

excess contributions to an IRA, premature distributions from an IRA and other qualified retirement plans, excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.

Respondents: Individuals or households.

Estimated Number of Respondents/

Recordkeepers: 1,000,000.

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping—2 hours, 24 minutes

Learning about the law or the form—43 minutes

Preparing the form—1 hour, 41 minutes

Copying, assembling, and sending the form to the IRS—35 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/

Recordkeeping Burden: 5,380,000 hours.

OMB Number: 1545-0687.

Form Number: IRS Form 990-T.

Type of Review: Revision.

Title: Exempt Organization Business Income Tax Return.

Description: Form 990-T is needed to compute the section 511 tax unrelated business income of a charitable organization. IRS uses the information to enforce the tax.

Respondents: Non-profit institutions.

Estimated Number of Respondents/

Recordkeepers: 35,531.

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping—60 hours, 59 minutes

Learning about the law or the form—20 hours, 20 minutes

Preparing the form—32 hours, 28 minutes

Copying, assembling, and sending the form to the IRS—2 hours, 57 minutes

Frequency of Response: Annually.

Estimated Total Reporting/

Recordkeeping Burden: 4,147,889 hours.

OMB Number: 1545-0715.

Form Number: IRS Form 1099-B.

Type of Review: Extension.

Title: Proceeds From Broker and Barter Exchange Transactions.

Description: Form 1099-B is used by brokers and barter exchanges to report proceeds from transactions to the Internal Revenue Service.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per

Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 12,925,000 hours.

OMB Number: 1545-0901.

Form Number: IRS Form 1098.

Type of Review: Revision.

Title: Mortgage Interest Statement.

Description: Form 1098 is used to report \$600 or more of mortgage interest received from an individual in the course of the mortgagor's trade or business.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents:

171,000.

Estimated Burden Hours Per

Respondent: 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden:

6,840,000 hours.

Clearance Officer: Garrick Shear (202)

535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202)

395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 92-19247 Filed 8-12-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0056.

Form Number: CF-19.

Type of Review: Extension.

Title: Protest.

Description: The CF-19 is filed by the importer, consignee, or the person paying any charge or exaction or seeking entry or delivery with respect to merchandise which is the subject of the decision protested.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/

Recordkeepers: 3,700.

Estimated Burden Hours Per

Respondent/Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting/

Recordkeeping Burden: 23,432 hours.

Clearance Officer: Ralph Meyer (202)

927-1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202)

395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-19248 Filed 8-12-92; 8:45 am]

BILLING CODE 4820-02-M

Office of the Secretary

[Supplement to Dep. Circular—Public Debt Series—No. 23-92]

Treasury Notes, Series AC-1994

Washington, July 29, 1992.

The Secretary announced on July 28, 1992, that the interest rate on the notes designated Series AC-1994, described in Department Circular—Public Debt Series—No. 23-92 dated July 22, 1992, will be 4¼ percent. Interest on the notes will be payable at the rate of 4¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-19253 Filed 8-12-92; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Dept. Circular—Public Debt Series—No. 24-92]

Treasury Notes, Series P-1997

Washington, July 30, 1992.

The Secretary announced on July 29, 1992, that the interest rate on the notes designated Series P-1997, described in Department Circular—Public Debt Series—No. 24-92 dated July 22, 1992, will be 5½ percent. Interest on the notes will be payable at the rate of 5½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-19252 Filed 8-12-92; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 157

Thursday, August 13, 1992

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

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 11-92

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504), and the Government in the Sunshine Act (5 U.S.C. 552b),

hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., August 26, 1992 at 10:30 a.m.—
Consideration of Proposed Decisions on
claims against Iran

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D

Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 1000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, D.C. on August 11, 1992.

Judith H. Lock,
Administrative Officer.

[FR Doc. 92-19464 Filed 8-11-92; 3:31 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register

Vol. 57, No. 157

Thursday, August 13, 1992

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

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-02-4143-11]

Sodium; Wyoming

Correction

In notice document 92-16714 appearing on page 32024 in the issue of Monday, July 20, 1992, make the following correction in the second column, in the heading "Coal Leases; WY" should read "Sodium; Wyoming".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

Definition and Registration of Mid-Level Practitioners

Correction

In proposed rule document 92-17873 beginning on page 33465 in the issue of Wednesday, July 29, 1992, make the following correction:

On page 33466, in the first column, in the last line, the second "the" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act: Fiscal Year 1992 Competitive Discretionary Grant Programs Announcement and Notice of the Availability of Application Kit

Correction

In notice document 92-17851 beginning on page 33826 in the issue of Thursday, July 30, 1992, make the following correction:

On page 33832, in the third column, under *Due Date*, in the third line "August 28, 1992" should read "September 28, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-92-AD]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

Correction

In proposed rule document 92-16210 beginning on page 30697 in the issue of

Friday, July 10, 1992, make the following correction:

§ 39.13 [Corrected]

On page 30698, in the second column, in § 39.13, in the first paragraph, in the second line, "ll-passenger" should read "all-passenger".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF46

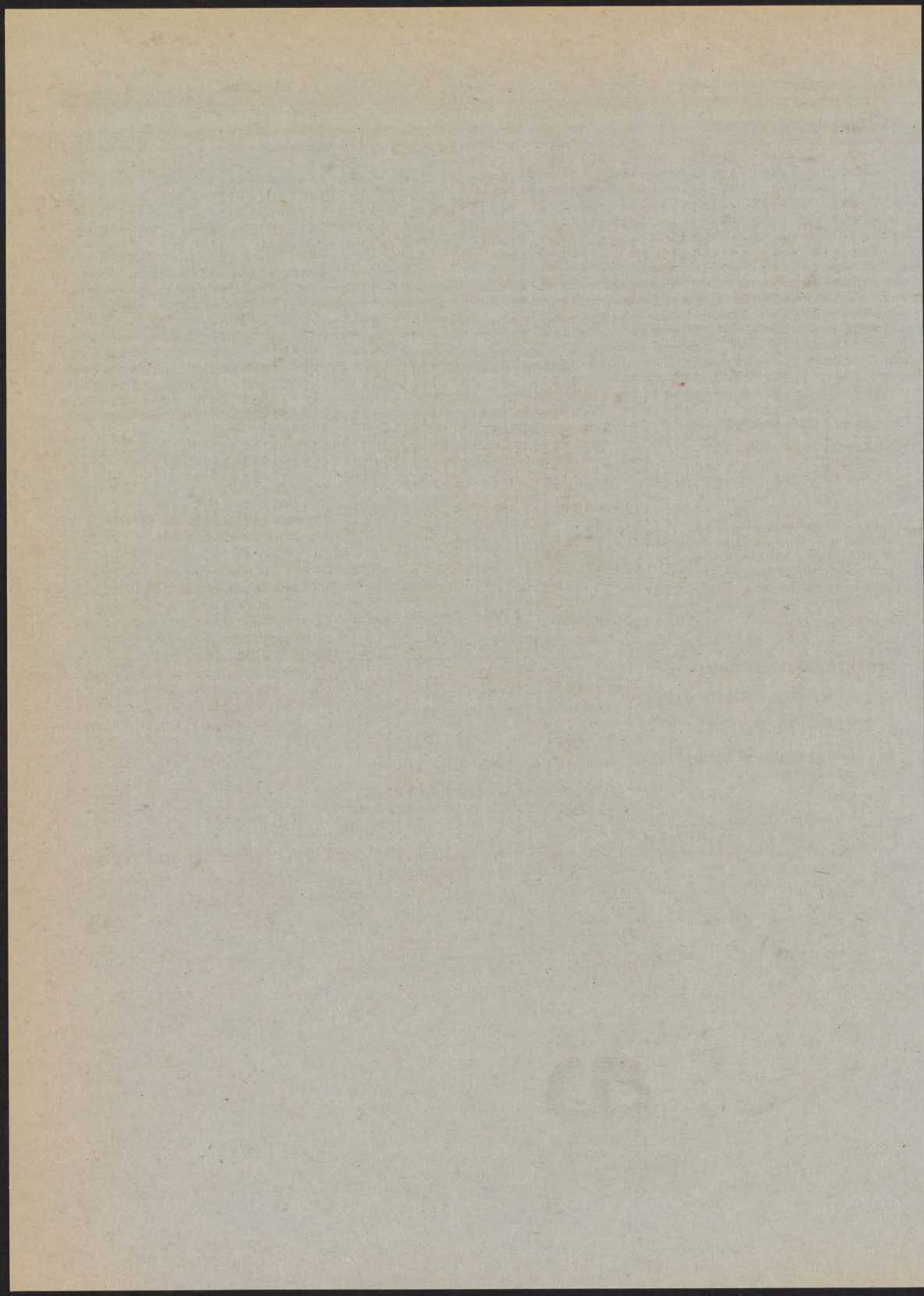
Claims Based on Chronic Effects of Exposure to Mustard Gas

Correction

In rule document 92-18107 beginning on page 33875 in the issue of Friday, July 31, 1992, make the following correction:

On page 33877, in the first column, the **List of Subjects** should read "Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans."

BILLING CODE 1505-01-D



SECURITIES EXCHANGE COMMISSION

Thursday
August 13, 1992

Part II

Securities and Exchange Commission

17 CFR Parts 200 et al.

Small Business Initiatives; Capital Raising
Facilitation and Compliance Burdens
Reductions; Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 228, 229, 230, 239, 240, 249, and 260

[Release Nos. 33-6949, 34-30968, 39-2287; FR-39]

RIN 3235-AD88

Small Business Initiatives

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today adopted rules and forms under the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act") and the Trust Indenture Act of 1939 ("Trust Indenture Act") to facilitate capital raising by small businesses and reduce the costs of compliance with the federal securities laws. Specifically, the Commission has revised its general small issues exemption from the Securities Act registration requirements, Regulation A, as well as the rule 504 exemption, and has adopted simplified registration and reporting disclosure requirements for "small business issuers," as defined. The Commission also is soliciting further public comment on rule 504 with respect to excluding blank check companies from the exemption as adopted.

EFFECTIVE DATE: August 13, 1992. Although Form S-18 is hereby rescinded, filings on that form will be accepted for filing through December 31, 1992. Amendments to pending registration statements on Form S-18 or S-1 may be made on Form SB-2 by small business issuers eligible to use that Form.

FOR FURTHER INFORMATION CONTACT: The Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549: (1) Regulation A and rule 504, Richard K. Wulff (202-272-2644); (2) Regulation S-B, Securities Act Rules and Forms, Exchange Act Rules and Forms and Trust Indenture Act Rules, Amy S. Bowerman and Martin P. Dunn (202-272-2573); and (3) Financial statement requirements, Teresa E. Iannaconi (202-272-2553).

