Issued in Kansas City, Missouri, on October 11, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-27002 Filed 11-7-91; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 239 and 240

[Release Nos. 33-6922; 34-29883; FR-38]

RIN 3235-AE45

Roll-up Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today adopted rules intended to enhance the quality of information provided to investors in connection with transactions involving roll-ups of limited partnerships or similar entities. The new rules require heightened disclosure with respect to the fundamental changes and potential adverse effects arising from roll-up transactions, and the conflicts of interest, reasons for, alternatives to and fairness of such transactions. The rules also call for enhanced disclosure concerning valuation methods and additional pro forma financial statements. In order to highlight for investors the differing effects that roll-up transactions may have on investors in various partnerships, the rules require delivery of individual partnership prospectus supplements highlighting, among other things, the effects of the roll-up transaction on investors in each partnership. Technical amendments to the business combination registration statement forms under the Securities Act of 1933, Forms S-4 and F-4, and to Article 11 of Regulation S-X, also have been adopted.

In addition to the new disclosure rules, the Commission is today adopting amendments to Forms S-4 and F-4 and to Rules 14a-6, 14c-2 and 14e-1 under the Securities Exchange Act of 1934, establishing a 60-day minimum solicitation period for roll-up transactions, or, if shorter, the maximum period permitted under applicable state law.

EFFECTIVE DATE: October 30, 1991. The rules will apply to roll-up disclosure documents filed with the Commission or sent to investors subsequent to the effective date of the rules. Filings pending on or before the effective date of the rules will be subject to the rules.

FOR FURTHER INFORMATION CONTACT: Meredith B. Cross, Michael L. Hermsen or Amy S. Bowerman at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today adopted subpart 900 of Regulation S-K,[1] technical revisions to Forms S-4 and F-4 under the Securities Act of 1933 ("Securities Act"),[2] the registration forms generally used in roll-up transactions, and a technical amendment to Article 11 of Regulation S-X.[3] The rules are applicable to registration statements filed with the Commission in connection with roll-up transactions, as defined in the rules. The Commission also has adopted rules establishing a minimum 60-calendar day soliciting or offering period (or lesser maximum period specified under applicable state law) for roll-up transactions.

TABLE OF CONTENTS

I. Executive Summary

Serious concerns have been raised about roll-ups in Congressional hearings [4] and investor complaints to the Commission. These transactions include the combination or reorganization of two or more public or private limited partnerships or other similar entities, or the reorganization of a single partnership or similar entity into a new legal entity.[5] Investors in the partnerships usually receive an equity interest in the successor entity, which may be a limited partnership, an entity taxed as a real estate investment trust ("REIT") or a corporation. In most roll-ups, if a majority of the limited partners in a partnership approve the transaction, all investors in the partnership must exchange their partnership interests for interests in the successor.

The concerns expressed about roll-up transactions revolve around four principal areas. First, and foremost, critics have taken issue with the fundamental change in the nature of the investment forced upon limited partners who object to the roll-up but are bound by the vote of other limited partners. Most roll-ups change the partnerships from finite-life entities that hold assets for a limited period of time, distribute cash generated from operations to investors and then sell the assets and distribute proceeds to investors in connection with liquidation (generally referred to as "finite-life" partnerships), to longer-term entities that reinvest cash generated from operations and proceeds from the sale of assets in the business rather than distributing such cash or proceeds to investors (generally referred to as "reinvesting" or "infinite-life" partnerships). The adverse effects of this change are exacerbated by the illiquid

[1] 17 CFR 229.900 *et seq.*

[2] 17 CFR 239.25 and 17 CFR 239.34; 15 U.S.C. 77a *et seq.*

[3] 17 CFR 210.11.

[4] *See, e.g.,* Written Testimony of Richard C. Wollack, Chairman of Liquidity Fund Management, Inc., Before the Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs, United States Senate at 10 (February 27, 1991) and Written Testimony of Michael Joseph Connolly, Secretary of State, Commonwealth of Massachusetts, Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, United States House of Representatives at 1 (April 23, 1991).

[5] For a detailed discussion of transactions subject to the rules, see part III below.

market for most limited partnership interests. Objecting limited partners have little alternative to being rolled-up.

Second, critics have questioned the fundamental fairness of the terms of roll-ups and the lack of arm's-length negotiations in structuring roll-ups. Roll-ups frequently result in increased compensation for roll-up sponsors, the receipt of substantial payments or securities by general partners, reduced cash distributions for investors, the imposition of super-majority voting requirements to remove management and the receipt by investors of securities that trade at a substantial discount in the securities market. Nor are appraisal rights commonly provided.

Third, objections have been raised about the uncertainties involved in combining numerous partnerships, the differing effects on investors in the various partnerships, and the valuation and allocation methods used to divide the securities of the successor amongst the partnerships.

Finally, investors have complained that informed decision making is hampered by the nature of the disclosure documents and brevity of the solicitation period. They say that roll-up disclosure documents, inherently complex given the nature of the transaction, often are substantially longer than necessary, and obtuse to the point of obfuscation. In addition, given the complexities of the transaction, investors find the solicitation period too short to make an informed decision.

In response to the concerns described above, the Commission has taken a number of actions, including the issuance of a release providing interpretive guidance of the existing disclosure requirements applicable to roll-up transactions.[6] The Interpretive Release reiterates the requirements for clear, concise and comprehensible disclosure, and the need to highlight the potential risks and adverse effects of roll-ups. As stated in the Interpretive Release, a registrant that fails to file a registration statement reflecting a good faith effort to provide clear, concise comprehensible disclosure to investors will be advised that the filing will not be processed until the document is amended to do so. The Commission is adopting new rules today to improve further the disclosure required in connection with roll-up transactions.[7]

The rules adopted today address the four principal concerns expressed about roll-up transactions through enhanced disclosure requirements [8] and extension of the solicitation period. The rules apply to roll-ups of limited partnerships and similar entities, and the rules, as well as this release, refer to such entities as "limited partnerships" or "partnerships." First, the new rules require specific disclosure with respect to risks, changes and effects of the transaction, such as changes in the expected term of existence of the partnership and the partnership's business plan, decreased cash distributions, reduced investor voting rights and increased management compensation. Second, heightened disclosure is required with respect to conflicts of interest, alternatives, valuation methods and fairness. Third, the rules require additional pro forma financial statements to highlight the effects of a partial roll-up and separate prospectus supplements summarizing the effects of the roll-up on investors in each partnership and providing more detailed disclosure with respect to valuation of the partnership's assets and allocation of the roll-up consideration to its limited partners. Finally, the rules require roll-up sponsors to distribute roll-up disclosure documents to investors at least 60 calendar days in advance of the proposed action, or, if shorter, the maximum period permitted under state law.

The rules adopted today are substantially the same as those proposed, with three principal revisions. First, the definition of roll-up transaction has been more precisely tailored to target those transactions that raise the concerns addressed by the rules. Under the revised definition,[9] a "roll-up transaction" includes a combination or reorganization of two or more finite-life limited partnerships or other finite-life entities, or a reorganization of a single finite-life limited partnership or other finite-life entity into a new entity. Transactions involving the roll-up or reorganization of infinite-life or reinvesting entities, substantially similar to ordinary operating businesses, have been excluded from the definition. In addition, the rules include a provision permitting a sponsor of a transaction that is subject to the rules, but does not raise the concerns addressed by the rules, to apply to the Commission for an exemption for the transaction.

Second, in response to comments asserting limited utility and inordinate costs, the proposal to require multiple pro forma financial statements in each partnership supplement has not been adopted.[10] Instead, additional pro forma financial statements based on the partial roll-up combination that produces the least cash flow will be required in the principal disclosure document and textual disclosure of the financial effects of this partial roll-up combination on each particular partnership will be required in the supplement relating to that entity.

Third, the proposed property appraisal and partnership-specific information requirements have been streamlined in response to concerns that the proposed requirements would result in voluminous disclosures without enhancing the quality of the information provided to investors. These and other changes in the rules as adopted are discussed below.

II. Background and Purposes of the Roll-Up Rules

A. Background of Limited Partnerships and Roll-Ups

Limited partnership interests have been offered to investors as a means to participate in the ownership of real estate, oil and gas properties, equipment or other types of assets. Investors usually purchase such interests with the expectation that the partnership will purchase assets, operate the assets for a limited period of time, in many cases make regular cash distributions to investors, and then sell the assets and distribute the proceeds to investors in connection with liquidation. Such limited partnerships typically are not authorized or expected to reinvest cash from operations or proceeds obtained from the sale of assets in assets owned or to be owned by the partnership. Although limited partnership interests often are offered in public, registered offerings and are transferable, for tax and other reasons there usually is no significant public market for the interests. Rather, investors generally purchase the interests with the understanding that they represent illiquid investments.

The limited partnership usually pays the general partner or its affiliates compensation for forming the partnership and for acquiring, operating and selling the partnership's assets. Partnership agreements generally

[6] See Release No. 33-6900 (June 17, 1991) (56 FR 28979 (June 25, 1991)) (the "Interpretive Release").

[7] The rules were proposed for comment in Release No. 33-6899 (June 17, 1991) (56 FR 28962 (June 25, 1991)). (the "Proposing Release").

The Proposing Release elicited 18 letters from 17 commenters; these letters, as well as the comment summary prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room (see File No. S7-21-91).

[8] The rules adopted today include new disclosure requirements and codify interpretive positions of existing disclosure requirements.

[9] Item 901.

[10] Proposed Item 902(a)(6).

provide for the distribution of proceeds from the sale of assets and cash from operations in accordance with the investors' interests (both limited and general partner interests) in the partnership. However, once investors receive specified minimum returns (often called "preferred returns"), the general partner often is entitled to receive a portion of the proceeds of asset sales or cash from operations greater than its interest in the partnership (often referred to as the general partner's "subordinated return" or "back-end interest").

Recessionary conditions in the real estate and oil and gas markets and changes in the tax laws have caused many limited partnerships and limited partnership sponsors to experience financial difficulties. These factors also have led to a significant reduction in the number and dollar amount of new limited partnership offerings.

At the same time, many limited partnership sponsors have proposed combinations of partnerships they have sponsored. The combined entities are expected to exist for a substantially longer period of time than the partnerships. The new entities will reinvest cash generated from operations and proceeds received from the sale of assets in new assets or in the improvement of existing assets, instead of making distributions to investors. Securities of the new entity, which are received by investors in exchange for their partnership interests, usually are listed for trading on a national securities exchange or traded in the NASDAQ system. Partnership sponsors proposing roll-ups generally state that the transactions should benefit investors for a variety of reasons, such as increased diversification of assets, increased liquidity for investors, increased access to capital sources and lower administrative costs.

B. Concerns Addressed by the Rules

1. Fundamental Changes and Adverse Effects

Serious objections have been raised about the fundamental changes in the nature of an investment that result from roll-ups. Many of the fundamental changes, adverse effects for investors and benefits for sponsors brought about by roll-ups are related to the change in the nature of partnerships from finite-life entities to reinvesting entities.

When a roll-up changes the cash distribution policy to permit reinvestment of cash generated from operations or proceeds from the sale of properties, investors generally must look to the securities markets for investment returns. However, securities issued in roll-up transactions frequently trade at a substantial discount from the value of the successor's assets. This may result in investors receiving lower returns from their investment than they would receive if the partnerships were left unchanged.

Increases in management compensation following many roll-ups also are related to the change from finite-life. The compensation arrangements in effect prior to a roll-up generally are based on the assumption that assets will be purchased, operated and sold over a limited period of time. When a partnership will be operated on a longer-term basis following a roll-up, partnership sponsors often change the compensation arrangements to provide for a "net asset value" or similar fee tied to the value of the partnership's assets, which will be paid for a substantially longer period of time. In addition, in many cases, property acquisition or disposition fees continue to be paid, but the amount of such fees paid by the partnership will increase as a result of the partnership's new policy of continuously selling properties and purchasing new properties. These changes reduce the amount of cash available for distribution to investors or for investment in new properties.

Roll-ups also may change the general partner's interest in the partnerships to eliminate its subordinated nature. The terms of some roll-ups provide that the general partner will receive securities of the successor, or cash or other consideration, in exchange for its subordinated interest at the time of the roll-up. In many cases, however, the general partner would not otherwise be entitled to these subordinated payments because limited partners have not yet received their minimum returns. In addition, net asset value or similar fees payable by the successor typically are not subordinated to minimum investor returns. These changes not only increase compensation to management, but also may diminish the general partner's incentive to generate maximum returns for investors.

Another fundamental change made in roll-ups, the imposition of a super-majority voting requirement to remove management or to engage in certain business combinations, also is related, in part, to the change from finite-life. As a publicly-traded entity after the roll-up, management of the successor faces a more substantial risk of an unwanted proxy contest or takeover. Consequently, roll-up sponsors frequently include provisions in the governing instruments of the successor, such as super-majority voting and other requirements, that make such actions more difficult.

