other information that would have been required had the company been required to file Part I of Form 10-Q (§ 249.308a) for the most recent quarter for which such a report would have been on file at the time the proxy statement is mailed or for a period ending as of a more recent date.

(C) The information required by paragraphs (b)(3)(i)(A)-(D) and (F)-(I) of this Item.

(c) *Additional method of incorporation by reference.*

In lieu of the provision of information about the registrant and the other person required in paragraph (b) of this Item, the registrant may incorporate by reference into the proxy statement the information required by paragraph (b)(3) of this Item if it is contained in an annual report sent to security holders pursuant to the requirement of Rule 14a-3 (§ 240.14a-3 of this chapter) with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates, provided such information substantially meets the requirements of paragraph (b)(3) of this Item or the appropriate portions of paragraph (b)(3) of this Item.

Instructions to Item 14.

1. In order to facilitate compliance with Rule 2-02(a) of Regulation S-X, one copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

2. Notwithstanding the provisions of this Item, any or all of the required financial statements and related information which are not material for the exercise of prudent judgement in regard to the matter to be acted upon may be omitted.

3. If the registrant or any of its securities or assets are to be acquired by the other person, the information regarding the other person that is required by this Item, other than information required by paragraphs (a)(1)–(3) and (a)(8)–(11) of this Item, need be provided only to the extent that: (1) the registrant or its security holders who are entitled to vote or give an authorization or consent with regard to the action will become or remain security holders of the other person; or (2) such information is otherwise material to an informed voting decision.

4. If the plan being voted on involves only the registrant and one or more of its totally held subsidiaries and does not involve a liquidation of the registrant or a spin-off, the information required by this Item, other than information required by paragraphs (a)(1)–(4) and (a)(8)(11) of this Item, may be omitted.

5. Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with Rules 12–15, 12–28 and 12–29 (or, for management investment companies, Rules 12–12 through 12–14) of that regulation need be furnished in the proxy statement.

6. 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 (a)(5), (b)(3)(i) (F), (G) or (H) of this Item.

7. If the registrant submits preliminary proxy material incorporating by reference financial statements required by this Item, the registrant should furnish a draft of the financial statements if the document from which they are incorporated has not been filed with or furnished to the Commission.

Item 15. Acquisition or disposition of property. If action is to be taken with respect to the acquisition or disposition of any property, furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the registrant or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferer or transferee, as the case may be and the nature of any material relationship of such person to the issuer or any affiliate of the issuer.

(d) Outline briefly any other material features of the contract or transaction.

Item 16. Restatement of accounts. If action is to be taken with respect to the restatement of any asset, capital, or surplus account of the registrant furnish the following information:

(a) State the nature of the restatement and the date as of which it is to be effective.

(b) Outline briefly the reasons for the restatement and for the selection of the particular effective date.

(c) State the name and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereon. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

(d) To the extent practicable, state whether and the extent, if any, to which, the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 17. Action with respect to reports. If action is to be taken with respect to any report of the registrant or of its directors, officers or committees or any minutes of a meeting of the security holders, furnish the following information:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.

Item 18. Matters not required to be submitted. If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, state the nature of such matter, the reasons for submitting it to a vote of security holders and what action is intended to be taken by the registrant in the event of a negative vote on the matter by the security holders.

Item 19. Amendment of character, bylaws or other documents.

If action is to be taken with respect to any amendment of the registrant's charter, bylaws or other documents as to which information is not required above, state briefly the reasons for and the general effect of such amendment.

Instructions. 1. Where the matter to be acted upon is the classification of directors, state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be so filled for the remainder of the full term.

2. Attention is directed to the discussion of disclosure regarding anti-takeover and similar proposals in Release No. 34–15230 (October 13, 1978).

Item 20. Other proposed action. If action is to be taken with respect to any matter not specifically referred to above, describe briefly the substance of each such matter in substantially the same degree of detail as is required by Items 5 to 19, inclusive, above.

Item 21. Vote required for approval. As to each matter which is to be submitted to a vote of security holders, other than elections to office or the selection or approval of auditors, state the vote required for its approval.

30. Section 240.14a–102 is amended by removing the words "issuer" or "issuers" and replacing them with the words "registrant" or "registrants" in Item 1, Item 2(c), Item 3 (a), (b), (c), (e), (f) and (g) and Item 4(c) (1) and (2) and revising Item 2(b)(1) to read as follows:

§ 240.14a–102 Schedule 14B, information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to § 240.14a–11(c) (Rule 14a–11(c)).

* * * * *

Item 2. * * *

(b) State the following:

(1) Your business, mailing or residence address.