SUPPLEMENTARY INFORMATION: The Commission today adopted revisions to the Regulation A exemption from the registration requirements of the Securities Act and Forms 1-A and 2-

A used for such offerings and repealed Forms 3-A, 4-A, 5-A, 6-A and 7-A. Form F-X has been amended to permit its use by Canadian issuers engaged in a Regulation A offering or a registered offering on Form SB-2. In connection with these revisions to Regulation A, Securities Act Rule 175 and Exchange Act Rule 3b-6, the Commission's "safe harbor" provisions for forward looking statements, have been revised to apply to statements made in a Regulation A offering statement and any written material submitted to the Commission pursuant to new Securities Act Rule 254. Proposed revisions to Rule 504 of Regulation D have been adopted with an exclusion for offerings by "blank check" companies.

The Commission today also adopted an integrated disclosure system for "small business issuers." The simplified disclosure requirements for small business issuers are contained in Regulation S-B. Amendments to Rules 405 and 481 under the Securities Act and Rule 12b-2 under the Exchange Act define the small business issuers that are eligible to use the simplified disclosure forms. Form S-18 has been repealed and replaced with Form SB-2. Forms S-2, S-3, S-6 and S-4 have been amended to reflect the new disclosure requirements of Regulation S-B. New Forms 10-SB, 10-KSB and 10-QSB have been created to satisfy registration, annual and quarterly reporting obligations under the Exchange Act. Further, Item 7 of Form 8-K has been amended to provide

consistent financial statement instructions regarding small business acquisitions. Parallel changes have been made to Schedule 14A, Schedule 14C, and Rule 14a-3 under the Exchange Act.

Rule 4a-1 under the Trust Indenture Act, which provides an exemption from the requirement to issue securities pursuant to an indenture, has been revised to increase the dollar ceiling of that exemption. Trust Indenture Act Rule 4a-2 has been redesignated Rule 4a-3 and amended to increase the dollar ceiling included in the exemption from the requirement that the securities be issued pursuant to a qualified indenture. The Commission also adopted new Rule 4a-2 which permits an exemption from the Trust Indenture Act for issuances of securities under Regulation A. Finally, the Commission amended Rule 4d-9 and Rule 10a-5 under the Trust Indenture Act to reflect the availability of Form SB-2 to Canadian issuers.

I. Executive Summary

Today, with the adoption of major revisions to Securities Act registration exemptions under Rule 504 and Regulation A and the inauguration of an integrated registration and reporting system for small business issuers, the Commission has completed the first of its Small Business Initiatives announced in March of this year.³⁹ The remaining regulatory initiatives have been proposed for public comment,⁴⁰ and the Commission's proposed Small Business Incentive Act of 1992 has been introduced in both the House of Representatives⁴¹ and Senate of the U.S. Congress.⁴²

The March proposals were enthusiastically received by the small business commenters as a significant step to facilitating access to the public market for start-up and developing companies, and reducing the costs for small businesses to undertake to have their securities traded in the public

⁴¹ 17 CFR 239.91.

⁴² 17 CFR 239.92.

⁴³ 17 CFR 239.93.

⁴⁴ 17 CFR 239.94.

⁴⁵ 17 CFR 239.95.

⁴⁶ 17 CFR 239.96.

⁴⁷ 17 CFR 239.42.

⁴⁸ 17 CFR 239.175.

⁴⁹ 17 CFR 240.3b-6.

⁵⁰ 17 CFR 239.504.

⁵¹ 17 CFR 228.10-228.702.

⁵² 17 CFR 239.405.

⁵³ 17 CFR 239.481.

⁵⁴ 17 CFR 240.12b-2.

⁵⁵ 15 U.S.C. § 78a et seq.

⁵⁶ 17 CFR 239.28.

⁵⁷ 17 CFR 239.10.

⁵⁸ 17 CFR 239.12.

⁵⁹ 17 CFR 239.13.

⁶⁰ 17 CFR 239.16b.

⁶¹ 17 CFR 239.25.

⁶² 17 CFR 249.210b.

⁶³ 17 CFR 249.310b.

⁶⁴ 17 CFR 249.308b.

⁶⁵ 17 CFR 249.308.

¹ 17 CFR 230.251-230.262.

² 15 U.S.C. § 77a et seq.

³ 17 CFR 239.90.

³⁹ 17 CFR 240.14a-101.

⁴⁰ 17 CFR 240.14c-101.

⁴¹ 17 CFR 240.14a-3.

⁴² 17 CFR 260.4a-1.

⁴³ 15 U.S.C. § 77aaa et seq.

⁴⁴ 17 CFR 260.4a-2.

⁴⁵ 17 CFR 260.4a-3.

⁴⁶ 17 CFR 260.4a-2.

⁴⁷ 17 CFR 260.4d-9.

⁴⁸ 17 CFR 260.10a-5.

³⁹ See Securities Act Release No. 6924 (March 11, 1992) ("March Release").

⁴⁰ See Securities Act Release No. 6943 (July 18, 1992) and Investment Company Act Release No. 18736 (June 5, 1992).

⁴¹ H.R. 4938, 102d Cong., 2d Sess. (April 9, 1992).

⁴² S. 2518, 102d Cong., 2d Sess. (April 2, 1992).

markets. The exemptions and small business integrated registration and reporting system adopted today are substantially in the form proposed in the March Release. Regulation A has been revised to exempt public offerings of non-reporting companies of up to \$5 million in a 12-month period and to permit the use of a simplified question-and-answer disclosure document. Companies conducting a Regulation A offering will be able to "test the waters" for potential interest in the company before having to prepare the mandated offering circular. In response to comment, Regulation A will continue to be available to qualifying Canadian issuers.

The revisions to Rule 504 are adopted with one change—Rule 504 will not be available to "blank check" companies. Under New Rule 504, as adopted, non-reporting companies will be permitted to sell up to \$1 million of securities in a 12-month period, subject to anti-fraud prohibitions. No specific disclosure document is prescribed, and there is no proscription on general solicitation. Investors purchasing Rule 504 securities will receive freely transferable securities.

The small business integrated registration and reporting system, modeled after Form S-18, is adopted with some refinements in response to public comment. The definition of small business issuer has been revised to include companies with annual revenues of less than \$25 million whose voting stock does not have a public float of \$25 million or more. As with Regulation A, Canadian issuers will be eligible to use the small business registration and reporting forms. Form numbers and other rules have been changed in anticipation of adoption of additional small business registration and reporting forms, as set forth in the accompanying release proposing further regulatory simplification for small business issuers.⁴³

Finally, the proposed changes to the rules under the Trust Indenture Act to increase the levels of debt that may be offered without full compliance with that Act are adopted as proposed.

II. Small Business Initiatives

A. Regulation A

As adopted, the dollar ceiling for a Regulation A offering is now \$5 million in any 12-month period,⁴⁴ including no

more than \$1.5 million in non-issuer resales.⁴⁵ In response to comment, the rule has been revised to make clear that the dollar amount is determined with reference to the dollar amount sold in the 12 months preceding the offering. Use of other "small issues" exemptions do not reduce the Regulation A dollar ceiling.⁴⁶

1. Scope of the Exemption

The categories of companies eligible to use the Regulation A exemption has been expanded from that proposed to include qualifying Canadian issuers as well as those non-operating entities proposed to be excluded for the first time (other than blank check offerings). Although, as noted in the Proposing Release, in recent years Canadians have not relied on the exemption, the changes in Regulation A may make the exemption more attractive not only to domestic but also Canadian companies.⁴⁷ Partnerships or certain other entities organized primarily for the purpose of investing in properties, commodities or other investment vehicles have long been eligible to use Regulation A, and their proposed exclusion has not been adopted. After consideration of public comment, the Commission believes it appropriate to reduce the costs for these small non-reporting issuers, particularly in view of the direct oversight by the Commission of the disclosures made under Regulation A.

The current exclusions of issuers of fractional undivided interests in certain oil, gas or mineral rights⁴⁸ and investment companies⁴⁹ are continued

requirements for issues of securities which do not exceed \$5 million under conditions which further the public interest and protection of investors.

⁴³ Secondary offerings by affiliates are ineligible for a Regulation A exemption where the issuer has had no net income for each of the two most recent fiscal years. The escrow rule, as well as the recommended format for escrow (Form 7-A), and the companion ceiling reduction provisions in old Rule 253 have been eliminated, just as proposed.

⁴⁴ E.g., Securities Act Rules 236, 504, and 505 [17 CFR 230.236, 504 and 505] and Regulations B [17 CFR 230.300-230.346], E [17 CFR 230.601-230.610a] and F [17 CFR 230.651-230.656].

⁴⁵ Canadian persons had been required to consent to service of process on forms established by the Commission (Forms 3-A, 4-A, 5-A and 6-A), which are now rescinded. Form F-X has been amended to permit its use for this purpose by Canadian issuers engaged in a Regulation A offering.

⁴⁶ Regulation B provides exemptive relief for such issuers.

⁴⁷ These include companies registered or required to be registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 *et seq.*

and the exclusion for "blank check" companies⁵⁰ is adopted. As under current Regulation A, an issuer's securities may not be sold in reliance on the exemption if the company, or a controlling person or underwriter, is subject to one of a series of enumerated legal remedies and sanctions.⁵¹

Although several commenters suggested the inclusion of reporting small business issuers in the list of eligible companies, the Commission is of the view that particularly in view of the small business integrated registration and reporting system adopted today the availability of Regulation A for reporting companies is not necessary.

A number of commenters addressed the Commission inquiry as to whether offerings of "penny stocks" should be prohibited under the Regulation A exemption. Most were of the view that lower priced offerings by legitimate small business issuers would be the main beneficiaries of the revised exemption and that there are now adequate safeguards governing the penny stock market to counter marketing abuses which have arisen in this market in the past. The Commission is persuaded that exclusion of legitimate small business operating companies from the exemption because of the trading price of their securities is not necessary for investor protection and would foreclose significant financing options to small developing companies.

2. Disclosure and Procedural Requirements

Regulation A requires the qualification of a prescribed offering statement which has been filed with the Commission, and delivery of a required offering circular, the form and content of which has been adopted as proposed. Corporate issuers now have the option to use a question-and-answer format, in

⁵⁰ A "blank check" company is one that has no specific business or plan except to locate and acquire a presently unknown business or opportunity. In response to public comment, the Commission has determined to use a definition which precludes the use of Regulation A by any blank check issuer regardless of whether or not it is issuing a penny stock. See Section 7(b) of the Securities Act, 15 U.S.C. § 77g(b).