Under the new rules, each of the fundamental changes brought about by a roll-up transaction will be highlighted to insure that investors have clear and full disclosure of the changes and the consequent risks and adverse effects of such changes.

2. Conflicts of Interest and Fairness

In most roll-up transactions, the general partner of the partnerships proposed to be combined determines the terms of the transaction, including the allocation of securities of the successor among the partnerships, the consideration to be paid to the general partner for its interests, the compensation to be paid to the general partner or its affiliates in the future and the voting and other rights of investors in the successor. The potential for conflict between the interests of the general partner and the limited partners in structuring the roll-up is considerable.

Roll-ups proposed by unaffiliated parties also may involve significant conflicts of interest. In a transaction in which an unaffiliated party proposes to acquire partnerships in exchange for interests in a newly-formed successor, for example, the general partner may negotiate both the sale of its interest to the unaffiliated party and the terms upon which the unaffiliated party will acquire the limited partners' interests.

Despite these serious conflicts of interest, most roll-ups are not structured to provide safeguards, traditional in the corporate context, such as independent representation of limited partners, to insure that their interests are fairly considered. Where fairness opinions are obtained from financial advisors, the scope of the opinions may be so limited that they may have no application to the roll-up as it is eventually completed. Frequently, a fairness opinion in a multiple-partnership roll-up does not address the fairness of each combination of partnerships that may result; for example, the opinion may be based only on the participation of all partnerships or a majority. Where possible partial roll-up combinations that may occur are not covered by the fairness opinion, investors may be misled.

The rules adopted today require enhanced disclosure, comparable to that required in going private transactions subject to Rule 13e–3,[11] of the conflicts

[11] 17 CFR 240.13e–3.

of interest and the general partner's beliefs concerning the fairness of the roll-up, as well as the bases for such beliefs.

3. Combinations of Multiple Partnerships

A roll-up of multiple entities presents several important concerns. First, when there are differences among the partnerships, the roll-up may have different effects on investors in the partnerships. It may be difficult for an investor to comprehend the effects of the roll-up on him or her when the effects on all of the partnerships are discussed together.

Second, securities of the roll-up successor must be allocated among the limited partners based on the comparative valuation of the participating partnerships. This requires a valuation of each partnership, and then the application of a formula to allocate the securities. In a roll-up with numerous entities, this process is quite complex. Investors in each partnership evaluating the fairness of the allocation require information about how their partnership was valued, as well as information from which to judge whether the valuation and allocation methods have been applied to all of the partnerships in a fair and uniform manner.

Third, if the roll-up is structured to permit completion with less than all partnerships (as is often the case), serious uncertainties may be present. Investors deciding whether to approve the roll-up are faced with making an investment decision without knowing which partnerships will be combined to form the successor. Depending on which partnerships participate, the assets, liabilities and cash flow of the successor may be quite different, particularly if there are significant differences among the partnerships proposed to be combined.

The rules adopted today contain several provisions, including the requirement of a partnership specific supplement, designed to address these disclosure concerns raised by multiple-entity transactions.

4. Complex Disclosure and Time Constraints

Investors and commenters have complained that, even if roll-up disclosure documents contain all relevant information, the disclosure is difficult to understand because of the length and complexity of the documents. Current Commission rules require disclosure to be presented in a clear, concise and comprehensible manner.[12] The Interpretive Release emphasizes this requirement, and provides specific guidance concerning the manner in which roll-up documents must be written. The rules adopted today further the goal of obtaining understandable disclosure through the separate prospectus supplements noted above and through a specific direction to include a clear, concise and understandable summary addressing specific concerns raised by roll-ups. Finally, to insure that investors have sufficient time to consider the disclosure provided in roll-ups, the rules adopted today impose a minimum 60–calendar day solicitation or offering period, or, if shorter, the maximum period permitted under applicable state law.

III. Transactions Subject to the Roll-Up Rules

A. General

The disclosure requirements set forth in new subpart 900 of Regulation S-K [13] and the minimum solicitation or offering period [14] apply to any "roll-up transaction" as defined in the rules.[15] The definition of roll-up transaction and other related definitions adopted today have been revised from those proposed to limit the application of the new rules to those transactions that are likely to involve the principal concerns addressed by the rules. In addition, the rules have been revised to include a provision pursuant to which a sponsor of a transaction that comes within the roll-up rules, but does not raise the concerns addressed by the rules, will be permitted to apply to the Commission for an exemption.

B. Combinations of Limited Partnerships

Combinations of two or more finite-life limited partnerships have generated the concerns and controversy associated with roll-ups described above. Therefore, the rules as adopted apply to a transaction or series of transactions that directly or indirectly, through acquisition or otherwise, involves a combination or reorganization of two or more finite-life limited partnerships or other finite-life entities, provided securities of a successor entity will be issued in connection with the transaction. Such a transaction may be structured in a variety of ways, such as a merger of the limited partnerships into a successor entity (whether newly-formed or previously existing),[16] in which limited partners receive securities of the successor entity in exchange for their limited partnership interests, or as an exchange offer in which the limited partnerships are acquired by a successor entity through the issuance of securities of the successor in exchange for limited partnership interests. In the latter case, the transaction would come within the rules whether or not the partnerships are merged into the successor entity.[17]

The rules apply whether the roll-up is proposed by an affiliate or a non-affiliate. Transactions proposed by non-affiliates have involved the fundamental changes associated with roll-ups when the transactions involve finite-life entities. In addition, as discussed above, "unaffiliated" roll-ups may raise serious conflicts of interest and fairness concerns as a result of the general partner's involvement in the negotiations of the sale of both its interests and those of the limited partners.

The rules as adopted have been revised to cover only transactions involving "finite-life" limited partnerships and other "finite-life" entities.[18] A partnership is "finite-life" if it (1) operates as a conduit vehicle for investors to participate in the ownership of assets for a limited period of time, and (2) has as a policy or purpose distributing to investors cash from operations or proceeds from the sale, financing or refinancing of assets, rather than reinvesting such cash or proceeds in the business.[19] The question of

[12] See Rule 421(b) of Regulation C (17 CFR 230.421(b)).

[13] 17 CFR 229.900 *et seq.*

[14] See General Instruction I.2 of Form S–4; General Instruction G.4 of Form F–4, Rules 14a–6(m), 14c–2(c) and 14e–1(a) (17 CFR 240.14a–6(m), 14c–2(c) and 14e–1(a)).

[15] Item 901(c). The disclosure requirements apply to registration statements on Form S–4 or Form F–4, the forms generally used in connection with business combinations or reorganizations. If securities to be issued in a roll-up transaction are registered on another form, such as Form S–1 (17 CFR 239.11) or Form S–11 (17 CFR 239.18), but would be authorized to be registered on Form S–4 or Form F–4, the roll-up rules will apply in that context.

[16] The definition of "roll-up transaction" in Item 901(c) has been revised to clarify that the successor entity need not be newly formed.

[17] The definition in Item 901(c) has been revised to clarify that a combination or reorganization accomplished indirectly through an acquisition transaction is included.

[18] If a combination or reorganization transaction includes a finite-life partnership and any other entities, the requirements apply to each entity proposed to be included in the roll-up transaction, whether or not the entity is a "partnership" as defined in Item 901(b). See Instruction to Item 901.

[19] See Item 901(b)(2). A partnership would be considered "finite-life" under the definition even if the partnership's governing instruments permitted the reinvestment of cash from operations or proceeds received from the sale of assets or did not explicitly address the point, if the partnership's

Continued

whether a particular partnership is "finite-life" will depend upon an examination of the partnership's purposes and is not subject to any numerical tests.

Transactions involving combinations of reinvesting limited partnerships are not subject to the rules as adopted, since such partnerships are closely akin to ordinary operating businesses. Business combinations involving such reinvesting partnerships have not been subject to the criticisms associated with roll-ups. Investors in such partnerships, like investors in other operating businesses, have no expectation that the partnership will distribute its cash from operations or sell its assets and distribute the proceeds to investors. Moreover, since many of the other fundamental changes associated with roll-ups, such as changes in management compensation and investor voting rights, are related to the change from finite-life, roll-ups of reinvesting limited partnerships should not involve such changes. In the event that a combination of reinvesting limited partnerships involves some of the concerns addressed by the new rules, such as differing effects on investors and valuation and allocation complexities, sponsors of such transactions should consider the disclosures required under the new rules in connection with the anti-fraud provisions of the Federal securities laws.[20]

C. Single Partnership Reorganizations

As with the proposal, the rules as adopted apply to a reorganization of a single limited partnership in which securities of a successor entity will be issued in exchange for the limited partnership interests, such as converting a limited partnership into a corporation or an entity taxed as a REIT. Such transactions often include changing a finite-life partnership to a reinvesting entity and, therefore, raise many of the serious concerns associated with roll-ups of multiple limited partnerships.

The rules apply to a reorganization of a single, finite-life partnership whether proposed by an affiliate or a non-affiliate. For the reasons noted above with respect to combinations of two or more partnerships proposed by non-affiliates, reorganizations of single, finite-life limited partnerships proposed by nonaffiliates may raise many of the concerns addressed in the rules.

The rules as adopted do not apply to reorganizations of single, reinvesting limited partnerships. As is the case with combinations of such entities, reorganizations of such entities should not raise the concerns addressed by the rules.

The rules have not been revised to include amendments to the governing instruments of a limited partnership that do not involve the issuance of securities of a successor entity. However, to the extent that such proposals raise concerns addressed by the roll-up rules, the disclosures required under the rules should be considered from an anti-fraud perspective.

D. Transactions Involving Other Finite-life Entities

The rules apply to combinations or reorganizations of entities that are substantially similar to finite-life limited partnerships.[21] As with limited partnerships, a REIT or business trust or another entity is a "finite-life entity" subject to the new rules, if it (1) operates as a conduit vehicle for investors to participate in the ownership of assets for a limited period of time, and (2) has as a policy or purpose distributing to investors cash from operations or proceeds from the sale, financing or refinancing of assets, rather than reinvesting such cash or proceeds in the business.[22] From an investor's point of view, such an entity is substantially similar to a finite-life limited partnership. As a result of the change in the definition, some REITs and business trusts will be subject to the rules, and others will not.[23]

The rules as adopted also have been revised to clarify that transactions involving entities registered as investment companies under the Investment Company Act of 1940 (the "1940 Act") [24] are not subject to the rules.[25] Transactions involving such entities are subject to extensive regulation under the 1940 Act, and the concerns associated with roll-ups have not been perceived in this area.

E. Exemption Upon Application

The Commission recognizes that there may be specific transactions subject to the rules adopted today that will not raise the concerns addressed by the new requirements, and where the public interest and investor protection would not require such disclosures. The question of whether such a transaction should be subject to the rules would depend upon all of the circumstances of the proposed transaction. The rules as adopted permit a sponsor of a transaction that does not raise the concerns addressed by the rules to apply to the Commission for an exemption from the application of the rules.[26]

IV. Requirements for Roll-Up Transactions

A. General

Roll-up sponsors preparing documents to be filed with the Commission must comply with the disclosure requirements in the new rules, and must present the information in a clear, concise and understandable manner as required by the Commission's rules [27] and the Interpretive Release.[28] The disclosure must be written in a "plain English," direct fashion that will enable investors to easily comprehend the substance of the disclosure and understand the importance of the disclosures.[29] The disclosure guidance provided by the Interpretive Release applies fully to the disclosure called for by the new rules as well as existing requirements.

policies or purposes included that such cash would be distributed to investors and would not be reinvested in the business, as evidenced by such matters as the partnership's offering materials or reports filed with the Commission or sent to investors. In addition, a partnership would be "finite-life" if it were permitted to reinvest cash from operations or proceeds received from the sale of assets during a limited period of time, if, after such initial period, the partnership's purposes or policies would call for the distribution of such cash.

[20] See, *e.g.*, section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. 77q(a); section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5. See also Rule 408 under the Securities Act (17 CFR 230.408), and Rule 12b-20 under the Exchange Act (17 CFR 240.12b-20).

[21] Such entities are included in the definition of the term "partnership" set forth in Item 901(b).

[22] Item 901(b)(2).

[23] A REIT that is required to distribute net income to investors in accordance with the Federal tax laws applicable to REITs will not be a "finite-life" entity under the rules if its policies or purposes do not include that proceeds from the sale, financing or refinancing of assets will be distributed to investors and will not be reinvested in the business. The definition in Item 901(b) includes a specific provision to clarify this point.

[24] 15 U.S.C. 80a *et seq.*

[25] Item 901(b)(3). The exemption includes registered investment companies and companies that have elected to be regulated as "business development companies" under the 1940 Act.