* * * * *

31. By amending § 240.14c–1 by removing the word "issuer" and replacing it with the word "registrant" in paragraph (a), by removing paragraph (c), by redesignating paragraph (d) as (c) and revising it, by redesignating paragraph (e) as (d) and by adding new paragraphs (e) and (f) to read as follows:

§ 240.14–1 Definitions.

* * * * *

(c) *Last fiscal year.* The term "last fiscal year" of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting with respect to which an information statement is required to be distributed, or if the information statement involves consents or authorizations in lieu of a meeting, the earliest date on which they may be used to effect corporate action.

* * * * *

(e) *Record date.* The term "record date" shall mean the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(f) *Registrant.* The term "registrant" means the issuer of a class of securities registered pursuant to section 12 of the Act.

32. By revising § 240.14c–2 as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the registrant of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c–101) or written information statements included in registration statements filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter), and containing the information specified in such form, to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the registrant pursuant to section 14(a) of the Act: *Provided however,* that (1) in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the registrant, and (2) no such statements need to be transmitted to a security holder if a registrant would be excused from delivery of an annual report or a proxy statement under Rule 14a-3(e)(2) (§ 240.14a-3(e)(2)) if such section were applicable.

(b) The information statement shall be sent or given at least 20 calendar days prior to the meeting date or, in the case of corporate action taken pursuant to the consents or authorizations of security holders, at least 20 calendar days prior to the earliest date on which the corporate action may be taken.

33. In § 240.14c-3 by revising paragraph (a) introductory text, (a)(1) and (a)(2) to read as follows, removing (a)(3) through (a)(12) including the notes after (a)(7) and (a)(10), and by removing the words "issuer," "issuers" and "shareholders" and replacing them with the words "registrant," "registrants" and "security holders" respectively in paragraph (b) and the note following paragraph (b):

§ 240.14c-3 Annual report to be furnished security holders.

(a) If the information statement relates to an annual (or special meeting in lieu of the annual) meeting, or written consent in lieu of such meeting, of security holders at which directors are to be elected, it shall be accompanied or preceded by an annual report to such security holders.

(1) The annual report shall contain the information specified in paragraphs (b)(1) through (b)(11) of Rule 14a-3 (§ 240.14a-3 of this chapter.)

(2) Paragraphs (b)(5) through (b)(11) of Rule 14a-3 shall not apply to an investment company registered under the Investment Company Act of 1940. Subject to the requirements of paragraphs (b)(1) through (b)(4) of Rule 14a-3, the annual report to security holders of such investment company may be in any form deemed suitable by management.

* * * * *

§ 240.14c-4 [Amended]

34. By amending § 240.14c-4 by removing the word "issuer" and replacing it with the word "registrant" and by removing the word "to" in the phrase "within the power to" and replacing it with the word "of" so that the phrase would read "within the power of" in paragraph (b) and by placing a comma between the words "presentation" and "financial" in the first sentence of paragraph (c).

35. By revising § 240.14c-5 as follows:

§ 240.14c-5 Filing requirements.

(a) *Preliminary information statement.* Five preliminary copies of the information statement shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such statement are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor. In computing the 10-day period, the filing date of the preliminary copies is to be counted as the first day and the 11th day is the date on which definitive copies of the information statement may be mailed to security holders.

Note 1.—The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the information statement.

Note 2.—The officials responsible for the preparation of the information statement should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary statement should be filed with the Commission at the earliest practicable date.

(b) *Definitive information statement.* Eight definitive copies of the information statement, in the form in which it is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date it is first sent or given to any security holders. Three copies thereof shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any security of the registrant is listed and registered.

(c) *Release dates.* All preliminary material filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders or, if not released, the date on which copies thereof are intended to be released.

(d) *Public availability of information.* All copies of material filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies" and shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission except that such material may be disclosed to any department or agency of the United States Government and to the Congress and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

(e) *Revised information statements.* Where any information statement filed pursuant to this section is amended or revised, two of the copies of such amended or revised material filed pursuant to this section shall be marked to indicate clearly and precisely the changes effected therein. If the amendment or revision alters the text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(f) *Merger material.* Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form N-14, S-4, or F-4 (§ 239.23, 25 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form N-14, S-4, or F-4 shall be filed in accordance with this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

(g) *Fees.* At the time of filing the preliminary information statement, the registrant shall pay to the Commission a fee of $125, no part of which shall be refunded, except, however, when filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee established in accordance with Rule 0-11, (§ 240.0-11 of this chapter).

36. Section 240.14c-7 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 240.14c-7 Providing copies of material for certain beneficial owners.