⁵¹ The disqualification provisions describe specific sanctions against the issuer, its controlling persons and any underwriter in its employ which preclude reliance upon Regulation A. The Commission may, in appropriate circumstances, waive such disqualifications upon a showing of good cause. Because of the renumbering of the rules in Regulation A, a technical revision to the reference in Rule 505 of Regulation D, 17 CFR 230.505 which picks up the same disqualification provisions has been made.

⁴³ See Securities Act Release No. 6950 (hereinafter referred to as the "Proposing Release").

⁴⁴ Regulation A has been adopted pursuant to the authority granted to the Commission under section 3(b) of the Securities Act [15 U.S.C. § 77c(b)] to provide exemptions from the registration

addition to the more traditional disclosure formats.⁵²

The Commission's safe harbor provisions relating to forward looking information have been specifically made applicable to Regulation A. Therefore, good faith projections, with a reasonable basis, of revenues, income, earnings per share, capital expenditures, dividends, capital structure and other financial items may be made in Regulation A filings and the "test the water" submissions and fall within the protection of the Commission's safe harbor rules, under the same conditions as for other Commission filings.⁵³

Procedural and timing requirements for commencement of a Regulation A offering have been revised as proposed to conform to those used for registered offerings. Requirements as to form, legibility and signatures for the required offering statement have been adopted as proposed. The Commission has delegated to the staff the authority to grant requests to qualify offering statements under Regulation A.⁵⁴ The Commission retains the authority to deny such requests. The authority to act with respect to requests for withdrawals and abandonments of offering statements continues to be delegated to the staff.⁵⁵

As in the registration context, issuers may begin to offer the securities to be sold in a Regulation A offering as soon as the offering statement is filed. Once an offering statement is filed, a written offer can be made only through the use of a preliminary or final offering circular. As under the current Regulation, advertisements and radio and television broadcasts containing information specified by rule concerning the issuer and the securities being offered may be used, so long as they indicate from whom an offering circular may be obtained.⁵⁶

⁵² The reintroduction of Canadian issuers into the list of Regulation A eligible companies necessitates a change to the instructions in Part F/S of the Form 1-A Offering Statement to require that Canadian financial statements be reconciled to U.S. generally accepted accounting principles. This position is consistent with a long-standing requirement in Regulation A.

⁵³ In addition, the type of information called for by Items 4, 47, 48 and 49, relating to milestones and other forward looking information in the question-and-answer format would also be covered.

⁵⁴ The authority has been delegated to the Director of the Division of Corporation Finance and the Regional Administrators: 17 CFR 200.30-1(c)(2); 17 CFR 200.30-6(b).

⁵⁵ 17 CFR 200.30-1(c)(3); 17 CFR 200.30-6(b).

⁵⁶ A note has been added to Rule 256 [17 CFR 230.256] to make clear that additional advertisements and scripts do not have to be filed if they are substantially the same as that previously filed.

Sales may not be made under Regulation A until the offering statement is qualified. The timing of qualification of the offering statement has been conformed to that in registered offerings. Absent the use of a delaying notation procedure, an offering statement would be deemed qualified 20 calendar days after being first filed with the Commission.⁵⁷

Delivery of a preliminary or final offering circular at least 48 hours prior to the confirmation of sale is required.⁵⁸ Offering circulars must be updated annually during the term of a continuous offering, as well as revised whenever the information presented has become false and misleading, material developments have occurred, or there has been a fundamental change in the information initially presented.

Periodic information regarding the course of the distribution, as well as information about the application of the proceeds from the offering, must be filed with the Commission. Form 2-A has been amended to require data similar to that sought in connection with registered offerings.

In response to comment, the provisions governing the filing of the Form 2-A to report sales and the use of proceeds, have been amended to clarify that the failure to file the Form 2-A does not cause the exemption to be lost. The failure continues to be a ground for suspension of the exemption by the Commission. A similar change has been made to the provisions regarding the filing of additional sales material.

The bases for administratively suspending a Regulation A exemption have been adopted as proposed. Questions have been raised with respect to the impact of an administrative suspension upon prior offers and sales made in reliance upon Regulation A. The entry of a suspension in and of itself does not affect the exempt status of prior offers and sales under Regulation A. Of course, where the suspension is based on action or inaction that rendered the exemption unavailable, unregistered offers and sales would have to qualify for another exemption or

⁵⁷ Interim amendments to the offering statement would restart the 20 calendar day period.

The cover page of Form 1-A now contains the legend available under Rule 252(g)(2) which would have to be deliberately omitted by an issuer that wishes to be qualified 20 days after filing. Other Commission forms utilize this technique, which avoids unnecessary expense for issuers that inadvertently omit the legend.

⁵⁸ This process is the same as that available with registered offerings. The preliminary offering circular must be substantially complete in order to satisfy this 48 hour rule. Pricing information, as defined in Rule 430A, 17 CFR 230.430A, is not required to be included.

would violate section 5 of the Securities Act.

3. Substantial and Good Faith Compliance

The Commission has adopted the rule governing substantial and good faith compliance with the terms, conditions and requirements of Regulation A. Under this provision, an issuer will not necessarily lose the exemption with respect to a particular investor if the issuer failed to comply with a requirement under Regulation A, provided that the failure did not pertain to a provision of the rule directly intended to protect that person. The failure would, however, violate a Commission rule. Thus, for example, failure to deliver the mandated offering circular to a single investor, would preclude reliance on the exemption for that particular sale as a violation of Rule 251(d)(2), but would not, in and of itself, preclude reliance on the exemption for other offers and sales made in compliance with the Regulation.

The exemption will not be lost if the issuer shows that the requirement was not intended to protect the particular investor, the violation was not material to the offering as a whole and the issuer had made a good faith attempt to comply with all of the requirements of Regulation A. The provisions regarding issuer qualification, as well as the requirements to file an offering statement and to stay within specified dollar limitations, are not subject to the substantial good faith compliance standard.

B. "Testing the Waters"

As discussed in the March Release, one of the major impediments to a Regulation A financing for a small start-up or developing company with no established market for its securities, is the cost of preparing the mandated offering statement. The full costs of compliance would be incurred without knowing whether there will be any investor interest in the company.

To remedy this situation, the Commission proposed for the first time to permit companies relying on the Regulation A exemption to "test the waters" for potential interest in the company prior to filing and delivery of the mandated offering statement. All test the water documents are required to be submitted to the Commission at the time of first use.⁵⁹ The proposal was

⁵⁹ The test the waters material submitted to the Commission will be a public document, placed in the Commission's files and subject to public inspection. The submission of subsequent soliciting

enthusiastically endorsed by private sector commenters as a necessary and appropriate solution to a significant regulatory impediment to small business financing, and, as drafted, is consistent with investor protection interests.

A number of refinements have been included in the test the water provisions in response to public comment. First, while the Regulation continues to require that the "testing of the waters" begin with a written solicitation of interest submitted to the Commission at the time of first use, the rules have been revised to make clear that submission of the document is not a condition to the exemption. Failure to comply with the requirement is a grounds for Commission suspension of the exemption.

As proposed, the written test the water document was a free writing subject to the inclusion of two mandated statements—first, that no funds were being solicited or would be accepted, and secondly that a detailed offering document would follow. Some commenters suggested that even these few items should be deleted, while others suggested additional requirements or specific prescription of the content.

The rule as adopted continues to provide for free writing with the inclusion of the following items:

1. A statement that no money is being solicited, or will be accepted; that no sales can be made until delivery and qualification of the offering circular, and that indications of interest involve no obligation or commitment of any kind; and

2. A brief, general identification of the company's business, products and chief executive officer.

The rule has been revised to make clear that inclusion of these statements in the soliciting document is not a condition to the exemption, but failure to include the statements is a basis for Commission suspension of the exemption.

An issuer may deliver the solicitation material to prospective investors, or publish it in a newspaper or other print media. In a change from the proposal and in response to public comments, the use of broadcast media for this purpose, whether on radio or television, is also permitted.

At the time of submission to the Commission, the issuer must provide the name and telephone number of a person who can respond to questions regarding the document. The submission should be

made at the Commission office (whether a Regional Office or Headquarters) where the issuer intends to file its Regulation A offering statement. In the case of a broadcast, any script should be submitted. Oral communications between the issuer and prospective investors are permitted but only after a solicitation of interest document has been submitted to the Commission.

Once the offering statement required by Regulation A is filed with the Commission, the issuer may not continue to use its written "test the waters" solicitation materials. The rule requires that at least 20 calendar days elapse between the last use of the solicitation of interest document or broadcast and any sale of securities in the Regulation A offering. Compliance with the rules limiting the use of the test the water documents after filing of the offering statement is not a condition to the exemption, but is a violation of the rule and is a basis for Commission suspension of the exemption.

Questions have been raised as to the application of the Commission's integration doctrine to the situation where an issuer relies upon the test the water process, determines not to go forward with a Regulation A offering, but later decides to offer and sell securities either on some exempt basis or through registration under the Securities Act. The Commission does not believe it to be in either the investors' or the issuer's interest to deter resort to a registered offering because of a good faith change of plans. Thus, where an issuer decides to forego the Regulation A exempt offering and does not file a Regulation A offering statement with the Commission, but instead proceeds with a registered offering after testing the waters, the rules would treat the solicitations of interest made in reliance upon Rule 254 as exempt, provided that at least 30 days had elapsed between the issuer's last use of a written testing of the waters document and the filing of the registration statement, and that all written solicitation material had been submitted to the Commission. If the offering statement is filed, Rule 251(c) would apply. With respect to all other offerings, the provisions of Rule 251(c) would govern, whether or not test the water materials have been used pursuant to Rule 254.

C. Rule 504 Under Regulation D

A significant number of commenters, particularly small businesses, favored the Commission's proposal to eliminate all restrictions on the Rule 504 exemption, and the revisions to Rule 504 are adopted as proposed, with one

exception. Based upon its own experience and the views of certain commenters, the Commission has excluded blank check companies from Rule 504. While former Rule 504 now Rule 504a is still available to blank check companies,⁶⁰ The Commission is issuing a proposal that would revoke entirely their eligibility to conduct such offerings.

Under new Rule 504, a public offering of up to \$1 million in a 12-month period by a non-Exchange Act reporting company⁶¹ is subject only to the anti-fraud and other civil liability provisions of the federal securities laws. While the filing of a Form D with the Commission continues to be required, the availability of the exemption is not contingent on that filing.⁶²

In light of the revisions to Rule 504, the special \$100,000 exemption under Regulation A,⁶³ which permits offerings of that size to be made without the use of an offering circular⁶⁴ is being eliminated. Commenters generally agreed that the changes to Rule 504 made Rule 257 unnecessary.