[26] Item 901(c)(2).

[27] See Rule 421(b) of Regulation C.

[28] Registrants are reminded that these disclosure standards apply to all documents filed with the Commission in connection with roll-up transactions, including, for example, letters to shareholders and supplemental soliciting materials.

[29] As stated in the Interpretive Release, roll-up documents that have not been written in this manner will not be processed by the Division staff until the document has been so written.

B. Fundamental Changes Causing Adverse Effects for Investors and Benefits for Management

1. Risk Factors and Other Considerations

The new rules call for specific information about the risks and effects of roll-up transactions.[30] The risks and effects of the roll-up must be identified briefly in the forepart of the summary [31] and described in detail in a separate risk factors section immediately following the summary.[32]

The summary and the risk factors requirement each list factors that generally will be of significance. The factors listed are not exclusive; the summary and risk factors section are required to disclose all material risks and effects of the transaction. In discussing the risks and effects specific to the transaction, the heightening of one risk or effect by the presence of other risks or effects of the transaction or investment should be clearly stated and explained.[33]

The risks and effects of the roll-up on investors in each partnership must be described.[34] However, to the extent that the risks and effects are substantially the same for investors in various partnerships, the information may be presented on a combined basis.

2. Comparative Information

The new rules require specific, detailed information about significant business terms and policies and rights and obligations of managers and the investors of the successor and a comparison of those business terms and policies, rights and obligations to those of the limited partnerships. The rule lists specific items that must be addressed, including voting rights, management compensation, business plan, borrowing and cash distribution policies. The list is not exclusive; disclosure is required concerning any other similar matters material to an understanding of the changes caused by the roll-up.[35] This item has been adopted substantially as proposed.[36]

The various comparative tables required under the new rules will be required to be included in the detailed discussion of the particular subject matter in the disclosure documents.[37] For example, the comparative presentation of compensation before and after the roll-up would be included with the detailed description of the compensation arrangements to be in effect after the roll-up.[38] The comparative presentations would be required to be specifically crossed-referenced in the risk and effect disclosure.

3. Federal Income Tax Consequences

Roll-ups typically change substantially the tax treatment of the investment. In addition, the roll-up transaction itself may have adverse tax consequences for investors. However, the complex tax disclosure often included in roll-up documents may not be useful for investors. To address these concerns, the rules as adopted include a specific requirement to provide a brief, clear and understandable summary of the material Federal income tax consequences of the roll-up transaction and an investment in the successor.[39] If any of the material Federal income tax consequences are reasonably expected to be different for different partnerships' investors, the differences must be described. Where a tax opinion has been provided, the substance of the opinion should be briefly summarized, including identification of those material consequences as to which counsel has not been asked, or is unable, to opine. Repeating the "long form" tax opinion in the disclosure document would not satisfy the summary of the opinion requirement. The entire opinion of counsel would be filed as an exhibit to the registration statement, and required to be made available to investors upon request, or included as an appendix to the prospectus.[40]

As proposed, the tax disclosure item required a table showing the expected tax liabilities arising from the roll-up for investors in each partnership, if any of the partnerships were expected to incur such liabilities. In light of concerns expressed by commenters about the potentially significant differences in the tax profiles of investors, the requirement to provide an expected tax liabilities table has not been included in the rules as adopted. However, because expected tax liabilities would be an important consideration to investors deciding whether to participate in a roll-up, information that will provide investors an understanding of the general magnitude of the expected tax liabilities should be provided in the disclosure document.[41]

C. Conflicts of Interest and Fairness

1. Conflicts of Interest

The conflicts of interest item requires a brief description of the general partner's fiduciary duties to investors in each partnership and any potential material conflict of interest between the general partner and such investors relating to the roll-up transaction.[42] This item also requires specific information about any person that has been retained to represent the interests of investors in connection with the roll-up. If no such representative has been retained, that must be disclosed, together with the general partner's reasons for not retaining a representative and the risks to limited partners arising from the absence of separate representation.[43]

As adopted, the rules do not include a requirement included in the proposed rules for the general partner to state whether or not it reasonably believed it had satisfied its fiduciary duties in connection with the roll-up. Upon consideration, the Commission believes that the central issue is the fairness, both procedural and substantive, of the transaction for investors. The new rules require the sponsor's belief as to the fairness of the transaction to investors, and the underlying bases for such belief.

2. Background of, Reasons for and Alternatives to the Roll-up Transaction

The new rules require specific information about the background of the roll-up transaction,[44] the sponsor's

[30] Item 903(b)(1) and Item 904.

[31] As proposed, the summary rule required the risks and effects to be set forth first in the summary. In response to commenters' concerns that this order of presentation might confuse investors, the Instruction to the summary rule provides that the material risks and effects of the transaction must be presented prominently in the forepart of the summary. The staff in reviewing any roll-up disclosure document will raise objections to any summary that does not adequately highlight the risks and effects of the transaction.

[32] Item 904(a). See also Item 503(c) of Regulation S-K (17 CFR 229.503(c)) which requires the risk factor section to be set forth immediately following the cover page of the prospectus, or following the summary if a summary is included.

[33] For example, if the transaction both increases the amount of management compensation and the expected term of existence of the entity, the disclosure must explain that not only is compensation increasing, but that this increased compensation will be paid for a longer period of time.

[34] The rules have been revised in response to comments to clarify that disclosure must be provided under the rules with respect to each entity subject to a roll-up, whether or not the particular entity is a "partnership" as defined in the rules. See Instruction to Item 901.

[35] Item 905.

[36] As proposed, Item 905 was included as Item 904(b).

[37] Instruction 1 to Item 905.

[38] Item 905(b).

[39] Item 915(a).

[40] Item 915(b).

[41] See also section II.A.3.e of the Interpretive Release ("If a roll-up transaction is taxable to an investor, risk factor treatment should be afforded.")

[42] Item 909(a).

[43] Item 909(b).

[44] Item 907(a).

reasons for proposing the transaction (including its reasons for proposing the particular structure selected) [45] and alternatives to the roll-up considered by the general partner or available to investors.[46] With the exceptions noted below, these requirements have been adopted without substantial revision.

To assist investors in considering whether opportunities other than the proposed roll-up might be available or have been considered and rejected by the general partner, the rules require disclosure of any discussions between the general partner and its affiliates and third parties (or any of their advisors) concerning specified transactions involving any of the partnerships or their assets within the previous two years, such as mergers, consolidations or acquisitions involving such partnerships.[47] This disclosure requirement is based on a similar requirement in Schedule 13E–3 [48] and is to be interpreted in the same manner.[49]

The rules require a description of the alternatives to the roll-up considered by the general partner and the reasons for the general partner's rejection of each alternative.[50] In addition, the possibility and results of continuing the partnerships in accordance with their business plans must be described even if the general partner did not consider that possibility.[51] This disclosure item also requires a description of the potential for, and results of, an orderly liquidation of the partnerships, whether or not considered by the general partner.[52]

3. Fairness

The new rules require disclosure of the general partner's beliefs concerning the fairness of the roll-up transaction and the bases for such beliefs. This fairness item is comparable to the fairness item in Schedule 13E–3 for going private transactions [53] and will be interpreted in a similar manner. In addition, the fairness item for roll-up transactions has been supplemented to address concerns specific to roll-ups, such as the uncertainties and differing effects arising from combinations of multiple partnerships and the change in business plan resulting from going from a finite-life partnership to a reinvesting entity.

The new disclosure rules require the general partner to state whether or not it reasonably believes the roll-up is fair or unfair to investors in each partnership.[54] This statement must address the fairness of all possible combinations of partnerships if the roll-up may be completed on a partial basis.[55] A fairness statement that did not apply to the transaction as it is eventually completed would not satisfy the purposes of this disclosure requirement.[56]

In order to insure that investors have adequate information upon which to assess the merits of the general partner's fairness determination, the rules require a discussion of matters, both procedural and substantive, considered by the general partner as a part of its fairness analysis.[57] For example, the rules require a discussion of the weight given to the form and amount of, and the methods used to determine, the consideration to be received by investors and the general partner, and the compensation to be paid to the sponsor in the future.[58] This discussion also must address the weight given to alternatives to the roll-up considered by the general partner.[59] In addition, the rules require the general partner to discuss the fairness of the roll-up in comparison to the possible alternatives of continuing the partnerships in accordance with their original business plans or liquidating the partnerships in an orderly fashion, even if those alternatives were not considered by the general partner.[60] The disclosure must describe any material differences among the partnerships relating to the fairness of the transaction.[61]

The rules do not mandate specific valuation methods to be used in connection with the discussion of the fairness of the roll-up compared to alternatives. Valuation methods likely will be determined consistent with state law fiduciary duties. However, the rules would not permit, as some have attempted, the general partner to present the disclosure in a manner that would lead investors to discount the information as totally unreliable. For example, it would not be appropriate for the disclosure to set forth possible liquidation values, coupled with disclosure to the effect that such values are merely theoretical and there is no reasonable likelihood that such values would be obtained in a liquidation.[62]

Finally, the rules require a description of the weight given by the general partner in the fairness analysis to any reports, opinions or appraisals obtained from third parties, together with a description of any material uncertainties known to the general partner that have affected or are reasonably likely to affect the conclusions in such documents.[63] Where, for example, the general partner's fairness analysis is based, in whole or part, on a fairness opinion that does not address the fairness of all possible combinations of partnerships, prominent disclosure of the limited scope of the opinion would be required to enable investors to evaluate whether reliance upon such an opinion is appropriate. Similarly, disclosure would be required if the general partner relied upon appraisals in the fairness analysis and the general partner is aware that events subsequent to the date of the appraisals may have affected the appraiser's conclusions.

4. Reports, Opinions and Appraisals

a. *General Requirements.* All reports, opinions and appraisals obtained from outside parties that are materially related to the roll-up transaction must be identified and summarized in the disclosure document.[64] This disclosure

[45] Item 908(a).

[46] Item 908(b).

[47] Item 907(a).

[48] See Item 3(b) of Schedule 13E–3.

[49] Item 907(a) has been revised consistent with Item 3(b) of Schedule 13E–3 to limit its applicability to discussions with persons (or their representatives) having a direct interest in the matter discussed, such as persons considering any of the specified transactions involving the partnerships.

[50] Item 908(b)(1).

[51] Item 908(b)(2).

[52] Item 908(b)(3).

[53] See Item 8 of Schedule 13E–3.

[54] Item 910(a).

[55] In a transaction in which portions of partnerships may be included (e.g., if a percentage of the assets of a partnership equal to the percentage of investors that voted to approve the transaction will become assets of the roll-up successor, or the successor will own a percentage of the equity securities of a partnership equal to the percentage of investors in the partnership that voted to approve the transaction), the fairness statement must address the fairness of any combination of partnerships or portions of partnerships. Language has been added to Item 910 to clarify this point.

[56] If there are possible combinations of partnerships that would result in a different evaluation by the general partner of the fairness of the transaction to the investors in one or more entities to be rolled-up, that combination should be specifically identified and the general partners' evaluation disclosed along with the basis for that evaluation.

[57] Item 910(b).

[58] Item 910 (Instruction 3).

[59] Item 910(b)(1).

[60] *Id.*

[61] Item 910(b)(2). This disclosure would discuss, for example, the general partner's consideration of the financial condition of the partnerships if some, but not all, of the partnerships were experiencing financial difficulties.

[62] The liquidation analysis contemplated would be that of an orderly liquidation pursuant to the terms of the partnership agreement or other organizational documents.

[63] Item 910(e).

[64] Item 911. This Item has been revised (consistent with the comparable requirement in Item 9 of Schedule 13E–3) to clarify that opinions of counsel are not required to be described pursuant to this Item.

item calls for the information required under the comparable item in Schedule 13E–3,[65] as well as additional information specifically related to the concerns associated with roll-up transactions.