If the registrant knows that securities of any class entitled to vote at a meeting, or by written authorizations or consents if no meeting is held, are held of record by a broker, dealer, bank or voting trustee, or their nominees, the registrant shall:

(a) By first class mail or other equally prompt means, inquire of such record holder whether other persons are the beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to beneficial owners and, in the case of an annual (or special meeting in lieu of the annual) meeting, or written consent in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such material to such beneficial owners for whom proxy material has not been and is not to be made available if such reports are to be distributed by the brokers, dealer, bank, voting trustee or their nominees; and

* * * * *

37. By revising § 240.14c–101 to read as follows:

§ 240.14c-10 Schedule 14C. Information required in information statement.

Note.—Where any item, other than Item 4, calls for information with respect to any matter to be acted upon at the meeting or, if no meeting is being held, by written authorization or consent, such item need be answered only with respect to proposals to be made by the registrant.

Item 1. Information required by Items of Schedule 14A (17 CFR 240.14a–101). Furnish the information called for by all of the items of Schedule 14A of Regulation 14A (17 CFR 240.14a–101) (other than Items 1(c), 2, 4 and 5 thereof) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting. Notes A, C, D, and E to Schedule 14A are also applicable to Schedule 14C.

Item 2. Statement that proxies are not solicited. The following statement shall be set forth on the first page of the information statement in bold-face type:

We Are Not Asking You for a Proxy and You are Requested Not To Send Us a Proxy

Item 3. Interest of certain persons in or opposition to matters to be acted upon. (a) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) each person who has been a director or officer of the registrant at any time since the beginning of the last fiscal year;

(2) each nominee for election as a director of the registrant;

(3) each associate of any of the foregoing persons.

(b) Give the name of any director of the registrant who has informed the registrant in writing that he intends to oppose any action to be taken by the registrant at the meeting and indicate the action which he intends to oppose.

Item 4. Proposals by security holders. If any security holder entitled to vote at the meeting or by written authorization or consent has submitted to the registrant a reasonable time before the information statement is to be transmitted to security holders a proposal, other than elections to office, which is accompanied by notice of his intention to present the proposal for action at the meeting the registrant shall, if a meeting is held, make a statement to that effect, identify the proposal and indicate the disposition proposed to be made of the proposal by the registrant at the meeting.

Instructions. 1. This item need not be answered as to any proposal submitted with respect to an annual meeting if such proposal is submitted less than 60 days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders.

2. If the registrant intends to rule a proposal out of order, the Commission shall be so advised at the time preliminary copies of the information statement are filed with the Commission, together with a statement of the reasons why the proposal is not deemed to be a proper subject for action by security holders.

§ 240.14f-1 [Amended]

38. By revising § 240.14f–1 by removing the phrase "Items 5 (a), (d), (e), and (f), 6 and 7 of Schedule 14A of Regulation 14A" and replacing it with the phrase "Items 6 (a), (d) and (e), 7 and 8 of Schedule 14A of Regulation 14A (§ 240.14a–101 of this chapter)."

PART 249—FORMS, SECURITIES EXCHANGE ACT 1934

39. The authority citation for Part 249 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; * * *

§ 249.210 [Amended]

40. Section 249.210 is amended by changing the title of Item 14 from "Disagreements with Accountants on Accounting and Financial Disclosure" to "Changes in and Disagreements with Accountants on Accounting and Financial Disclosure," [note that the text of Form 10 does not appear in the Code of Federal Regulations.]

41. Section 249.310 is amended by adding an Instruction to Items 9 and 11 of Form 10–K (§ 249.310) to read as follows [note that the text of Form 10–K does not appear in the Code of Federal Regulations]:

§ 249.310 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Form 10–K

* * * * *

Item 9. *Changes in and disagreements with accountants on accounting and financial disclosure.*

* * * * *

Item 11. *Executive compensation.*

Furnish the information required by Item 402 of Regulations S–K (§ 229.402) of this chapter.

Instruction

A registrant complying with paragraph (a)(3) of Item 10 of Schedule 14A (§ 240.14a–101 of this chapter) will be deemed to have complied with the requirements of this Item 11.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

42. The authority citation for Part 270 continues to read, in part, as follows:

Authority: Secs. 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–89, * * *

43. By revising paragraph (a) of § 270.20a–3 to read as follows:

§ 270.20a-3 Information as to certain transactions.

(a) This section shall apply to a solicitation if (1) the information specified in Item 7, Directors and executive officers, of Schedule 14A of Regulation 14A (§ 240.14a–101 of this chapter) is required to be furnished for an investment company, or (2) action is to be taken with respect to an investment advisory contract.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

November 10, 1986.

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