D. Integrated Disclosure System for Registration and Reporting for Small Business Issuers

1. Introduction

The Commission is adopting an integrated registration, reporting and qualification system for small business issuers under the Securities Act, Exchange Act and Trust Indenture Act. Issuers that meet the definition of a small business issuer, are eligible to use this new small business integrated disclosure system. The system consists of specialized forms under the Securities Act and the Exchange Act that reference disclosure requirements located in one central depository—Regulation S-B. In addition, rules have been adopted to permit offerings of debt securities up to \$10 million without full compliance with the Trust Indenture Act.

⁶⁰ Rule 504a [17 CFR 230.504a] is a redesignated Rule 504. New Rule 504 reflects the changes made hereby.

⁶¹ Rule 504 is not available to investment companies.

⁶² See Securities Act Rules 504(b)(1), 505(a)(1) and 506(a)(1) [17 CFR 230.504(b)(1), 17 CFR 230.505(a)(1), and 17 CFR 230.506(a)(1)].

⁶³ In the past three years, only 6 of the 177 Regulation A filings made with the Commission were pursuant to the terms of Rule 257.

⁶⁴ Current Rule 257 is not available for issues of assessable stock or by those within the descriptions of Rule 253(a), i.e., an entity incorporated or organized within one year prior to filing without a net income from operations, or if a longer existence but no net income from operations in at least one of the prior two fiscal years.

The disclosure system adopted today is part of a two tiered system for small business issuers. In the Proposing Release, the Commission is proposing entry level, transitional disclosure for small business issuers entering the disclosure system and undertaking small offerings of securities.

2. Definition of Small Business Issuer

As proposed, the Commission is adopting a revenue-based definition of small business issuer. This definition was favored by a majority of commenters. Generally, those that favored a revenue-based definition of small business issuer requested that the threshold be higher than the proposed \$15 million. Others favored a market capitalization-based definition. Several commenters suggested that a combination of tests be used.

In response to these comments, a small business issuer is defined as a company with revenues of less than \$25 million. However, if the aggregate market value of the issuer's voting stock held by non-affiliates (referred to as the "public float") equals or exceeds \$25 million, the issuer does not qualify as a small business issuer. An estimated 3,000 reporting public companies fall within the definition of small business issuer.⁶⁵

The definition of small business issuer has been revised to include Canadian issuers. This revision was made in response to comment that Canadian issuers are eligible to use Form S-18 and should therefore be eligible to use Form SB-2. Accordingly, the definition of small business issuer was revised to include Canadian registrants that otherwise meet the definition of small business issuer. A general instruction has been added to Regulation S-B directing Canadian small business issuers to the applicable foreign issuer disclosure requirements of Regulation S-K. Technical amendments have been made to rules under the Trust Indenture Act so as to permit the use of a Canadian trustee in connection with the offering of debt securities on Form SB-2.⁶⁶

Accordingly, as adopted, a small business issuer is defined as a U.S. or Canadian entity with revenues of less than \$25,000,000 unless the issuer's public float (the aggregate market value of voting stock held by non-affiliates) is

\$25 million or more. Investment companies are excluded from the definition. Further, if the small business issuer is a majority owned subsidiary of another company, its parent must also meet the definition of small business issuer.

3. Registration Requirements of the Securities Act

Form SB-2⁶⁷ is the designated Securities Act registration form for small business issuers. As proposed, there is no dollar limit for offerings on Form SB-2 and the Form may be used for both initial and repeat offerings, and for both primary and secondary offerings. Small business issuers may file initial public offerings on Form SB-2 with the regional office closest to the issuer's principal place of business or at the Commission's headquarters.⁶⁸ All subsequent filings will be made at the Commission's headquarters.

4. Registration and Reporting Under the Exchange Act

The Commission has adopted a new series of forms and amendments to forms under the Exchange Act for small business issuers. Specifically, the Commission has adopted an Exchange Act registration statement form for small business issuers—Form 10-SB. Form 10-KSB and Form 10-QSB are the designated annual and quarterly reports for small business issuers. An instruction was added to Item 7 of Form 8-K relating to small business acquisitions and general instructions were added to Schedules 14A and 14C, and Rule 14a-3, relating to their use by small business issuers.

a. *Financial Information Required by Regulation S-B.* The financial information required by Regulation S-B is substantially the same as the financial statement requirements of Form S-18 but has a component to address interim financial statement requirements. Item 310 of Regulation S-B is being adopted with several modifications. First, additional requirements are added as necessary in order to accommodate the inclusion of Canadian issuers in the SB series. Second, at the suggestion of several commenters, the definition of a significant business found in Rule 405 of Regulation C is being incorporated into

Item 310 of Regulation S-B in lieu of cross-referencing. Finally, the ability to use pro forma financial statements filed on Form 8-K as the basis for testing significance of acquired businesses is imported from Regulation S-X.

One commenter requested clarification of whether filings by a registrant which no longer qualifies as a small business issuer would be required to contain all information and schedules required by Regulation S-X for those periods during which the issuer qualified and reported as a small business. Consistent with the approach for annual reports following a Form S-18, if a registrant was permitted to and filed financial statements which did not comply with Regulation S-X and the issuer later elects or is required to provide financial statements on forms which require compliance with Regulation S-X, such compliance will not apply to periods in which the registrant was not required to and did not present such information.

A further clarification in response to a comment letter involves interim financial information of development stage companies. Consistent with staff administrative policy, if a development stage company is not readily able to provide financial information for comparative interim periods before filing its initial public offering, the requirement to provide such information is waived.

In a separate release, the Commission is proposing two revisions to these financial statement requirements for small business issuers. First, the Commission is proposing an automatic waiver of financial statement requirements relating to specified significant acquisitions when audited financial statements are not readily available. Second, the Commission is proposing to extend to initial public offerings of small business issuers the ability to conduct a registered offering within 90 days of year end without audited financial statements for the latest fiscal year.

b. *Narrative Disclosure in SB Series of Forms.* The narrative disclosure requirements in Regulation S-B are applicable to all registration and reporting obligations of small business issuers. The disclosure requirements in Regulation S-B generally parallel those of Regulation S-K. However, where such requirements were simplified or not required by Form S-18.

Regulation S-B generally tracks the substantive disclosure requirements of Form S-18. Regulation S-B is adopted in substantially the same form as proposed. The significant changes

⁶⁵ This figure is derived from publicly available data sources which do not include all reporting companies in their data bases. Accordingly, the actual number of publicly held companies that meet definitional tests may be higher.

⁶⁶ Revisions were made to Rules 4d-9 and 10a-5 under the Trust Indenture Act. 17 CFR 260.4d-9, 17 CFR 260.10a-5.

⁶⁷ As proposed, this registration statement form was designated Form SB-1. It has been redesignated Form SB-2 in light of the Commission's concurrent proposal of new Form SB-1, as a transitional Securities Act registration form for small business issuers registering small offerings.

⁶⁸ Post-effective amendments to initial public offerings on Form SB-2 would be filed with the Commission office in which the initial registration statement was filed.

between Regulation S-B as adopted and as proposed are outlined below.⁶⁹

Item 10(b) was added to specify the circumstances under which issuers may enter and exit from the small business registration and reporting system.

Item 101(a) was revised in response to comment to reduce from five to three years the period for which disclosure of the small business issuer's business development is required. This marks a departure from Regulation S-K which requires disclosure of an issuer's business development over the course of the past five years.

Item 102 was revised to specifically include, rather than cross reference, the Items of Form S-11 to which issuers that are engaged in real estate activity are required to respond.

In response to comment, Item 201(a)(2) was revised to require disclosure of the amount of securities that may be resold pursuant to Rule 144. As adopted, Item 201(a)(2) conforms to the disclosure

requirement of Form S-18. Item 201(b) was revised in response to comment and requires disclosure only of record holders.

Item 303 has been revised to require Management's Discussion and Analysis ("MD&A"), rather than business plan disclosure, where the issuer has had revenues in each of the last two years (or the last full year and latest interim period). In addition, amendments were made to MD&A in response to comments that proposed Item 303 of Regulation S-B could have been interpreted to require more disclosure than its Regulation S-K counterpart. Specifically, the proposed instruction to proposed Item 303, restating language from the Commission's interpretive release on MD&A, was deleted in response to the comment that incorporating the release into the text of the Item raised questions about the scope of the Item. As the interpretive guidance in the MD&A release applies equally to both small and large issuers, the SB Item was revised to avoid suggesting otherwise. In addition, language from Item 303 of Regulation S-K was added to clarify that the discussion and analysis shall focus specifically on material events, trends and uncertainties known to management that could cause reported financial information not to be necessarily indicative of future operating results or financial condition. The statement from Regulation S-K Item 303 that issuers are encouraged but not required to discuss forward looking information has also been included in response to comment.

As proposed, Item 402 of Regulation S-B, which calls for disclosure of executive compensation, was modeled after Form S-18, rather than Item 402 of Regulation S-K. After the small business initiatives were issued in the March Release, the Commission issued proposals to amend executive compensation disclosure requirements, to require a clear and concise tabular presentation of compensation paid or awarded to executive officers, and the directors' bases for making their compensation decisions.⁷⁰ The Commission proposed to exclude small business issuers from certain of the proposed executive compensation amendments—those requiring additional information concerning the relationships between compensation committee or board members and the registrant where the company either does not have a compensation committee composed entirely of outside directors or has

cross-compensation committee memberships with another registrant.⁷¹ Comment was requested as to whether the exclusion for small business issuers was appropriate⁷² and whether small business issuers should also be excluded from the proposed table providing disclosure about option value under various rates of stock appreciation.⁷³

The Commission will consider comment on, and reach a determination concerning, the scope of small business issuer executive compensation disclosure in connection with its compensation initiative.⁷⁴ In that connection, commenters may wish to address whether small business issuers should be excluded from additional aspects of the proposed executive compensation proposals, including the proposed performance chart⁷⁵ and compensation committee report.⁷⁶ Should small business compensation disclosure be limited to the proposed summary table?⁷⁷

Item 501 was revised in response to comment that inclusion of a separate column in the offering proceeds table is more burdensome on small business issuers. Accordingly, footnote disclosure of offering expenses, now required under Item 501, has been continued.

As suggested by one commenter, the exhibits required by Items 601(b) (20) and (23) of Regulation S-K will also be required under Regulation S-B. These exhibits are required to be filed only if a small business issuer incorporates into its annual report on Form 10-KSB or quarterly report on Form 10-QSB a report submitted to shareholders.