The disclosure document must state that copies of the reports, opinions and appraisals described in the disclosure document will be provided without charge promptly upon written request of an investor or his representative.[66] In addition, the reports, opinions and appraisals must be filed with the Commission as exhibits to the registration statement.[67] With the exception of the revisions to the appraisal disclosure requirements discussed below, this disclosure item has been adopted substantially as proposed.

b. *Disclosure of "Opinion Shopping".* To provide disclosure of opinion shopping that could bear on the weight an investor might place on the opinions disclosed, the rules require the sponsor to disclose contacts with any person concerning a fairness opinion, valuation or report on the roll-up transaction, if such person's opinion, valuation or report is not filed as an exhibit to the document.[68] Under this item, the identity of the firm, the nature of the contact, any actions taken by the firm, and any views (preliminary or final) expressed on the proposed subject matter of the opinion, report or appraisal must be disclosed. Disclosure of all contacts is required pursuant to this item, whether formal or informal, and regardless of whether an agreement of retainer was reached with an outside party.

c. *Fairness Opinions.* The fairness opinion disclosure item requires the document to state whether the fairness opinion addresses the fairness of the roll-up for investors in each partnership and the fairness of all possible combinations of partnerships.[69] If all combinations are not addressed, the document must identify those combinations that are addressed and provide information about the bases for the selection.[70] In addition, if all combinations are not addressed, prominent disclosure is required to clearly alert investors to the limited scope of the fairness opinion. Where materially limited, great care must be taken in the disclosure document to insure that investors are not misled to believe a fairness opinion has been obtained with respect to partial roll-up combinations not actually covered by the opinion.[71]

d. *Appraisals.* The rules as proposed required specific detailed information about each separate appraisal. Commenters questioned whether in roll-ups involving numerous separately appraised assets, the disclosures required under the proposed rules would be too voluminous to be of value to most investors considering the roll-up. In light of this concern and given the availability (without cost) of the appraisals to any interested investor upon request, the appraisal information item has been revised.[72] As adopted, the item requires the disclosure document to provide basic information about the appraisals intended to facilitate an investor's understanding of the appraisal process. Specific tabular information about the appraisals of significant assets is required in an appendix to the disclosure document.

The basic information to be set forth in the disclosure document is to include:

• A description of the purposes for which the appraisals were obtained and how the appraisals were used in connection with the roll-up;

• A general description of the assets covered by the appraisals and disclosure of the aggregate appraised value of such assets (including such value net of associated indebtedness), together with a description of and valuation of assets subject to any material qualifications by the appraiser and a summary of such qualifications; and

• Disclosure of the date of the appraisals, whether and in what circumstances the appraisals will be updated and whether any events have occurred or conditions have changed since the date of the appraisals that may have caused a material change in the value of the assets.[73]

The appendix to the disclosure document must include specific information about the appraisal of any property or asset that is significant [74] to the partnership holding such property or asset. The appraised value of each such asset must be set forth, together with specific information about values under different valuation approaches considered by the appraiser and assumptions used by the appraiser.[75]

5. Roll-up Expenses; Dissenters' Rights; Inspection Rights

The new rules also include other specific disclosure requirements intended to elicit information relevant to the fairness of the roll-up and alternatives available to investors. Specifically, the rules require information to be provided about expenses of the roll-up [76] and the sources and amount of funds used to finance the roll-up.[77] In addition, information must be provided about the availability of dissenters' appraisal or similar rights, investor access to partnership books and records or the services of an appraiser (including whether the sponsor will pay the expenses of the appraiser) and investors' rights under Federal and state law to obtain a list of the partnership's security holders.[78] Each of these provisions has been adopted substantially as proposed.

D. Combinations of Multiple Entities

1. Individual Partnership Supplements

When two or more entities are proposed to be included in a roll-up transaction, the new rules require the delivery of a separate prospectus supplement to investors in each entity.[79]

---

[65] *See* Item 9 of Schedule 13E–3. The report, opinion or appraisal does not have to be prepared for purposes of the roll-up transaction to be discloseable. The fact that a report, opinion or appraisal is not specifically prepared for the transaction is not dispositive of its relevance or materiality. See letter to Charles L. Ephraim (available Sept. 30, 1987). See also, In re Meyers Parking System, Inc., Exchange Act Release No. 26069 (Sept. 12, 1988).

[66] Item 911(a)(3).

[67] Item 911(a)(4). A specific provision concerning the exhibit filing requirement has been added to the rule as adopted for clarity.

[68] Item 911(a)(5).

[69] Item 911(b). If the roll-up is structured so that portions of partnerships may participate, the disclosure must address whether the fairness opinion covers all possible combinations of partnerships or portions of partnerships. Language has been added to Item 911 as adopted to clarify this point.

[70] Item 911(b)(2). This requirement has been revised from the proposed requirement to provide that the combinations that have been addressed must be identified, rather than the combinations that have not been addressed.

[71] Item 911(b)(2)(iii).

[72] Item 911(c). This disclosure item does not require roll-up sponsors to obtain appraisals of assets, nor does it require any appraisals that are obtained to be prepared in accordance with any particular standards. As with fairness opinions, the rules are confined to requiring information about the appraisals intended to assist investors in understanding the appraisals.

[73] Item 911(c)(1)–(3).

[74] An asset would be "significant" if it represents more than 10% of the value of the partnership's assets or if 10% or more of the partnership's cash flow or net income was derived from such asset. See Item 911(c)(5).

[75] Item 911(c)(4).

[76] Item 912(b).

[77] Item 912(a) and (c).

[78] Item 913.

[79] Item 902(a). If the transaction is a roll-up transaction involving more than one entity, a supplement would be required for each entity, whether or not the entity is a "partnership" as defined in Item 901(b) (e.g., if the roll-up includes one partnership and one corporation, a supplement would be required for the partnership and the corporation). See Instruction to Item 901.

The purposes of the separate supplement are twofold. First, the supplement, rather than being a summary of all important information about the roll-up transaction, is designed to highlight for investors in each partnership the risks, effects and fairness of the roll-up with respect to their own partnership. It is often difficult for an investor to comprehend the risks and effects applicable to him or her, when all of the effects are discussed together in one disclosure document. Therefore, the rule requires a brief description of each material risk and effect and a statement as to the general partner's views of the fairness of the roll-up transaction for investors in the partnership. This discussion in the supplement will highlight the disclosure relevant to a particular partnership that is contained in the principal disclosure document. The supplement must be written in direct, plain English, and include descriptive headings or "bullet" lists, followed by brief discussions.

Second, the supplement will provide additional detail bearing on the valuation of the particular partnership and its assets in the roll-up transaction. The supplement must provide detailed information about: (1) The valuation of the partnership for purposes of the allocation of the successor's securities in the roll-up; and (2) the compensation and cash distributions received by the general partner and its affiliates from the partnership during the previous three-year period and most recently completed interim period, together with a comparison of those amounts to the amounts that would have been paid if the compensation and distribution arrangements to be in effect after the roll-up had been in effect during such periods. This detailed information is not required to be reiterated in the principal disclosure document.[80]

The rules have been revised to require the supplement to include information about cash distributions made to limited partners during the last five fiscal years and most recently completed interim period. Although this information also will be set forth in the selected financial information concerning each partnership included in the principal disclosure document, it is required to be shown separately in the supplements in light of its importance to an evaluation of the fairness of the roll-up to investors in a particular partnership.

The sponsor will be required to file all supplements with the Commission and must undertake to promptly provide upon written request (without cost) of a limited partner (or his or her representative), a copy of any supplement with respect to a roll-up.[81] Thus, if, for example, a limited partner has an interest in assessing the detailed valuation of other partnerships, that partner may request the supplements applicable to other partnerships participating in the roll-up transaction.

Although the separate supplement requirement may impose additional costs on roll-up sponsors, the benefits to investors considering complex roll-up transactions warrant the additional expense. However, in order to address commenter concerns about the additional costs, the rule as adopted limits the information required about individual assets to those assets that are significant to the partnership.[82] In addition, in lieu of the pro forma statements and a discussion of the statements required under the proposed rule, the rule as adopted requires the supplement to refer the reader to the pro forma financial statements included in the principal disclosure document.[83] However, in order to insure that investors understand the financial impact of the transaction, the brief discussion of the risks and effects of the transaction included in the supplement must alert the investor to the successor's possible financial condition and results of operations after the roll-up if such condition or results may be significantly different from those of the partnership.[84]

With the exception of the revisions discussed above, the supplement rule has been adopted substantially as proposed.[85] In light of the individual partnership valuation and compensation information required in the supplements, the rule has not been revised to permit combined supplements. A combined supplement would undermine the effectiveness of the supplement in highlighting the partnership-specific information, and could present the same complex disclosure problems currently present in many roll-up documents.

2. Allocation of Roll-up Consideration

The rules require the principal disclosure document to include a detailed description of, and a table showing, the method used to allocate securities and other consideration in the roll-up transaction to each of the partnerships.[86] Under this requirement, the value assigned to each significant category of assets of each partnership would be presented. For example, in a roll-up of several real estate programs, separate columns would be included for real estate net of mortgage debt, cash and cash equivalents, and net other assets.[87] In addition, detailed information about the method used to allocate securities or other consideration to the general partner is required.[88] The requirements of this item are intended to clarify the requirements currently set forth in Forms S-4 and F-4 to describe the terms of the roll-up transaction.[89] This item

[80] Thus, the valuation and allocation information required in the supplements will show the value of each significant asset owned by the partnership, while the valuation and allocation information included in the principal disclosure document pursuant to Item 906 will show each partnership's assets on an aggregate basis by type of asset (e.g., real estate assets and cash). Similarly, the management compensation and distribution information required in the supplements will show the amounts paid by the individual partnership, while the management compensation and distribution information included in the principal disclosure document pursuant to Item 905(b) will be set forth on an aggregate basis for all of the partnerships.

[81] Item 902(b)(1). This Item has been revised to require a statement to be included in the supplement informing investors of the existence and availability of other supplements.

[82] Item 902(b)(4)(i).

[83] Item 902(b)(7).

[84] For example, if the partnership has been experiencing positive cash flow and the pro forma statements required to be included in the principal disclosure document reflect that the successor would have experienced a negative cash flow for the comparable period, this would be discussed in the risks and effects portion of the supplement.

[85] Other nonsubstantive or clarifying changes also have been made. For example, the requirement included in proposed Item 902(a)(4) to discuss factors that may cause the method of allocating securities to be more or less favorable to investors in the partnership has been deleted since such a discussion should be included either in the effects or the fairness discussions otherwise required by Item 902. In addition, the requirement to discuss effects of the transaction in proposed Item 902(a)(1) has been revised to make clear that the discussion must address each material risk and effect of the transaction for investors in the partnership. Language has been added to the requirement to provide detailed information concerning how the partnership was valued (Item 902(b)(4)) to clarify that any other information material to an understanding of the valuation must be set forth.

[86] Item 906. Although the item specifies certain matters that must be included in the allocation table, to the extent that other or additional matters are significant to the allocation, the table should include such matters. Language has been added to the rule as adopted to clarify this point.

[87] This information is intended to enable an investor to evaluate the fairness of how his partnership was valued for purposes of the allocation in comparison to the other partnerships. The table required pursuant to this rule would show, for example, if a partnership held a substantial amount of its assets in cash or cash equivalents and other partnerships had little or no cash.

[88] Item 906(c). Language has been added to this item to clarify that the consideration paid by the general partner for interests that will be exchanged in the roll-up must be set forth. For example, if the general partner will be allocated securities for its general partner interest, the amount paid for the general partner interest would be stated.

[89] See Item 4 of Part I.A of Form S-4 and Form F-4.

has been adopted substantially as proposed.

3. Financial Information

Specific pro forma and selected financial information is required under the rules.[90] The item requiring such information has been adopted without substantial revision.

The new rules require the inclusion of pro forma financial statements based on (at least) the following two assumptions: (1) Participation by all partnerships, and (2) participation by those partnerships that on a combined basis have the lowest combined net cash provided by operating activities for the last fiscal year of the partnerships, provided such participation satisfies all conditions to completing the roll-up.[91] The purpose of this requirement is to provide a means for investors to evaluate the possible financial condition of the successor if such a combination were to occur.[92] The pro forma financial information rule also requires the inclusion of pro forma statements of cash flow.[93]

The selected financial data required by the new rules with respect to each partnership expands the current selected financial information requirements.[94] For example, information is required about cash held by the partnerships, total assets at both book value and at the value assigned for purposes of the roll-up, net cash provided by operating activities and distributions.[95]

4. Background of the Partnerships

The rules require roll-up disclosure documents to include basic information about the background of the partnerships proposed to be included in the roll-up transaction.[96] This requirement, which has been adopted substantially as proposed, is intended to address the concern that investors considering a multiple partnership roll-up may have little or no previous knowledge about all of the partnerships that are proposed to be combined with their own. The information required includes (for each partnership) the investment objective(s), the amount of capital raised from unaffiliated investors, the extent to which funds have been invested as planned, and the extent to which the partnership has achieved its investment objective(s). This information may be presented on a combined basis provided each partnership covered in the combined presentation is clearly identified and the information is presented in a clear and understandable manner.[97] However, separate disclosure is required with respect to recent or likely materially adverse financial developments involving the partnerships or the general partner and the effect the roll-up transaction will have on such developments.[98]

Upon further consideration of the information required under the current rules, the proposed requirement to provide summary information concerning partnership properties and other assets has not been adopted.[99] Under the current requirements, information about the assets of each entity proposed to be included in a roll-up must be included in the registration statement, either directly or through incorporation by reference to filings made with the Commission.[100] This information is substantially the same as that which would be provided to investors if the partnership proposed to be included in the roll-up registered its securities for sale, and generally includes the information specified in the proposed summary information rule. Consequently, additional information is not necessary. However, in the event that a roll-up transaction includes numerous partnerships, care should be taken to insure that the information provided about partnership assets is presented in a manner that is clear and understandable for investors.