The Commission also adopted the redesignation of Item 17A of Form S-18 as Guide 7 under the Securities Act and Exchange Act. Accordingly, all issuers engaged in mining operations, including small business issuers, should refer to Guide 7 for industry specific disclosure requirements.⁷⁸ Small business issuers engaged in real estate operations, banking activities and oil and gas should also refer to the applicable industry guide.

c. Operation of SB Reporting System.

For a company entering the

⁷¹ Proposed Item 402(j)(2)(i)(A), (B); see Securities Act Release No. 6940, 57 FR at 29596, 29605.

⁷² *Id.* at 29597.

⁷³ *Id.* at 29588; see proposed Item 402(c), 57 FR at 29600.

⁷⁴ Comment letters should refer to File No. S7-16-92.

⁷⁵ Proposed Item 402(k), 57 FR at 29607.

⁷⁶ Proposed Item 402(j)(1), 57 FR at 29605.

⁷⁷ See proposed Item 402(b), 57 FR at 29599-600.

⁷⁸ See proposed Items 801(g) and 802(g) of Regulation S-K [17 CFR 229.801(g) and 802(g)].

⁶⁹ In response to comments, the following revisions were also made to Regulation S-B:

- "Common stock" in Item 10(c)(2) was replaced with the term "common equity";

- "Market value" in Item 10(c)(3) was replaced with the term "public market" and the definition thereof has been expanded;

- "Small business issuer" was revised to state simply that the term refers to the issuer and its consolidated subsidiaries;

- The last sentence of Item 10(d)(1) requiring disclosure of only material information was deleted;

- Item 101(a)(4) (number of employees) was redesignated as Item 101(b)(12) so as not to require three years of employment disclosure;

- Item 101(b) was revised so as not to require disclosure of backlog data or disclosure of the names of material customers;

- Item 101(b)(11) was revised in order to distinguish between company sponsored and customer sponsored research and development expenses to parallel Regulation S-K;

- Item 103(a)(5) of Regulation S-B was revised so as to not mandate disclosure of the amount of damages;

- Instruction 2 to Item 103 was revised so as to require disclosure of bankruptcy and receivership proceedings only with respect to the registrant;

- "Disclose" was added to instruction 4 to Item 103;

- "Material" was added to Item 202(b);

- The parenthetical in Item 401(a)(1) was deleted;

- Item 401(a)(5) was revised so as to only require disclosure of directorships in other publicly held companies;

- Item 501(a)(8) was revised to not require red-ink;

- "More" replaced the word "less" in Item 506(a);

- Item 506(b) was revised to add the phrase "or since its inception, whichever period is shorter";

- An instruction was added to Item 507 to state that selling securityholder information may be combined with disclosure under Item 403;

- Item 510 was revised to delete the undertaking therein and to cross reference the identical undertaking in Item 512;

- Item 511 was revised to specifically reference listing fees; and

- Item 601(b)(13) was revised to reference the SB forms.

⁷⁰ See Securities Act Release No. 6940 (June 23, 1992).

Commission's disclosure system, either through a Securities Act or an Exchange Act registration statement, its eligibility to use the optional SB system will depend on the level of its revenues in its last full fiscal year, and its capitalization as of a date within 60 days prior to the offering in a Securities Act registration statement or the filing of the registration statement under the Exchange Act. Continued eligibility to use the system will be made at the commencement of each fiscal year.

Once reporting, a company may continue to report under the small business integrated disclosure system until it exceeds the \$25 million revenues for two consecutive years or public float test for two consecutive years, based on its annual report on Form 10-KSB. The two-year test is adopted to avoid the possibility that temporary changes in the level of revenues or public float, may force a small business to exit prematurely the small business disclosure system. Accordingly, a small business issuer must exceed one of the two tests, for two consecutive years, in order to become eligible for the small business disclosure system.

In order for a reporting company to enter the small business disclosure system, it must meet the definition of small business issuer for two consecutive years. In entering the disclosure system, the issuer must meet both prongs of the test, revenues and public float, for two consecutive years.

d. Use of Forms S-2, S-3, S-4 and S-8 by Small Business Issuers. The Commission's proposal to add instructions to Forms S-2, S-3 and S-8 to enable small business issuers to use those forms while maintaining the SB level of disclosure has been adopted. Under these amendments, small business issuers are permitted to register securities on Forms S-2, S-3 and S-8 if they otherwise meet the eligibility requirements for use of those forms.⁷⁹ References in those forms to the disclosure requirements of Regulation S-K will be deemed to be references to Regulation S-B for small business issuers. With respect to the continuous reporting eligibility requirements of Forms S-2 and S-3, the SB series of periodic reports filed by small business issuers are deemed to satisfy those requirements.

⁷⁹ The proposed inclusion of a small business issuer in Form S-3 is intended to recognize the potential use of that Form by small business issuers for offerings which do not require the non-affiliated public float specified in General Instruction B.1. to Form S-3; primary offerings of debt and non-convertible preferred securities, secondary offerings, rights offerings, dividend or interest reinvestment plans, and conversions or warrants.

Form S-4, the Securities Act registration form for business combinations, has been amended as proposed to permit its use by small business issuers through satisfaction of the Regulation S-B requirements.⁸⁰ Form S-4 is available to Form S-2 eligible small business issuers which are registering securities or are being acquired in the business combination transaction.

e. Form 8-K Revisions. As proposed, an instruction has been added to Item 7 of Form 8-K, which requires the filing of historical and pro forma financial statements for significant business acquisitions. Item 7 refers to Regulation S-X for the determination of the periods for which the financial statements are required. A parallel instruction is included in Form SB-2 but the criteria for significance and the periods for which financial statements are required differ from Regulation S-X. The amendments incorporate an instruction in Form 8-K cross referencing financial statement requirements in Regulation S-B, which track the standard of significance which is found in Form SB-2, and derived from Form S-18.

E. Amendments to Rules Under Trust Indenture Act

The Commission has adopted the proposed amendments to rules under the Trust Indenture Act that parallel the limited offering exemptions discussed above. Specifically, Rule 4a-1 has been amended to increase to \$5 million the aggregate principal amount of securities that may be issued without an indenture.⁸¹ The Commission also has adopted new Rule 4a-2 to exempt from compliance with the Trust Indenture Act any offering of debt securities that is exempt from registration under Regulation A. Former Rule 4a-2 has been redesignated as Rule 4a-3 and amended to increase to \$10 million the

⁸⁰ Form SB-2 will be available only in "for cash" offerings of securities. Accordingly, small business issuers wishing to enter business combination transactions which involve the offer and sale of securities will continue to be required to register those transactions on Form S-4 or Form S-1. Small business issuers using Form S-1 are subject to the disclosure requirements of Regulation S-K. Small business issuers engaged in roll-up transactions on Form S-4 are also required to furnish the disclosure required by Item 901 et seq. of Regulation S-K. See Securities Act Release No. 6922, n.15 (October 30, 1991).

⁸¹ See Rule 4a-1 [17 CFR 260.4a-1] promulgated under section 304(a)(8) of the Trust Indenture Act. Section 304(a)(8) exempts from the provisions of the Trust Indenture Act any security issued otherwise than under an indenture. This exemption is limited within a 12-month period to the \$5 million amount of securities specified in section 3(b) of the Securities Act, or such lesser amount as the Commission shall establish by rule. Rule 4a-1 currently limits the section 304(a)(8) exemption to \$2,000,000.

aggregate principal amount of debt securities that may be issued under an indenture which need not be qualified under the Act.⁸² Technical amendments also were made in order to permit Canadian issuers of debt securities to use a Canadian trustee in connection with a qualified indenture.⁸³ Small business issuers are reminded that an indenture, pursuant to which registered debt securities are offered, should be filed as an exhibit to the registration statement.⁸⁴

F. Other Amendments

The Commission has adopted an amendment to Rule 481(b)(2) which requires a red-inked legend to be placed on a preliminary prospectus and a prospectus used in connection with Rule 430A to delete the reference to red ink. Thus the information required by Rule 481(b)(2) may be in any color ink.

G. Availability of the Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis, pursuant to the requirements of the Regulatory Flexibility Act,⁸⁵ regarding the rules adopted today. This analysis indicates that the revisions should aid small businesses in their efforts to raise capital while being consonant with the needs of and the protection of investors. The amendments are designed to minimize costs but do not sacrifice the important concerns of investors. A copy of the Final Regulatory Flexibility Analysis may be obtained from Twanna

⁸² See Rule 4a-2 [17 CFR 260.4a-2] promulgated under section 304(a)(9) of the Trust Indenture Act. The rights of the holders of the securities issued would be evidenced by the instrument sold to the holder and contract (indenture) under which that instrument was issued. See Division of Corporation Finance interpretive letter to Allied-Carson Corporation (February 12, 1976) with respect to debt securities issued without qualification of an indenture in reliance upon Section 304(a)(9) of the Trust Indenture Act.

Among the provisions which we believe should be included in the indenture are the usual covenants, events of default, and the procedures by which the collective rights of security holders may be enforced. Although it is possible that a provision for the enforcement of collective rights might be effected without providing an indenture trustee, as a practical matter such collective rights are best enforced by a trustee who is accorded specific powers for this purpose. Such trustee need not meet the qualification and conflict requirements of section 310 of the 1939 Act.

⁸³ Specifically, Trust Indenture Act Rules 4d-9 and 10a-5 were amended to add Form SB-2 to the list of forms pursuant to which offerings of debt securities with a Canadian trustee may be made.

⁸⁴ The indenture, which is an "[i]nstrument affecting the rights of security holders," is required to be filed as an exhibit to the registration statement by Item 601(b)(4) of Regulation S-K [17 CFR 229.601(b)(4)].

⁸⁵ 5 U.S.C. 604.

M. Young, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 7-8, Washington, DC 20549, (202) 272-2644.

H. Cost-Benefit Analysis

No specific empirical data was submitted in response to the Commission's invitation to provide information on the costs and benefits of the proposed revisions. However, the vast majority of the public commenters were of the view that the proposals if adopted would work some cost savings to issuers that chose to use the new procedures; further that investors would have adequate safeguards in the new system.

I. Certain Other Findings

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact that these rulemaking actions would have on competition and has concluded that they would not impose a significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission finds, in accordance with section 553(b) of the Administrative Procedure Act⁸⁶ that the action taken with respect to certain delegations of authority to the Director of the Division of Corporation Finance and the Regional Administrators relate solely to agency organization, procedure or practice, and that such section makes unnecessary the notice and prior publication ordinarily required by the Act.⁸⁷

J. Effective Date

The rules and forms relating to the integrated registration and reporting system for small business issuers as well as the revisions to Rule 504 of Regulation D and Regulation A are effective August 13, 1992. Pursuant to 5 U.S.C. 553(d)(1), immediate effectiveness is appropriate because the rules being adopted grant new exemptions and relieve restrictions for small business issuers and certain securities offerings. The benefits of this system to both persons subject to the federal securities laws as well as potential investors should be available at the earliest possible time.