E. Solicitation Period

As discussed in the Proposing Release, investors and many in Congress have expressed concerns that investors have had insufficient time to read and understand the complex disclosure contained in roll-up documents and arrive at an informed decision regarding proposed roll-up transactions. Therefore, subject to the exception described below for shorter maximum periods under state law, the rules establish a minimum solicitation period of 60-calendar days prior to a limited partners' meeting at which a roll-up transaction will be submitted to a vote or 60 calendar days prior to the earliest date on which partnership action could be taken by consent.[101] Similarly, if the roll-up transaction is an exchange offer subject to the Williams Act, a minimum 60-calendar day offering period is imposed.[102] If, however, under applicable state law, the maximum period permitted for giving notice is less than 60 calendar days, the state law maximum notice period will apply. The rules establishing the minimum period have been adopted substantially as proposed.[103] Where the state law does

[90] Item 914. A clarifying amendment also has been added to Article 11 of Regulation S-X to refer to the pro forma financial statement requirements included in Item 914.

[91] Item 914(b). In the event that the sponsor believes that pro forma financial statements based on other assumptions should be included, this would be permitted provided the assumptions are reasonable under the circumstances and described in an understandable manner. In addition, if the roll-up transaction is structured to permit participation by portions of partnerships, consideration should be given to the effect of such participation in preparing the pro forma financial statements reflecting a partial roll-up. See Instruction 2 to Item 914.

[92] Pro forma financial statements based on the minimum participation standard set by the general partner do not fulfill this requirement since minimum participation may include partnerships that, although holding less assets than other partnerships, are experiencing more favorable operating results than other partnerships. In addition, minimum participation is often defined by the general partner as a percentage of the assets held by all of the partnerships (e.g., 50% of the total exchange value), and may not be achieved through any possible combination of partnerships. Pro forma statements based upon a combination that actually may occur in the roll-up should be more meaningful for investors.

[93] Consistent with Article 11 of Regulation S-X, Item 914(c) has been revised to delete the requirement to include pro forma balance sheet data for the most recently completed fiscal year in the event that such pro forma information is provided as of a more recent interim period.

[94] See Item 3(d) of Part I.A of Form S-4 and Form F-4.

[95] Revisions to the language of some of the line item requirements in Item 914 have been included in the rules as adopted to clarify the disclosure requirements. For example, assets at appraised value has been changed to read "assets at the value assigned for purposes of the roll-up." In addition, language has been added to make clear that other selected financial information may be included if appropriate for the particular type of business, such as estimated present value of future net revenues from proved reserves in the case of an oil and gas partnership.

[96] Item 907 (b) and (c).

[97] For example, information about investment objectives could be presented on a combined basis for groups of partnerships that had substantially the same investment objective(s).

[98] Such adverse developments would include, for example, defaults on mortgage debt, property foreclosures and deferral of payment of debt service or other material financial commitments.

[99] Proposed Item 914.

[100] *See* Part I.C of Form S-4 and Part I.C of Form F-4.

[101] *See* General Instruction I.2 to Form S-4; General Instruction G.2 to Form F-4; Rules 14a-6(m) and 14c-2(c).

[102] Rule 14e-1(a).

[103] One commenter questioned the authority of the Commission under section 14(a) of the Exchange Act to adopt a minimum solicitation period, arguing that the time periods within which an investor vote may be taken is a matter of state law. To the contrary, the Commission's authority under Section 14(a), as well as other provisions of the Securities Act and the Exchange Act (*e.g.*, section 19(a) of the Securities Act (15 U.S.C. 77s(a)) and sections 13(e), 14(a), 14(c), 14(e) and 23(a) of the Exchange Act (15

Continued

not preclude a 60-day solicitation period, the 60-day requirement will apply, notwithstanding any provision in the partnership agreement to the contrary.

V. Cost-Benefit Aanalysis

In the Proposing Release, the Commission requested commenters to provide views and data as to the costs and benefits associated with amending the disclosure requirements. No commenters specifically responded to this request, however, three commenters expressed concern that the costs of these transactions to sponsors and to the Commission staff would be significant.

The Commission believes that while some additional costs to registrants will result from the adoption of subpart 900 of Regulation S-K and the other revisions being made, such costs will be outweighed by the benefits resulting from the amended disclosure requirements which enhance the ability of securityholders to analyze limited partnership roll-up transactions. Subpart 900 of Regulation S-K and the other revisions have been formulated against the template of evolving state partnership law and will not subject additional persons to filing requirements.

VI. Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 has been prepared regarding the new rules described in this release. Members of the public who wish to obtain a copy of the Final Regulatory Analysis should contact Michael L. Hermsen, Special Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7-6, Washington, DC 20549 (202) 272-2573. The summary of the Initial Regulatory Flexibility Analysis appears at 56 FR 28971 (Securities Act Release No. 6899).

VII. Effective Date

The disclosure and other requirements relating to roll-up transactions are effective on October 30, 1991, in accordance with the Administrative Procedures Act, which allows for effectiveness in less than 30 days after publication, *inter alia*, "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). It is necessary for the disclosure and other requirements relating to roll-up transactions to become effective immediately in order to address effectively and comprehensively the serious investor protection concerns described in this release regarding roll-up transactions. Based on the Commission's experience in reviewing documents of this type, and review of pending documents, it appears that investors could be deprived of the protections provided by the new rules, although receiving disclosure documents a significant period of time after adoption of the requirements. Immediate effectiveness will prevent delays in applicability of the requirements, prevent circumvention of the requirements and assure that all investors who are asked to participate in roll-up transactions from the time the rules are adopted receive comparable and concise disclosure.

VIII. Statutory Basis

The amendment to Regulation S-X is being adopted pursuant to Sections 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933, as amended (15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa); Sections 12, 13, 14, 15 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78l, 78m, 78n, 78o, 78w); and Sections 5, 14 and 20 of the Public Utility Holding Company Act of 1935, as amended (15 U.S.C. 79e, 79n, 79t).

The amendments to Regulation S-K and Forms S-4 and F-4 are being adopted pursuant to sections 6, 7, 8, 10 and 19 of the Securities Act of 1933, as amended (15 U.S.C. 77f, 77g, 77h, 77j, 77s).

The amendments to Rule 14a-6, Rule 14c-2 and Rule 14e-1 are being adopted pursuant to sections 14(a), 14(c), 14(e) and 23(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78n(a), 78n(c), 78n(e), 78w(a)).

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

Accounting, Reporting and recordkeeping requirements, Securities.

IX. 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 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78l, 78m, 78n, 78o, 78w(a), 79e(a) (b), 79n, 79t, 80a-8, 80a-20, 80a-29, 80a-30, 80a-37, unless otherwise noted.

§ 210.11-01 [Amended]

2. By amending § 210.11-01 to redesignate paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8) and to add new paragraph (a)(6) to read as follows:

(a) * * *

(6) Pro forma financial information required by § 229.914 is required to be provided in connection with a roll-up transaction as defined in § 229.901(c).

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, 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 as follows:

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

4. By amending part 229 to add a new subpart 229.900, to read as follows:

Subpart 229.900—Roll-Up Transactions

U.S.C. 78m(e), 78n(a), 78n(c), 78n(e) and 78w(a)), does encompass the rule adopted today, and the Commission has exercised its authority to establish minimum solicitation and offering periods under the Securities Act and the Exchange Act in various other contexts. For example, the business combination registration statement forms, Form S-4 and Form F-4, require that a combined proxy statement/prospectus be mailed to securityholders at least 20 business days before a meeting if information concerning the registrant or the companies to be acquired is incorporated by reference into the disclosure document. See Instruction A.2 to Form S-4; Instruction A.2 to Form F-4. Other minimum periods include the 20-business day offering period applicable to tender offers under Rule 14e-1(a), the 20-calendar day solicitation period for going-private transactions under Rule 13e-3(f), and the 20 calendar-day period applicable to the dissemination of information statements in connection with meetings for which proxies will not be solicited under Rule 14c-2(b).

Subpart 229.900—Roll-Up Transactions

§ 229.901 (Item 901) Definitions.

For the purposes of this subpart 229.900:

(a) *General partner* means the person or persons responsible under state law for managing or directing the management of the business and affairs of a partnership that is the subject of a roll-up transaction including, but not limited to, the general partner(s), board of directors, board of trustees, or other person(s) having a fiduciary duty to such partnership.

(b)(1) *Partnership* means any:

(i) Finite-life limited partnership; or

(ii) Other finite-life entity.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this Item (§ 229.901(b)(2)(ii)), a limited partnership or other entity is "finite-life" if:

(A) It operates as a conduit vehicle for investors to participate in the ownership of assets for a limited period of time; and

(B) It has as a policy or purpose distributing to investors proceeds from the sale, financing or refinancing of assets or cash from operations, rather than reinvesting such proceeds or cash in the business (whether for the term of the entity or after an initial period of time following commencement of operations).

(ii) A real estate investment trust as defined in I.R.C. section 856 is not *finite-life* solely because of the distribution to investors of net income as provided by the I.R.C. if its policies or purposes do not include the distribution to investors of proceeds from the sale, financing or refinancing of assets, rather than the reinvestment of such proceeds in the business.

(3) *Partnership* does not include any entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or any Business Development Company as defined in section 2(a)(48) of that Act (15 U.S.C. 80a–2(a)(48)).

(c)(1) Except as provided in paragraph (c)(2) of this Item (§ 229.901), *roll-up transaction*, means any transaction or series of transactions that directly or indirectly, through acquisition or otherwise, involves the combination or reorganization of one or more partnerships and either:

(i) The offer or sale of securities by a successor entity, whether newly formed or previously existing, to one or more limited partners of the partnerships to be combined or reorganized; or

(ii) The acquisition of the successor entity's securities by the partnerships being combined or reorganized.

(2) The Commission, upon written request or upon its own motion, may exempt any transaction from the definition of *rollup transaction* if it finds such action to be in the public interest and consistent with the protection of investors.

(d) *Sponsor* means the person proposing the roll-up transaction.

(e) *Successor* means the surviving entity after completion of the roll-up transaction or the entity whose securities are being offered or sold to, or acquired by, limited partners of the partnerships or the limited partnerships to be combined or reorganized.

Instruction to Item 901. If a transaction is a roll-up transaction as defined in Item 901(c) of this subpart (§ 229.901(c)), the requirements of this subpart apply to each entity proposed to be included in the roll-up transaction, whether or not the entity is a "partnership" as defined in Item 901(b) of this subpart (§ 229.901(b)).

§ 229.902 (Item 902) Individual partnership supplements.

(a) If two or more entities are proposed to be included in the roll-up transaction, provide the information specified in this Item (§ 229.902) in a separate supplement to the disclosure document for each entity.

(b) The separate supplement required by paragraph (a) of this Item (§ 229.902) shall be filed as part of the registration statement, shall be delivered with the prospectus to investors in the partnership covered thereby, and shall include:

(1) A statement in the forepart of the supplement to the effect that:

(i) Supplements have been prepared for each partnership;

(ii) The effects of the roll-up transaction may be different for investors in the various partnerships; and

(iii) Upon receipt of a written request by an investor or his representative who has been so designated in writing, a copy of any supplement will be transmitted promptly, without charge, by the general partner or sponsor.

This statement must include the name and address of the person to whom investors should make their request.

(2) A brief description of each material risk and effect of the roll-up transaction, including, but not limited to, federal income tax consequences, for investors in the partnership, with appropriate cross references to the discussions of the risks, effects and tax consequences of the roll-up transaction required in the principal disclosure document pursuant to Items 904 and 915 of this subpart (§ 229.904 and § 229.915). Such discussion shall address the effect of the roll-up transaction on the partnership's financial condition and results of operations.

(3) A statement concerning whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in the partnership, together with a brief discussion of the bases for such belief, with appropriate cross references to the discussion of the fairness of the roll-up transaction required in the principal disclosure document pursuant to Item 910 of this subpart (§ 229.910). If there are material differences between the fairness analysis for the partnership and for the other partnerships, such differences shall be described briefly in the supplement.

(4) A brief, narrative description of the method of calculating the value of the partnership and allocating interests in the successor to the partnership, and a table showing such calculation and allocation. Such table shall include the following information (or other information of a comparable character necessary to a thorough understanding of the calculation and allocation):

(i) The appraised value of each separately appraised significant asset (as defined in Item 911(c)(5) of this subpart (§ 229.911(c)(5)) held by the partnership, or, if appraisals have not been obtained for each significant asset, the value assigned for purposes of the valuation of the partnership to each significant asset for which an appraisal has not been obtained;

(ii) The dollar amount of any mortgages or other similar liabilities to which each of such assets is subject;

(iii) Cash and cash equivalent assets held by the partnership;

(iv) Other assets held by the partnership;

(v) Other liabilities of the partnership;

(vi) The value assigned to the partnership;

(vii) The value assigned to the partnership per interest held by investors in the partnership (on an equivalent interest basis, such as per $1,000 original investment);

(viii) The aggregate number of interests in the successor to be allocated to the partnership and the percentage of the total interests of the successor;

(ix) The number of interests in the successor to be allocated to investors in the partnership for each interest held by such investors (on an equivalent interest basis, such as per $1,000 original investment); and

(x) The value assigned to the general partner's interest in the partnership, and the number of interests in the successor or other consideration to be allocated in the roll-up transaction to the general partner for such general partnership interest or otherwise as compensation or reimbursement for claims against or interests in the partnership, such as foregone fees, unearned fees and for fees to be earned on the sale or refinancing of an asset.

(5) The amounts of compensation paid, and cash distributions made, to the general partner and its affiliates by the partnership for the last three fiscal years and the most recently completed interim period and the amounts that would have been paid if the compensation and distributions structure to be in effect after the roll-up transaction had been in effect during such period. If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor (e.g., if properties will be sold or purchased after the roll-up transaction and no properties were sold or purchased during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(6) Cash distributions made to investors during each of the last five fiscal years and most recently completed interim period, identifying any such distributions which represent a return of capital.

(7) An appropriate cross reference to selected financial information concerning the partnership and the pro forma financial statements included in the principal disclosure document in response to Item 914(b)(2) of this subpart (§ 229.914(b)(2)).

§ 229.903 (Item 903) Summary.

(a) Provide in the forepart of the disclosure document a clear, concise and comprehensible summary of the roll-up transaction.

(b) The summary required by paragraph (a) of this Item (§ 229.903) shall include a summary description of each of the following items, as well as any other material terms or consequences of the roll-up transaction necessary to an understanding of such transaction:

(1) Each material risk and effect on investors, including, but not limited to:

(i) Changes in the business plan, voting rights, cash distribution policies, form of ownership interest or management compensation;

(ii) The general partner's conflicts of interest in connection with the roll-up transaction and in connection with the successor's future operations; and

(iii) The likelihood that securities received by investors in the roll-up transaction will trade at prices substantially below the value assigned to such securities in the roll-up transaction and/or the value of the successor's assets;

(2) The material terms of the roll-up transaction, including the valuation method used to allocate securities in the successor to investors in the partnerships;

(3) Whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in each partnership, including a brief discussion of the bases for such belief;

(4) Any opinion from an outside party concerning the fairness of the roll-up transaction, including whether the opinion addresses the fairness of all possible combinations of partnerships or portions of partnerships, and contacts with any outside party concerning fairness opinions, valuations or reports in connection with the roll-up transaction required to be disclosed pursuant to Item 911(a)(5) of this subpart (§ 229.911(a)(5));

(5) The background of and reasons for the roll-up transaction, as well as alternatives to the roll-up transaction described in response to Item 908(b) of this subpart (§ 229.908(b));

(6) Rights of investors to exercise dissenters' or appraisal rights or similar rights and to obtain a list of investors in the partnership in which the investor holds an interest; and

(7) If any affiliates of the general partner or the sponsor may participate in the business of the successor or receive compensation from the successor, an organizational chart showing the relationships between the general partner, the sponsor and their affiliates.

Instruction to Item 903. The description of the material risks and effects of the roll-up transaction required by paragraph (b)(1) of this Item (§ 229.903) must be presented prominently in the forepart of the summary.

§ 229.904 (Item 904) Risk factors and other considerations.

(a) Immediately following the summary required by Item 903 of this subpart (§ 229.903), describe in reasonable detail each material risk and effect of the roll-up transaction on investors in each partnership, including, but not limited to:

(1) The potential risks, adverse effects and benefits of the roll-up transaction for investors and for the general partner, including those which result from each matter described in response to Item 905 of this subpart (§ 229.905), with appropriate cross references to the comparative information required by Item 905;

(2) The material risks arising from an investment in the successor; and

(3) The likelihood that securities of the successor received by investors in the roll-up transaction will trade in the securities markets at a price substantially below the value assigned to such securities in the roll-up transaction and/or the value of the assets of the successor, and the effects on investors of such a trading market discount.

(b) Quantify each risk or effect to the extent practicable.

(c) State whether any of such risks or effects may be different for investors in any partnership and, if so, identify such partnership(s) and describe such difference(s).

Instruction to Item 904. The requirement to quantify the effects of the roll-up transaction shall include, but not be limited to:

(i) If cost savings resulting from combined administration of the partnerships is identified as a potential benefit of the roll-up transaction, the amount of cost savings and a comparison of such amount to the costs of the roll-up transaction; and

(ii) If there may be a material conflict of interest of the sponsor or general partner arising from its receipt of payments or other consideration as a result of the roll-up transaction, the amount of such payments and other consideration to be obtained in the roll-up transaction and a comparison of such amounts to the amounts to which the sponsor or general partner would be entitled without the roll-up transaction.

§ 229.905 (Item 905) comparative information.

(a)(1) Describe the voting and other rights of investors in the successor under the successor's governing instruments and under applicable law. Compare such rights to the voting and other rights of investors in each partnership subject to the transaction under the partnerships' governing instruments and under applicable law. Describe the effects of the change(s) in such rights.

(2) Describe the duties owed by the general partner of the successor to investors in the successor under the successor's governing instruments and

under applicable law. Compare such duties to the duties owed by the general partner of each partnership to investors in the partnership under the partnership's governing instruments and under applicable law. Describe the effects of the change(s) in such duties.

(b)(1) Describe each item of compensation (including reimbursement of expenses) payable by the successor after the roll-up transaction to the general partner and its affiliates or to any affiliate of the successor. Compare such compensation to the compensation currently payable to the general partner and its affiliates by each partnership. Describe the effects of the change(s) in compensation arrangements.

(2) Describe each instance in which cash or other distributions may be made by the successor to the general partner and its affiliates or to any affiliate of the successor. Compare such distributions to the distributions currently paid or payable to the general partner and its affiliates by each partnership. Describe the effects of the change(s) in distribution arrangements. If distributions similar to those currently paid or payable by any partnership to the general partner or its affiliates will not be made by the successor, state whether or not other compensation arrangements with the successor described in response to paragraph (b)(1) of this Item (§ 229.905) (e.g., incentive fees payable upon sale of a property) will, in effect, replace such distributions.

(3) Provide a table demonstrating the changes in such compensation and distributions setting forth among other things:

(i) The actual amounts of compensation and distributions, separately identified, paid by the partnerships on a combined basis to the general partner and its affiliates for the partnerships' last three fiscal years and most recently ended interim periods; and

(ii) The amounts of compensation and distributions that would have been paid if the compensation and distributions structure to be in effect after the roll-up transaction had been in effect during such period.

(4) If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor from that shown in the table provided in response to paragraph (b)(3)(ii) of this Item (§ 229.905) (e.g., if properties will be sold or purchased after the roll-up transaction and no properties were sold or purchased during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(5) Describe the material conflicts that may arise between the interests of the sponsor or general partner and the interests of investors in the successor as a result of the compensation and distribution arrangements described in response to paragraphs (b)(1) and (2) of this Item (§ 229.905) and describe any steps that will be taken to resolve any such conflicts.

(c) Describe any provisions in the governing instruments of the successor and any policies of the general partner of the successor relating to distributions to investors of cash from operations, proceeds from the sale, financing or refinancing of assets, and any other distributions. Compare such provisions and policies to those of each of the partnerships. Describe the effects of any change(s) in such provisions or policies.

(d)(1) Describe each material investment policy of the successor, including, without limitation, policies with respect to borrowings by the successor. Compare such investment policies to the investment policies of each of the partnerships. Describe the effects of any change(s) in such policies.

(2) Describe any plans of the general partner, sponsor or of any person who will be an affiliate of the successor with respect to:

(i) A sale of any material assets of the partnerships;

(ii) A purchase of any material assets; and

(iii) Borrowings.

(3)(i) State whether or not specific assets have been identified for sale, financing, refinancing or purchase following the roll-up transaction.

(ii) If specific assets have been so identified, describe the assets and the proposed transaction.

(e) Describe any other similar terms or policies of the successor that are material to an investment in the successor. Compare any such terms or policies to those of each of the partnerships. Describe the effects of any change(s) in any such terms or policies.

Instructions to Item 905. (1) The information provided in response to this Item (§ 229.905) should be illustrated in tables or other readily understandable formats, which should be included together with the disclosures required by this Item.

(2) The information required by this Item (§ 229.905) shall be set forth in appropriate separate sections of the principal disclosure document.

§ 229.906 (Item 906) Allocation of roll-up consideration.

(a) Describe in reasonable detail the method used to allocate interests in the successor to investors in the partnerships and the reasons why such method was used.

(b) Provide a table showing the calculation of the valuation of each partnership and the allocation of interests in the successor to investors. Such table shall include for each partnership the following information (or other information of a comparable character necessary to an understanding of the calculation and allocation):

(1) The value assigned to each significant category of assets of the partnership and the total value assigned to the partnership;

(2) The total value assigned to all partnerships;

(3) The aggregate amount of interests in the successor to be allocated to each partnership and the percentage of the total amount of all such interests represented thereby; and

(4) The amount of interests of the successor to be issued to investors per interest held in each partnership (on an equivalent interest basis, such as per $1,000 invested).

(c) If interests in the successor will be allocated to the general partner in exchange for its general partner interest or otherwise or if the general partner will receive other consideration in connection with the roll-up transaction:

(1) Describe in reasonable detail the method used to allocate interests in the successor to the general partner or to determine the amount of consideration payable to the general partner and the reasons such method(s) was used; and

(2) Identify the consideration paid by the general partner for interests in the partnerships that will be exchanged in the roll-up transaction.

§ 229.907 (Item 907) Background of the roll-up transaction.

(a)(1) Furnish a summary of the background of the transaction. Such summary shall include, but not be limited to, a description of any contacts, negotiations or transactions concerning any of the following matters:

(i) A merger, consolidation, or combination of any of the partnerships;

(ii) An acquisition of any of the partnerships or a material amount of any of their assets;

(iii) A tender offer for or other acquisition of securities of any class issued by any of the partnerships; or

(iv) A change in control of any of the partnerships.

(2) The summary required by paragraph (a)(1) of this Item shall:

(i) Cover the period beginning with each partnership's second full fiscal year preceding the date of the filing of the roll-up transaction;

(ii) Include contacts, negotiations or transactions between the general partner or its affiliates and any person who would have a direct interest in the matters listed in paragraph (a)(1)(i)–(iv) of this Item; and

(iii) Identify the person who initiated such contacts, negotiations or transactions.

(b) Briefly describe the background of each partnership, including, but not limited to:

(1) The amount of capital raised from investors, the extent to which net proceeds from the original offering of interests have been invested, the extent to which funds have been invested as planned and the amount not yet invested; and

(2) The partnership's investment objectives and the extent to which the partnership has achieved its investment objectives.

(c) Discuss whether the general partner (including any affiliated person materially dependent on the general partner's compensation arrangement with the partnership) or any partnership has experienced since the commencement of the most recently completed fiscal year or is likely to experience any material adverse financial developments. If so, describe such developments and the effect of the transaction on such matters.

§ 229.908 (Item 908) Reasons for and alternatives to the roll-up transaction.

(a) Describe the reason(s) for the roll-up transaction.

(b)(1) If the general partner or sponsor considered alternatives to the roll-up transaction being proposed, describe such alternative(s) and state the reason(s) for their rejection.

(2) Whether or not described in response to paragraph (b)(1) of this Item (§ 229.908), describe in reasonable detail the potential alternative of continuation of the partnerships in accordance with their existing business plans, including the effects of such continuation and the material risks and benefits that likely would arise in connection therewith, and, if applicable, the general partner's reasons for not considering such alternative.

(3) Whether or not described in response to paragraph (b)(1) of this Item (§ 229.908), describe in reasonable detail the potential alternative of liquidation of the partnerships, the procedures required to accomplish liquidation, the effects of liquidation, the material risks and benefits that likely would arise in connection with liquidation, and, if applicable, the general partner's reasons for not considering such alternative.

(c) State the reasons for the structure of the roll-up transaction and for undertaking such transaction at this time.

(d) State whether the general partner initiated the roll-up transaction and, if not, whether the general partner participated in the structuring of the transaction.