III. Statutory Basis, Text of Proposals and Authority

The amendments to the Commission's rules and forms are being adopted pursuant to sections 3(b), 6, 7, 8, 10, and

19(a) of the Securities Act, Sections 12, 13, 15(d) and 23(a) of the Exchange Act, and Sections 304(a)(8), 304(a)(9), 304(d) and 319 of the Trust Indenture Act.

List of Subjects

17 CFR Parts 200, 228, 229, 230, 239, 240 and 249

Organization and program management, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 280

Trusts and trustees.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

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

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

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

2. By revising paragraph (c) of § 200.30-1 to read as follows:

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

(c) With respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) and Regulation A thereunder (§ 230.251, *et seq.* of this chapter):

(1) to authorize the granting of applications under Rule 262 (§ 230.262 of this chapter) upon a showing of good cause that it is not necessary under the circumstances that an exemption under Regulation A be denied;

(2) to authorize the issuance of orders qualifying offering statements pursuant to Rule 252(g) (§ 230.252(g) of this chapter); and

(3) to issue orders declaring offering statements withdrawn or abandoned pursuant to Rule 259 (§ 230.259 of this chapter).

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

§ 200.30-6 Delegation of authority to Regional Administrators.

(b) With respect to the Securities Act of 1933, 15 U.S.C. 77a *et seq.* and Regulation A thereunder, § 230.251 *et seq.* of this chapter, the same authority as that delegated to the Director of the Division of Corporation Finance in paragraphs (c)(2) and (c)(3) of § 200.30-1.

4. Part 228 is added to read as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

Subpart A—Regulation S-B

- § 228.10 (Item 10) General.
- § 228.101 (Item 101) Description of Business.
- § 228.102 (Item 102) Description of Property.
- § 228.103 (Item 103) Legal Proceedings.
- § 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.
- § 228.202 (Item 202) Description of Securities.
- § 228.303 (Item 303) Management's Discussion and Analysis or Plan of Operation.
- § 228.304 (Item 304) Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.
- § 228.310 (Item 310) Financial Statements.
- § 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.
- § 228.402 (Item 402) Executive Compensation.
- § 228.403 (Item 403) Security Ownership of Certain Beneficial Owners and Management.
- § 228.404 (Item 404) Certain Relationships and Related Transactions.
- § 228.405 (Item 405) Compliance With Section 16(a) of the Exchange Act.
- § 228.501 (Item 501) Front of Registration Statement and Outside Front Cover of Prospectus.
- § 228.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.
- § 228.503 (Item 503) Summary Information and Risk Factors.
- § 228.504 (Item 504) Use of Proceeds.
- § 228.505 (Item 505) Determination of Offering Price.
- § 228.506 (Item 506) Dilution.
- § 228.507 (Item 507) Selling Security Holders.
- § 228.508 (Item 508) Plan of Distribution.
- § 228.509 (Item 509) Interest of Named Experts and Counsel.
- § 228.510 (Item 510) Disclosure of Commission Position on Indemnification for Securities Act Liabilities.
- § 228.511 (Item 511) Other Expenses of Issuance and Distribution.
- § 228.512 (Item 512) Undertakings.
- § 228.601 (Item 601) Exhibits.
- § 228.701 (Item 701) Recent Sales of Unregistered Securities.
- § 228.702 (Item 702) Indemnification of Directors and Officers.

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa[25], 77aa[26], 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 781, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

§§ 228.10 (Item 10) General.

(a) *Application of Regulation S-B.* Regulation S-B is the source of disclosure requirements for "small business issuer" filings under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act").

(1) *Definition of small business issuer.* A small business issuer is defined as a

⁸⁶ 5 U.S.C. 553(b).

⁸⁷ 5 U.S.C. 553.

company that meets all of the following criteria:

- (i) has revenues of less than \$25,000,000;
- (ii) is a U.S. or Canadian issuer;
- (iii) is not an investment company; and
- (iv) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of \$25,000,000 or more.

Note: The public float of a reporting company shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

(2) *Entering and Exiting the Small Business Disclosure System.* (i) A company that meets the definition of small business issuer may use Form SB-2 for registration of its securities under the Securities Act; Form 10-SB for registration of its securities under the Exchange Act; and Forms 10-KSB and 10-QSB for its annual and quarterly reports.

(ii) For a non-reporting company entering the disclosure system for the first time either by filing a registration statement under the Securities Act on Form SB-2 or a registration statement under the Exchange Act on Form 10-SB, the determination as to whether a company is a small business issuer is made with reference to its revenues during its last fiscal year and public float as of a date within 60 days of the date the registration statement is filed. See Note to paragraph (a) of this Item.

(iii) Once a small business issuer becomes a reporting company it will remain a small business issuer until it exceeds the revenue limit or the public float limit at the end of two consecutive years. For example, if a company exceeds the revenue limit for two consecutive years, it will no longer be considered a small business. However, if it exceeds the revenue limit in one year and the next year exceeds the public float limit, but not the revenue limit, it will still be considered a small business. See Note to paragraph (a) of this Item.

(iv) A reporting company that is not a small business company must meet the definition of a small business issuer at the end of two consecutive fiscal years before it will be considered a small business issuer for purposes of using Form SB-2, Form 10-SB, Form 10-KSB and Form 10-QSB. See Note to paragraph (a) of this Item.

(v) The determination as to the reporting category (small business issuer or other issuer) made for a non-reporting company at the time it enters the disclosure system governs all reports relating to the remainder of the fiscal year. The determination made for a reporting company at the end of its fiscal year governs all reports relating to the next fiscal year. An issuer may not change from one category to another with respect to its reports under the Exchange Act for a single fiscal year. A company may, however, choose not to use a Form SB-2 for a registration under the Securities Act.

(b) *Definitions of terms.*

(1) *Common Equity*—means the small business issuer's common stock. If the small business issuer is a limited partnership, the term refers to the equity interests in the partnership.

(2) *Public market*—no public market shall be deemed to exist unless, within the past 60 business days, both bid and asked quotations at fixed prices (excluding "bid wanted" or "offer wanted" quotations) have appeared regularly in any established quotation system on at least half of such business days. Transactions arranged without the participation of a broker or dealer functioning as such are not indicative of a "public market."

(3) *Reporting company*—means a company that is obligated to file periodic reports with the Securities and Exchange Commission under section 15(d) or 13(a) of the Exchange Act.

(4) *Small business issuer*—refers to the issuer and all of its consolidated subsidiaries.

(c) *Preparing the disclosure document.*

(1) The purpose of a disclosure document is to inform investors. Hence, information should be presented in a clear, concise and understandable fashion. Avoid unnecessary details, repetition or the use of technical language. The responses to the items of this Regulation should be brief and to the point.

(2) Small business issuers should consult the General Rules and Regulations under the Securities Act and Exchange Act for requirements concerning the preparation and filing of documents. Small business issuers should be aware that there are special rules concerning such matters as the

kind and size of paper that is allowed and how filings should be bound. These special rules are located in Regulation C of the Securities Act (17 CFR 230.400 *et seq.*) and in Regulation 12B of the Exchange Act (17 CFR 240.12b-1 *et seq.*).

(d) *Commission policy on projections.* The Commission encourages the use of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines below set forth the Commission's views on important factors to be considered in preparing and disclosing such projections. (See also 17 CFR 230.175 and 240.3b-6).

(1) *Basis for projections.* Management has the option to present in Commission filings its good faith assessment of a small business issuer's future performance. Management, however, must have a reasonable basis for such an assessment. An outside review of management's projections may furnish additional support in this regard. If management decides to include a report of such a review in a Commission filing, it should also disclose the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant, and other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act, the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

(2) *Format for projections.* Traditionally, projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible to misleading inferences through selective projection of only favorable items. It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year.

(3) *Investor understanding.* Disclosures accompanying the

projections should facilitate investor understanding of the basis for and limitations of projections. The Commission believes that investor understanding would be enhanced by disclosure of the assumptions which in management's opinion are most significant to the projections or are the key factors upon which the financial results of the enterprise depend and encourages disclosure of assumptions in a manner that will provide a framework for analysis of the projection. Management also should consider whether disclosure of the accuracy or inaccuracy of previous projections would provide investors with important insights into the limitations of projections.

(e) *Commission policy on security ratings.* In view of the importance of security ratings ("ratings") to investors and the marketplace, the Commission permits small business issuers to disclose ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock in registration statements and periodic reports. In addition, the Commission permits disclosure of ratings assigned by any nationally recognized statistical rating organizations ("NRSROs") in certain communications deemed not to be a prospectus ("tombstone advertisements"). Below are the Commission's views on important matters to be considered in disclosing security ratings.

(1)(i) If a small business issuer includes in a filing any rating(s) assigned to a class of securities, it should consider including any other rating assigned by a different NRSRO that is materially different. A statement that a security rating is not a recommendation to buy, sell or hold securities and that it may be subject to revision or withdrawal at any time by the assigning rating organization should also be included.

(ii)(A) If the rating is included in a filing under the Securities Act, the written consent of any rating organization that is not a NRSRO whose rating is included should be filed. The consent of any NRSRO is not required. (See Rule 436(g) under the Securities Act (§ 230.436(g) of this chapter.)

(B) If a change in a rating already included is available before effectiveness of the registration statement, the small business issuer should consider including such rating change in the prospectus. If the rating change is material, consideration should be given to recirculating the preliminary prospectus.

(C) If a materially different additional NRSRO rating or a material change in a rating already included becomes available during any period in which offers or sales are being made, the small business issuer should consider disclosing this information in a sticker to the prospectus.

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

§ 228.101 (Item 101) Description of Business.

(a) *Business Development.* Describe the development of the small business issuer during the last three years. If the small business issuer has not been in business for three years, give the same information for predecessor(s) of the small business issuer if there are any. This business development description should include:

- (1) Form and year of organization;
- (2) Any bankruptcy, receivership or similar proceeding; and
- (3) Any material reclassification, merger, consolidation, or purchase or sale of a significant amount of assets not in the ordinary course of business.