(e) State whether the general partner recommends the roll-up transaction and briefly describe the reasons for such recommendation.

§ 229.909 (Item 909) Conflicts of interest.

(a) Briefly describe the general partner's fiduciary duties to each partnership subject to the roll-up transaction and each actual or potential material conflict of interest between the general partner and the investors relating to the roll-up transaction.

(b)(1) State whether or not the general partner has retained an unaffiliated representative to act on behalf of investors for purposes of negotiating the terms of the roll-up transaction. If no such representative has been retained, describe the reasons therefor and the risks arising from the absence of separate representation.

(2) If an unaffiliated representative has been retained to represent investors:

(i) Identify such unaffiliated representative;

(ii) Briefly describe the representative's qualifications, including a brief description of any other transaction similar to the roll-up transaction in which the representative has served in a similar capacity within the past five years;

(iii) Describe the method of selection of such representative, including a statement as to whether or not any investors were consulted in the selection of the representative and, if so, the names of such investors;

(iv) Describe the scope and terms of the engagement of the representative, including, but not limited to, what party will be responsible for paying the representative's fees and whether such fees are contingent upon the outcome of the roll-up transaction;

(v) Describe any material relationship between the representative or its affiliates and:

(A) The general partner, sponsor, any affiliate of the general partner or sponsor; or

(B) Any other person having a material interest in the roll-up transaction, which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(vi) Describe in reasonable detail the actions taken by the representative on behalf of investors; and

(vii) Describe the fiduciary duties or other legal obligations of the representative to investors in each of the partnerships.

§ 229.910 (Item 910) Fairness of the transaction.

(a) State whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors and the reasons for such belief. Such discussion must address the fairness of the roll-up transaction to investors in each of the partnerships and as a whole. If the roll-up transaction may be completed with a combination of partnerships consisting of less than all partnerships, or with portions of partnerships, the belief stated must address each possible combination.

(b) Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this Item (§ 229.910) is based and, to the extent practicable, the weight assigned to each such factor. Such discussion should include an analysis of the extent, if any, to which such belief is based on the factors set forth in Instructions (2) and (3) to this Item (§ 229.910), paragraph (b)(1) of Item 909 of this subpart (§ 229.909(b)(1)) and Item 911 of this subpart (§ 229.911). This discussion also must:

(1) Compare the value of the consideration to be received in the roll-up transaction to the value of the consideration that would be received pursuant to each of the alternatives discussed in response to Item 908(b) of this subpart (§ 229.908(b)); and

(2) Describe any material differences among the partnerships (e.g., different types of assets or different investment objectives) relating to the fairness of the transaction.

(c) If any offer of the type described in Instruction (2)(viii) to this Item (§ 229.910) has been received, describe such offer and state the reason(s) for its rejection.

(d) Describe any factors known to the general partner that may affect materially the value of the consideration to be received by investors in the roll-up transaction, the values assigned to the partnerships for purposes of the comparisons to alternatives required by paragraph (b) of this Item (§ 229.910) and the fairness of the transaction to investors.

(e) State whether the general partner's statements in response to paragraphs (a) and (b) of this Item (§ 229.910) are based, in whole or in part, on any report, opinion or appraisal described in response to Item 911 of this subpart (§ 229.911). If so, describe any material uncertainties known to the general partner that relate to the conclusions in any such report, opinion or appraisal including, but not limited to, developments or trends that have affected or are reasonably likely to affect materially such conclusions.

Instructions to Item 910. (1) A statement that the general partner has no reasonable belief as to the fairness of the roll-up transaction to investors will not be considered sufficient disclosure in response to paragraph (a) of this Item (§ 229.910(a)).

(2) The factors which are important in determining the fairness of a roll-up transaction to investors and the weight, if any, which should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraph (b)(1) of Item 909 (§ 229.909(b)(1)) and whether the consideration offered to investors constitutes fair value in relation to:

(i) Current market prices, if any;

(ii) Historic market prices, if any;

(iii) Net book value;

(iv) Going concern value;

(v) Liquidation value;

(vi) Purchases of limited partnership interests by the general partner or sponsor or their affiliates since the commencement of the partnership's second full fiscal year preceding the date of filing of the disclosure document for the roll-up transaction;

(vii) Any report, opinion, or appraisal described in Item 911 of this subpart (§ 229.911); and

(viii) Offers of which the general partner or sponsor is aware made during the preceding eighteen months for a merger, consolidation, or combination of any of the partnerships; an acquisition of any of the partnerships or a material amount of their assets; a tender offer for or other acquisition of securities of any class issued by any of the partnerships; or a change in control of any of the partnerships.

(3) The discussion concerning fairness should specifically address material terms of the transaction including whether the consideration offered to investors constitutes fair value in relation to:

(i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction;

(ii) The methods used to determine such consideration; and

(iii) The compensation to be paid to the sponsor in the future.

(4) Conclusory statements, such as "The roll-up transaction is fair to investors in relation to net book value, going concern value, liquidation value and future prospects of the partnership," will not be considered sufficient disclosure in response to paragraph (b) of this Item (§ 229.910(b)).

(5) Consideration should be given to presenting the comparative numerical data as to the value of the consideration being received by investors, liquidation value and other values in a tabular format. Financial and other information concerning the partnerships should be prepared based upon the most recent available information, such as, in the case of financial information, the periods covered by interim selected financial information included in the prospectus in accordance with Item 914 of this subpart (§ 229.914).

§ 229.911 (Item 911) Reports, opinions and appraisals.

(a)(1) *All material reports, opinions or appraisals.* State whether or not the general partner or sponsor has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party which is materially related to the roll-up transaction including, but not limited to, any such report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to investors in connection with the roll-up transaction or the fairness of such transaction to the general partner or investors.

(2) With respect to any report, opinion or appraisal described in paragraph (a)(1) of this Item (§ 229.911);

(i) Identify such outside party;

(ii) Briefly describe the qualifications of such outside party;

(iii) Describe the method of selection of such outside party;

(iv) Describe any material relationship between:

(A) The outside party or its affiliates; and

(B) The general partner, sponsor, the successor or any of their affiliates, which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(v) If such report, opinion or appraisal relates to the fairness of the consideration, state whether the general partner, sponsor or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid.

(vi) Furnish a summary concerning such report, opinion or appraisal which shall include, but not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the general partner, sponsor or its affiliates; and any limitation imposed by the general partner, sponsor or affiliate on the scope of the investigation.

(3) Furnish a statement to the effect that upon written request by an investor or his representative who has been so designated in writing, a copy of any such report, opinion or appraisal shall be transmitted promptly, without charge, by the general partner or sponsor. The statement also must include the name and address of the person to whom investors or their representatives should make their request.

(4) All reports, opinions or appraisals referred to in paragraph (a)(1) of this Item (§ 229.911) shall be filed as exhibits to the registration statement.

(5)(i) Describe any contacts in connection with the roll-up transaction between the sponsor or the general partner and any outside party with respect to the preparation by such party of an opinion concerning the fairness of the roll-up transaction, a valuation of a partnership or its assets, or any other report with respect to the roll-up transaction. No description is required, however, of contacts with respect to reports, opinions or appraisals filed as exhibits pursuant to paragraph (a)(4) of this Item (§ 229.911).

(ii) The description of contacts with any outside party required by paragraph (a)(5)(i) of this Item (§ 229.911) shall include the following:

(A) The identity of each such party;

(B) The nature of the contact;

(C) The actions taken by such party;

(D) Any views, preliminary or final, expressed on the proposed subject matter of the report, opinion or appraisal; and

(E) Any reasons such party did not provide a report, opinion or appraisal.

(b) *Fairness opinions.* If any report, opinion or appraisal relates to the fairness of the roll-up transaction to investors in the partnerships, state whether or not the report, opinion or appraisal addresses the fairness of:

(1) The roll-up transaction as a whole and to investors in each partnership;

(2) All possible combinations of partnerships in the rollup transaction (including portions of partnerships if the transaction is structured to permit portions of partnerships to participate). If all possible combinations are not addressed:

(i) Identify the combinations that are addressed;

(ii) Identify the person(s) that determined which combinations would be addressed and state the reasons for the selection of the combinations; and

(iii) State that if the roll-up transaction is completed with a combination of partnerships not addressed, no report, opinion or appraisal concerning the fairness of the roll-up transaction will have been obtained.

(c) *Appraisals.* If the report, opinion or appraisal consists of an appraisal of the assets of the partnerships:

(1) Describe the purpose(s) for which the appraisals were obtained and their use in connection with the roll-up transaction;

(2) Describe which assets are covered by the appraisals and state the aggregate appraised value of the assets covered by the appraisals (including such value net of associated indebtedness). Provide a description of, and valuation of, any assets subject to any material qualifications by the appraiser and a summary of such qualifications;

(3) Identify the date as of which the appraisals were prepared. State whether and in what circumstances the appraisals will be updated. State whether any events have occurred or conditions have changed since the date of the appraisals that may have caused a material change in the value of the assets;

(4) Include as an appendix to the prospectus one or more tables setting forth the following information:

(i) The appraised value of any separately appraised asset that is significant to the partnership holding such asset;

(ii) If the appraiser considered different valuation approaches in preparing the appraisals of the assets identified in response to paragraph (c)(4)(i) of this Item (§ 229.911(c)(4)(i)), the value of each such asset under each valuation approach considered by the appraiser, identifying the valuation approach used by the appraiser in determining the appraised value and the reason such approach was chosen; and

(iii) All material assumptions used by the appraiser in appraising the assets identified in response to paragraph (c)(4)(i) of this Item (§ 229.911(c)(4)(i)), and, if the appraiser used different assumptions for any of such assets, the reasons the different assumptions were chosen.

(5) For purposes of this Item and Item 902 of this subpart (§ 229.902), an asset is "significant" to a partnership if it represents more than 10% of the value of the partnership's assets as of the end of the most recently-completed fiscal year or recently-completed interim period or if 10% or more of the partnership's cash flow or net income for the most recently-completed fiscal year or most recently-completed subsequent interim period was derived from such asset.

Instructions to Item 911. (1) The reports, opinions and appraisals required to be identified in response to paragraph (a) of this Item (§ 229.911) include any reports, opinions and appraisals which materially relate to the roll-up transaction whether or not relied upon, such as reports or opinions regarding alternatives to the roll-up transaction whether or not the alternatives were rejected.

(2) The information called for by paragraph (a)(2) of this Item (§ 229.911) should be given with respect to the firm which provides the report, opinion or appraisal rather than the employees of such firm who prepared it.

(3) With respect to appraisals, a summary prepared by the appraisers should not be included in lieu of the description of the appraisals required by paragraph (c) of this Item (§ 229.911). A clear and concise summary description of the appraisals is required.

§ 229.912 (Item 912) Source and amount of funds and transactional expenses

(a) State the source and total amount of funds or other consideration to be used in the roll-up transaction.

(b)(1) Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the roll-up transaction including, but not limited to, filing fees, legal, financial advisory, accounting and appraisal fees, solicitation expenses and printing costs. Identify the persons responsible for paying any or all of such expenses.

(2) State whether or not any partnership subject to the roll-up transaction will be, directly or indirectly, responsible for any or all of the expenses of the transaction. If any partnership will be so responsible, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(c) If all or any part of the consideration to be used by the sponsor or successor in the roll-up transaction is expected to be, directly or indirectly, provided by any partnership, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(d) If all or any part of the funds or other consideration is, or is expected to be, directly or indirectly borrowed by the sponsor or successor for the purpose of the roll-up transaction:

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

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

(e) If the source of all or any part of the funds to be used in the roll-up transaction is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Exchange Act and section 13(d) or 14(d) is applicable to such transaction, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

§ 229.913 (Item 913) Other provisions of the transaction.

(a) State whether or not appraisal rights are provided under applicable state law, under the partnership's governing instruments or will be voluntarily accorded by the successor, the general partner or the sponsor (or any of their affiliates) in connection with the roll-up transaction. If so, summarize such appraisal rights. If appraisal rights will not be available to investors who object to the transaction, briefly outline the rights which may be available to such investors under such law.

(b) If any provision has been made to allow investors to obtain access to the books and records of the partnership or to obtain counsel or appraisal services at the expense of the successor, the general partner, the partnership, the sponsor (or any of their affiliates), describe such provision.

(c) Discuss the investors' rights under federal and state law to obtain a partnership's list of investors.

§ 229.914 (Item 914) Pro forma financial statements: selected financial data.