(b) *Business of Issuer.* Briefly describe the business and include, to the extent material to an understanding of the issuer:

- (1) Principal products or services and their markets;
- (2) Distribution methods of the products or services;
- (3) Status of any publicly announced new product or service;
- (4) Competitive business conditions and the small business issuer's competitive position in the industry and methods of competition;
- (5) Sources and availability of raw materials and the names of principal suppliers;
- (6) Dependence on one or a few major customers;
- (7) Patents, trademarks, licenses, franchises, concessions, royalty agreements or labor contracts, including duration;
- (8) Need for any government approval of principal products or services. If government approval is necessary and the small business issuer has not yet received that approval, discuss the status of the approval within the government approval process;
- (9) Effect of existing or probable governmental regulations on the business;

(10) Estimate of the amount spent during each of the last two fiscal years on research and development activities, and if applicable the extent to which the cost of such activities are borne directly by customers;

(11) Costs and effects of compliance with environmental laws (federal, state and local); and

(12) Number of total employees and number of full time employees.

§ 228.102 (Item 102) Description of Property.

(a) Give the location of the principal plants and other property of the small business issuer and describe the condition of the property. If the small business issuer does not have complete ownership of the property, for example, others also own the property or there is a mortgage or lien on the property, describe the limitations on the ownership.

Instructions to Item 102(a)

1. Small business issuers engaged in significant mining operations also should provide the information in Guide 7 (§ 229.801(g) and § 229.802(g) of this chapter).

2. Small business issuers engaged in oil and gas producing activities also should provide the information in Guide 2 (§ 229.801(b) and § 229.802(b) of this chapter).

3. Small business issuers engaged in real estate activities should, in addition to Guide 5 (§ 229.801(e) of this chapter) provide responses to the following Items:

(b) Investment Policies

Describe the policy of the small business issuer with respect to each of the following types of investments. State whether there are any limitations on the percentage of assets which may be invested in any one investment, or type of investment, and indicate whether such policy may be changed without a vote of security holders. State whether it is the small business issuer's policy to acquire assets primarily for possible capital gain or primarily for income.

(1) *Investments in real estate or interests in real estate.* Indicate the types of real estate in which the small business issuer may invest, for example, office or apartment buildings, shopping centers, industrial or commercial properties, special purpose buildings and undeveloped acreage, and the geographic area(s) of these properties. Briefly describe the method, or proposed method, of operating and financing these properties. Indicate any limitations on the number or amount of mortgages

which may be placed on any one piece of property.

(2) *Investments in real estate mortgages.* Indicate the types of mortgages, for example, first or second mortgages, and the types of properties subject to mortgages in which the small business issuer intends to invest, for example, single family dwellings, apartment buildings, office buildings, unimproved land, and the nature of any guarantees or insurance. Describe each type of mortgage activity in which the small business issuer intends to engage such as originating, servicing and warehousing, and the portfolio turnover policy.

(3) *Securities of or interests in persons primarily engaged in real estate activities.* Indicate the types of securities in which the small business issuer may invest, for example, common stock, interest in real estate investment trusts, partnership interests. Indicate the primary activities of persons in which the small business issuer will invest, such as mortgage sales, investments in developed or undeveloped properties and state the investment policies of such persons.

(c) Description of Real Estate and Operating Data

This information shall be furnished separately for each property the book value of which amounts to ten percent or more of the total assets of the small business issuer and its consolidated subsidiaries for the last fiscal year. With respect to other properties, the information shall be given by such classes or groups and in such detail as will reasonably convey the information required.

(1) Describe the general character and location of all materially important properties held or intended to be acquired by or leased to the small business issuer and describe the present or proposed use of such properties and their suitability and adequacy for such use. Properties not yet acquired shall be identified as such.

(2) State the nature of the small business issuer's title to, or other interest in such properties and the nature and amount of all material mortgages, liens or encumbrances against such properties. Disclose the current principal amount of each material encumbrance, interest and amortization provisions, prepayment provisions, maturity date and the balance due at maturity assuming no prepayments.

(3) Outline briefly the principal terms of any lease of any of such properties or any option or contract to purchase or sell any of such properties.

(4) Outline briefly any proposed program for the renovation, improvement or development of such properties, including the estimated cost thereof and the method of financing to be used. If there are no present plans for the improvement or development of any unimproved or undeveloped property, so state and indicate the purpose for which the property is to be held or acquired.

(5) Describe the general competitive conditions to which the properties are or may be subject.

(6) Include a statement as to whether, in the opinion of the management of the small business issuer, the properties are adequately covered by insurance.

(7) With respect to each improved property which is separately described, provide the following in addition to the above:

- (i) Occupancy rate;
- (ii) Number of tenants occupying ten percent or more of the rentable square footage and principal nature of business of each such tenant and the principal provisions of each of their leases;
- (iii) Principal business, occupations and professions carried on in, or from the building;
- (iv) The average effective annual rental per square foot or unit;
- (v) Schedule of the lease expirations for each of the ten years starting with the year in which the registration statement is filed, stating:
 - (A) the number of tenants whose leases will expire,
 - (B) the total area in square feet covered by such leases,
 - (C) the annual rental represented by such leases, and
 - (D) the percentage of gross annual rental represented by such leases;
- (vi) Each of the properties and components thereof upon which depreciation is taken, setting forth the:
 - (A) federal tax basis,
 - (B) rate,
 - (C) method, and
 - (D) life claimed with respect to such property or component thereof for purposes of depreciation;
- (vii) The realty tax rate, annual realty taxes and estimated taxes on any proposed improvements.

Instruction

If the small business issuer has a number of properties, the information may be given in tabular form.

§ 228.103 (Item 103) Legal Proceedings.

(a) If a small business issuer is a party to any pending legal proceeding (or its property is the subject of a pending legal proceeding), give the following

information (no information is necessary as to routine litigation that is incidental to the business):

- (1) name of court or agency where proceeding is pending;
- (2) date proceeding began;
- (3) principal parties;
- (4) description of facts underlying the proceedings; and
- (5) relief sought.

(b) Include the information called for by paragraphs (a) (1) through (5) of this Item for any proceeding that a governmental authority is contemplating (if the small business issuer is aware of the proceeding).

Instructions to Item 103

1. A proceeding that primarily involves a claim for damages does not need to be described if the amount involved, exclusive of interest and costs, does not exceed 10% of the current assets of the small business issuer. If any proceeding presents the same legal and factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

2. The following types of proceedings with respect to the registrant are not "routine litigation incidental to the business" and, notwithstanding instruction 1 of this Item, must be described: bankruptcy, receivership, or similar proceeding.

3. Any proceeding that involves federal, state or local environmental laws must be described if it is material; involves a damages claim for more than 10% of the current assets of the issuer; or potentially involves more than \$100,000 in sanctions and a governmental authority is a party.

4. Disclose any material proceeding to which any director, officer or affiliate of the issuer, any owner of record or beneficially of more than 5% of any class of voting securities of the small business issuer, or security holder is a party adverse to the small business issuer or has a material interest adverse to the small business issuer.

§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.

(a) *Market information.* (1) Identify the principal market or markets where the small business issuer's common equity is traded. If there is no public trading market, so state.

(i) If the principal market for the small business issuer's common equity is an exchange, give the high and low sales prices for each quarter within the last two fiscal years and any subsequent

interim period for which financial statements are required by Item 310(b).

(ii) If the principal market is not an exchange, give the range of high and low bid information for the small business issuer's common equity for each quarter within the last two fiscal years and any subsequent interim period for which financial statements are required by Item 310(b). Show the source of the high and low bid information. If over-the-counter market quotations are provided, also state that the quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not represent actual transactions.

(2) If the information called for by paragraph (a) of this Item is being presented in a registration statement relating to a class of common equity for which at the time of filing there is no established public trading market, indicate the amount(s) of common equity:

(i) that is subject to outstanding options or warrants to purchase, or securities convertible into, common equity of the registrant;

(ii) that could be sold pursuant to Rule 144 under the Securities Act or that the registrant has agreed to register under the Securities Act for sale by security holders; or

(iii) that is being or has been proposed to be, publicly offered by the registrant unless such common equity is being offered pursuant to an employee benefit plan (or dividend reinvestment plan), the offering of which could have a material effect on the market price of the registrant's common equity.

(b) *Holders.* Give the approximate number of holders of record of each class of common equity.

(c) *Dividends.* (1) Discuss any cash dividends declared on each class of common equity for the last two fiscal years and in any subsequent period for which financial information is required.

(2) Describe any restrictions that limit the ability to pay dividends on common equity or that are likely to do so in the future.

Instruction

Canadian issuers should, in addition to the information called for by this Item, provide the information in Item 201(a)(1)(iv) of Regulation S-K and Instruction 4 thereto.

§ 228.202 (Item 202) Description of Securities.

(a) *Common or Preferred Stock.*

(1) If the small business issuer is offering common equity, describe any dividend, voting and preemption rights.

(2) If the small business issuer is offering preferred stock, describe the

dividend, voting, conversion and liquidation rights as well as redemption or sinking fund provisions.

(3) Describe any other material rights of common or preferred stockholders.

(4) Describe any provision in the charter or by-laws that would delay, defer or prevent a change in control of the small business issuer.

(b) *Debt Securities.*

(1) If the small business issuer is offering debt securities, describe the maturity date, interest rate, conversion or redemption features and sinking fund requirements.

(2) Describe all other material provisions giving or limiting the rights of debtholders. For example, describe subordination provisions, limitations on the declaration of dividends, restrictions on the issuance of additional debt, maintenance of asset ratios, etc.

(3) Give the name of any trustee(s) designated by the indenture and describe the circumstances under which the trustee must act on behalf of the debtholders.

(4) Discuss the tax effects of any securities offered at an "original issue discount."

(c) *Other Securities To Be Registered.* If the small business issuer is registering other securities, provide similar information concerning the material provisions of those securities.

§ 228.303 (Item 303) Management's Discussion and Analysis or Plan of Operation.

Small business issuers that have not had revenues from operations in each of the last two fiscal years, or the last fiscal year and any interim period in the current fiscal year for which financial statements are furnished in the disclosure document, shall provide the information in paragraph (a) of this Item. All other issuers shall provide the information in paragraph (b) of this Item.

(a) *Plan of Operation.*

(1) Describe the small business issuer's plan of operation for the next twelve months. This description should include such matters as:

(i) a discussion of how long the small business issuer can satisfy its cash requirements and whether it will have to raise additional funds in the next twelve months;

(ii) a summary of any product research and development that the small business issuer will perform for the term of the plan;

(iii) any expected purchase or sale of plant and significant equipment; and

(iv) any expected significant changes in the number of employees.