(a) In addition to the information required by Item 301 of Regulation S–K, Selected Financial Data (§ 229.301), and Item 302 of Regulation S–K, Supplementary Financial Information (§ 229.302), for each partnership proposed to be included in a roll-up transaction provide: Ratio of earnings to fixed charges, cash and cash equivalents, total assets at book value, total assets at the value assigned for purposes of the roll-up transaction (if applicable), total liabilities, general and limited partners' equity, net increase (decrease) in cash and cash equivalents, net cash provided by operating activities, distributions; and per unit data for net income (loss), book value, value assigned for purposes of the roll-up transaction (if applicable), and distributions (separately identifying distributions that represent a return of capital). This information should be provided for the same period(s) for which Selected Financial Data and Supplementary Financial Information are required to be provided. Additional or other information should be provided if material to an understanding of each partnership proposed to be included in a roll-up transaction.

(b) Provide pro forma financial information (including oil and gas reserves and cash flow disclosure, if appropriate), assuming:

(1) All partnerships participate in the roll-up transaction; and

(2) Participation in a roll-up transaction of those partnerships that on a combined basis have the lowest combined net cash provided by operating activities for the last fiscal year of such partnerships, *provided* participation by such partnerships satisfies all conditions to consummation of the roll-up transaction. If the combination of all partnerships proposed to be included in a roll-up transaction results in such lowest combined net cash provided by operating activities, this shall be noted and no separate pro forma financial statements are required.

(c) The pro forma financial statements required by paragraph (b) of this Item (§ 229.914) shall disclose the effect of the roll-up transaction on the successor's:

(1) Balance sheet as of the later of the end of the most recent fiscal year or the latest interim period;

(2) Statement of income (with separate line items to reflect income (loss) excluding and including the roll-up expenses and payments), earnings per share amounts, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period;

(3) Statement of cash flows for the most recent fiscal year and the latest interim period; and

(4) Book value per share as of the later of the end of the most recent fiscal year or the latest interim period.

Instructions to Item 914. (1) Notwithstanding the provisions of this Item (§ 229.914), any or all of the information required by paragraphs (b) and (c) of this Item (§ 229.914) that is not material for the exercise of prudent judgment in regard to the matter to be acted upon, may be omitted.

(2) If the roll-up transaction is structured to permit participation by portions of partnerships, consideration should be given to the effect of such participation in preparing the pro forma financial statements reflecting a partial roll-up.

§ 229.915 (Item 915) Federal income tax consequences.

(a) Provide a brief, clear and understandable summary of the material Federal income tax consequences of the roll-up transaction and an investment in the successor. Where a tax opinion has been provided, briefly summarize the substance of such opinion, including identification of the material consequences upon which counsel has not been asked, or is unable, to opine. If any of the material Federal income tax consequences are not expected to be the same for investors in all partnerships, the differences shall be described.

(b) State whether or not the opinion of counsel is included as an appendix to the prospectus. If filed as an exhibit to the registration statement and not included as an appendix to the prospectus, include a statement to the effect that, upon receipt of a written request by an investor or his representative who has been so designated in writing, a copy of the opinion of counsel will be transmitted promptly, without charge, by the general partner or sponsor. The statement should include the name and address of the person to whom investors should make their request.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

§ 239.25 [Amended]

6. By amending Form S-4 (17 CFR 239.25) by adding General Instruction I to read as follows:

Note: Form S-4 does not appear in the Code of Federal Regulations.

Form S-4

* * * * *

General Instructions

* * * * *

I. *Roll-Up Transactions.*

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)), then the disclosure provisions of subpart 229.900 of Regulation S-K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form. To the extent that the disclosure requirements of subpart 229.900 are inconsistent with the disclosure requirements of any other applicable forms or schedules, the requirements of subpart 229.900 are controlling.

2. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)), the prospectus must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for giving notice under applicable state law.

§ 239.34 [Amended]

7. By amending Form F-4 (17 CFR 239.34) by adding General Instruction G to read as follows:

Note: Form F-4 does not appear in the Code of Federal Regulations.

Form F-4

* * * * *

General Instructions

* * * * *

G. *Roll-Up Transactions.*

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)), then the disclosure provisions of subpart 229.900 of Regulation S-K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form. To the extent that the disclosure requirements of subpart 229.900 are inconsistent with the disclosure requirements of any other applicable forms or schedules, the requirements of subpart 229.900 are controlling.

2. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)), the prospectus must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for giving notice under applicable state law.

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

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

Authority: 15 U.S.C. 77c, 77d, 77s, 77ttt; 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a-29, 80a-37, unless otherwise noted.

* * * * *

9. By amending § 240.14a-6 (17 CFR 240.14a-6) by adding new paragraph (m) to read as follows:

§ 240.14a-6 Filing requirements.

* * * * *

(m) *Roll-up transactions.* If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34), the proxy statement of the sponsor or the general partner as defined in Item 901(d) and Item 901(a), respectively, of Regulation S-K (17 CFR 229.901) must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

10. By amending § 240.14c-2 (17 CFR 240.14c-2) by adding new paragraph (c) to read as follows:

§ 240.14c-2 Distribution of information statement.

* * * * *

(c) If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34), the information statement must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

11. By amending § 240.14e-1 (17 CFR 240.14e-1) by revising paragraph (a) to read as follows:

§ 240.14e-1 Unlawful tender offer practices.

* * * * *

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent to security holders; provided, however, that if the tender offer involves a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)) and the securities being offered are registered (or authorized to be registered) on Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34), the offer shall not be open for less than sixty calendar days from the date the tender offer is first published or sent to security holders;

* * * * *

Dated: October 30, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-26632 Filed 11-7-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 284, 375, and 380

[Docket No. RM90-1-002]

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

October 30, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; notice of technical conference.

SUMMARY: On September 20, 1991, the Commission issued a final rule, Order No. 555, to revise its regulations governing authorizations to construct natural gas pipeline facilities and its environmental regulations (56 FR 52330, October 18, 1991). A technical conference will be held solely on the environmental provisions of the order, as well as the Interim Guidelines for Applicant-Prepared Draft Environmental Assessments, issued by the Director of Pipeline and Producer Regulation on September 12, 1991. All persons are invited to attend and to participate.

DATES: The conference will be held on Tuesday, November 12, 1991 at 10 a.m.; requests to participate should be filed by November 5, 1991.

ADDRESSES: The conference will be held in Hearing Room 1, 810 First Street, NE., Washington, DC; requests to participate should be filed with the Secretary of the Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois Cashell, Secretary of the Commission, (202) 208-0400.

SUPPLEMENTARY INFORMATION: A transcript will be made of the technical conference. All interested persons are invited to attend and to participate. All persons intending to participate should include in their request to participate the amount of time desired for presentation. Participants will be restricted to lesser periods of time if necessary to afford each participant an opportunity to speak.

Lois D. Cashell,

Secretary.

[FR Doc. 91-26826 Filed 11-7-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. 84-02; Notice 9]

RIN 2127-AD26

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction.

SUMMARY: On August 20, 1991 (56 FR 41394), NHTSA published a final rule implementing the new National Driver Register (NDR) system, also called the Problem Driver Pointer System (PDPS), which was developed and pilot tested in accordance with the NDR Act of 1982. Specifically, the final rule established the procedures that a State must follow to notify the agency of its intention to participate in the NDR PDPS, the conditions of State participation, and the procedures and conditions under which other authorized parties may receive NDR information. This document corrects errors that appeared in the regulatory text and appendix A to the August 20, 1991, final rule.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Hatch, Chief, Driver and Vehicle Services Division (NTS-24), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-4800.

SUPPLEMENTARY INFORMATION: Section 1327.6 of the final rule contains two paragraphs numbered (e). The first, which begins on page 41407, third column, includes the heading "U.S. Coast Guard;" the second, which begins on page 41408, first column, includes no heading but pertains to third parties. This correction notice adds a heading to and redesignates the second paragraph (e). It also redesignates the remaining paragraphs in that section.

Appendix A to the final rule contains an Abridged Listing of the American Association of Motor Vehicle Administrators (AAMVA) Violations Exchange Code, used by the NDR for Recording Driver License Denials and Withdrawals. The preamble to the final rule, on page 41397, column 2, states that, "NHTSA believes that the codes it has excluded from the abbreviated list (such as suspension for failure to pay insurance) are of questionable utility to those served by the NDR, and States should not be required to submit this information." Inadvertently, two such codes (FR4, failure to file future proof of financial responsibility as required under any other provision of the financial responsibility law, and FR5, failure to maintain required compulsory liability insurance) were mistakenly included on the Abridged Listing. This correction notice removes these two codes from the list.

This correction notice also corrects a punctuation error. Accordingly, the following corrections are made on page 41408 of Volume 56 of the **Federal Register**, in the issue that was published on August 20, 1991:

§ 1327.6 [Corrected]

1. In the first column, line 1, change "(e)" to "(f) *Third Parties.*".

2. In the first column, line 35, change "(f)" to "(g)".

3. In the first column, line 52, remove the symbol "(" which appears after the word "maiden".

Appendix A [Corrected]

4. In the third column, remove lines 3–7

Issued on: October 30, 1991.

Editorial Note: For a related document, see the Corrections Section in this issue of the Federal Register.

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 91-26681 Filed 11-7-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, 210, and 212

RIN 1010-AB22

Revision of Geothermal Resources Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing the valuation of Federal geothermal resources for the purposes of computing and paying royalties. The revised regulations describe the methods by which value is determined for all geothermal resources, including byproducts, produced from Federal leases.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, MMS, Royalty Management Program, Mail Stop 3910, P.O. Box 25165, Denver, Colorado, 80225-0165, (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Charles Brook and Michael Throckmorton of the Royalty Valuation and Standards Division, Royalty Management Program, MMS, Lakewood, Colorado.

I. Introduction

On January 5, 1989, MMS published a notice in the **Federal Register** (54 FR 354) of a proposed rulemaking revising geothermal resources valuation regulations. This action was undertaken because the existing regulations at 30 CFR 206.350 and 206.351 provide only a list of general criteria that could be considered in establishing the value of geothermal production for royalty purposes; they do not give specific guidance or standards on how to apply the criteria. They particularly do not provide sufficiently specific standards for valuing those geothermal resources that are utilized directly by the lessee and consequently are not subject to a sales transaction on which to determine value.

To resolve some of the shortcomings of the regulations and to establish consistent valuation standards, MMS instituted various interpretative policies and procedures. Specific valuation procedures were developed within the context of, and consistent with, the existing regulations. Standards and procedures for valuing those geothermal resources used to generate electricity were set forth in the report "Valuation of Federal Geothermal Resources—Electrical Generation" issued to the public in October 1987 and revised June 1988. Standards and procedures for valuing those few geothermal resources used in direct utilization processes were issued to lessees on the basis of individual need.

The public comment period for the proposed rulemaking closed April 17, 1989, having been extended from March 6, 1989 (54 FR 9066, March 3, 1989), during which MMS received 15 responses to its request for comments. A public hearing was held on March 28, 1989, in Lakewood, Colorado, where 10 individuals made oral presentations.

The public comment period was reopened from May 7 to June 6, 1990, to obtain additional information on the rates of return applicable to capital investments in geothermal power projects (55 FR 18911, May 7, 1990, and 55 FR 20679, May 18, 1990). Additional comments on any other issues called for in the first notice of proposed rulemaking were also welcomed if new information had become available since the close of the initial comment period. Six comments were received during the second comment period; five addressed the rate of return issue and one addressed measurement standards.

After carefully considering all of the public comments received during the rulemaking process, MMS hereby adopts final regulations governing the valuation of geothermal resources from Federal leases.

II. Purpose and Background

The MMS is revising the current regulations governing the valuation of Federal geothermal resources to accomplish the following:

(a) Clarify existing valuation policy and standards as they apply to geothermal resources used for electrical generation;

(b) Provide clear standards for valuing geothermal resources used in direct utilization processes;

(c) Provide clear standards for valuing geothermal byproducts; and

(d) Provide industry and the public with a comprehensive and consistent geothermal valuation policy.

For the convenience of geothermal resources lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. *Title Revision:*	
Part 212:	
The title of subpart B is revised to read "Oil, Gas, and OCS Sulfur—General"	Retitled for consistency with the title of subpart B in other parts of MMS regulations.
II. *Removals:*	
Part 206:	
Sections 206.350 and 206.351 are removed from subpart H	These sections are replaced by new sections.
Part 210:	
Sections 210.350 and 210.351 are removed from subpart H	These sections are replaced by new sections.
Part 212:	
The authority citation under subpart B is removed	This is an administrative amendment because the authority citation is not required under the subpart.
III. *Additions:*	
Part 202:	
New §§ 202.350, 202.351, 202.352 and 202.353 are added to subpart H	These new sections provide geothermal resources valuation standards and procedures.
Part 206:	
New §§ 206.350, 206.351, 206.352, 206.353, 206.354, 206.355, 206.356, 206.357, and 206.358 are added to Subpart H.	These new sections provide geothermal resources valuation standards and procedures.