(b) *Management's Discussion and Analysis of Financial Condition and Results of Operations.*

(1) *Full fiscal years.* Discuss the small business issuer's financial condition, changes in financial condition and results of operations for each of the last two fiscal years. This discussion should address the past and future financial condition and results of operation of the small business issuer, with particular emphasis on the prospects for the future. The discussion should also address those key variable and other qualitative and quantitative factors which are necessary to an understanding and evaluation of the small business issuer. If material, the small business issuer should disclose the following:

(i) Any known trends, events or uncertainties that have or are reasonably likely to have a material impact on the small business issuer's short-term or long-term liquidity;

(ii) Internal and external sources of liquidity;

(iii) Any material commitments for capital expenditures and the expected sources of funds for such expenditures;

(iv) Any known trends, events or uncertainties that have had or that are reasonably expected to have a material impact on the net sales or revenues or income from continuing operations;

(v) Any significant elements of income or loss that do not arise from the small business issuer's continuing operations;

(vi) The causes for any material changes from period to period in one or more line items of the small business issuer's financial statements; and

(vii) Any seasonal aspects that had a material effect on the financial condition or results of operation.

(2) *Interim Periods.* If the small business issuer must include interim financial statements in the registration statement or report, provide a comparable discussion that will enable the reader to assess material changes in financial condition and results of operations since the end of the last fiscal year and for the comparable interim period in the preceding year.

Instructions to Item 303

1. The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition.

2. Small business issuers are encouraged, but not required, to supply forward looking information. This is distinguished from presently known data which will impact upon future

operating results, such as known future increases in costs of labor or materials. This latter data may be required to be disclosed.

§ 228.304 (Item 304) Changes In and Disagreements With Accountants on Accounting and Financial Disclosure.

(a)(1) If, during the small business issuer's two most recent fiscal years or any later interim period, the principal independent accountant or a significant subsidiary's independent accountant on whom the principal accountant expressed reliance in its report, resigned (or declined to stand for re-election) or was dismissed, then the small business issuer shall state:

(i) Whether the former accountant resigned, declined to stand for re-election or was dismissed and the date;

(ii) Whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or disclaimer of opinion, or was modified as to uncertainty, audit scope, or accounting principles, and also describe the nature of each such adverse opinion, disclaimer of opinion or modification;

(iii) Whether the decision to change accountants was recommended or approved by the board of directors or an audit or similar committee of the board of directors; and

(iv)(A) Whether there were any disagreements with the former accountant, whether or not resolved, on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the former accountant's satisfaction, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report; or

(B) The following information only if applicable. Indicate whether the former accountant advised the small business issuer that:

(1) Internal controls necessary to develop reliable financial statements did not exist; or

(2) Information has come to the attention of the former accountant which made the accountant unwilling to rely on management's representations, or unwilling to be associated with the financial statements prepared by management; or

(3) The scope of the audit should be expanded significantly, or information has come to the accountant's attention that the accountant has concluded will, or if further investigated might, materially impact the fairness or reliability of a previously issued audit report or the underlying financial statements, or the financial statements

issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent audited financial statements (including information that might preclude the issuance of an unqualified audit report), and the issue was not resolved to the accountant's satisfaction prior to its resignation or dismissal; and

(C) The subject matter of each such disagreement or event identified in response to paragraph (a)(1)(iv) of this Item;

(D) Whether any committee of the board of directors, or the board of directors, discussed the subject matter of the disagreement with the former accountant; and

(E) Whether the small business issuer has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each of such disagreements or events and, if not, describe the nature of and reason for any limitation.

(2) If during the period specified in paragraph (a)(1) of this Item, a new accountant has been engaged as either the principal accountant to audit the issuer's financial statements or as the auditor of a significant subsidiary and on whom the principal accountant is expected to express reliance in its report, identify the new accountant and the engagement date. Additionally, if the issuer (or someone on its behalf) consulted the new accountant regarding:

(i) The application of accounting principles to a specific completed or contemplated transaction, or the type of audit opinion that might be rendered on the small business issuer's financial statements and either written or oral advice was provided that was an important factor considered by the small business issuer in reaching a decision as to the accounting, auditing or financial reporting issue; or

(ii) Any matter that was the subject of a disagreement or event identified in response to paragraph (a)(1)(iv) of this Item, then the small business issuer shall:

(A) Identify the issues that were the subjects of those consultations;

(B) Briefly describe the views of the new accountant given to the small business issuer and, if written views were received by the small business issuer, file them as an exhibit to the report or registration statement;

(C) State whether the former accountant was consulted by the small business issuer regarding any such issues, and if so, describe the former accountant's views; and

(D) Request the new accountant to review the disclosure required by this Item before it is filed with the

Commission and provide the new accountant the opportunity to furnish the small business issuer with a letter addressed to the Commission containing any new information, clarification of the small business issuer's expression of its views, or the respects in which it does not agree with the statements made in response to this Item. Any such letter shall be filed as an exhibit to the report or registration statement containing the disclosure required by this Item.

(3) The small business issuer shall provide the former accountant with a copy of the disclosures it is making in response to this Item no later than the day that the disclosures are filed with the Commission. The small business issuer shall request the former accountant to furnish a letter addressed to the Commission stating whether it agrees with the statements made by the issuer and, if not, stating the respects in which it does not agree. The small business issuer shall file the letter as an exhibit to the report or registration statement containing this disclosure. If the letter is unavailable at the time of filing, the small business issuer shall request the former accountant to provide the letter so that it can be filed with the Commission within ten business days after the filing of the report or registration statement. Notwithstanding the ten business day period, the letter shall be filed within two business days of receipt. The former accountant may provide an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming within the ten business day period noted above. The interim letter, if any, shall be filed with the report or registration statement or by amendment within two business days of receipt.

(b) If the conditions in paragraphs (b)(1) through (b)(3) of this Item exist, the small business issuer shall describe the nature of the disagreement or event and the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required (unless that method ceases to be generally accepted because of authoritative standards or interpretations issued after the disagreement or event):

(1) In connection with a change in accountants subject to paragraph (a) of this Item, there was any disagreement or event as described in paragraph (a)(1)(iv) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the later fiscal year, there have been any transactions or events similar

to those involved in such disagreement or event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required.

Instructions to Item 304

1. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported as that term is defined in Rule 12b-2 under the Exchange Act (§ 240.12b-2); the disclosure called for by paragraph (a) of this Item must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A (§ 249.14a-101 *et seq.*). The disclosure called for by paragraph (b) of this Item must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this Item in an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 (§ 240.14a-3 or 240.14c-3 of this chapter), or in a proxy or information statement filed pursuant to the requirements of Schedule 14A (§ 240.14a-101 *et seq.*) or 14C (§ 240.14c-101 *et seq.*), in lieu of a letter pursuant to paragraph (a)(2)(ii)(D) or (a)(3) of this Item, before filing such materials with or furnishing such materials to the Commission, the small business issuer shall furnish the disclosure required by paragraph (a) of this Item to each accountant who was engaged during the period set forth in paragraph (a) of this Item. If any such accountant believes that the statements made in response to paragraph (a) of this Item are incorrect or incomplete, it may present its views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the small business issuer within ten business days of the date the accountant receives the small business issuer's disclosure. Further, unless the written views of the newly engaged accountant required to be filed as an exhibit by paragraph (a)(2)(ii)(D) of this Item have been previously filed with the Commission, the small business issuer shall file a Form 8-K (17 CFR 249.308 of this chapter) along with the annual report or proxy or information statement for the purpose of filing the written views as exhibits.

3. The information required by this Item need not be provided for a company being acquired by the small business issuer if such acquiree has not

been subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 (§ 240.14a-3 or 240.14c-3 of this chapter) for its latest fiscal year.

4. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or their designee) will generally suffice as the accountant advising the small business issuer of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

§ 228.310 (Item 310) Financial Statements.

Notes—1. Financial statements of a small business issuer, its predecessors or any businesses to which the small business issuer is a successor shall be prepared in accordance with generally accepted accounting principles in the United States.

2. Regulation S-X [17 CFR 210.1-210.12] Form and Content of and Requirements for Financial Statements shall not apply to the preparation of such financial statements, except that the report and qualifications of the independent accountant shall comply with the requirements of Article 2 of Regulation S-X [17 CFR 210.2], Articles 3-19 and 3-20 shall apply to financial statements of foreign private issuers and small business issuers engaged in oil and gas producing activities shall follow the financial accounting and reporting standards specified in Article 4-10 of Regulation S-X [17 CFR 210.4-10] with respect to such activities. To the extent that Article 11-01 [17 CFR 210.11-01] (Pro Forma Presentation Requirements) offers enhanced guidelines for the preparation, presentation and disclosure of pro forma financial information, small business issuers may wish to consider these items. Financial statements of foreign private issuers shall be prepared and presented in accordance with the requirements of Item 18 of Form 20-F except that Item 17 may be followed for financial statements included in filings other than registration statements for offerings of securities unless the only securities being offered are: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing securities holders of the class of securities to which the rights attach and

there is no standby underwriting in the United States or similar arrangement; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferrable warrants issued by the issuer of the securities being offered, or by an affiliate of such issuer.

3. The Commission, where consistent with the protection of investors, may permit the omission of one or more of the financial statements or the substitution of appropriate statements of comparable character. The Commission by informal written notice may require the filing of other financial statements where necessary or appropriate.

(a) *Annual Financial Statements.* Small business issuers shall file an audited balance sheet as of the end of the most recent fiscal year, or as of a date within 135 days if the issuers existed for a period less than one fiscal year, and audited statements of income, cash flows and changes in stockholders' equity for each of the two fiscal years preceding the date of such audited balance sheet (or such shorter period as the registrant has been in business).

(b) *Interim Financial Statements.* Interim financial statements, which may be unaudited, shall include a balance sheet as of the end of the issuer's most recent fiscal quarter and income statements and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year.

Instructions to Item 310(b)

1. Where Item 310 is applicable to a Form 10-QSB (§ 249.308b) and the interim period is more than one quarter, income statements must also be provided for the most recent interim quarter and the comparable quarter of the preceding fiscal year.

2. Interim financial statements must include all adjustments which in the opinion of management are necessary in order to make the financial statements not misleading. An affirmative statement that the financial statements have been so adjusted must be included with the interim financial statements.

(1) *Condensed Format.* Interim financial statements may be condensed as follows:

(i) Balance sheets should include separate captions for each balance sheet component presented in the annual financial statements which represents 10% or more of total assets. Cash and retained earnings should be presented regardless of relative significance to total assets. Registrants which present a

classified balance sheet in their annual financial statements should present totals for current assets and current liabilities.

(ii) Income statements should include net sales or gross revenue, each cost and expense category presented in the annual financial statements which exceeds 20% of sales or gross revenues, provision for income taxes, discontinued operations, extraordinary items and cumulative effects of changes in accounting principles or practices. (Financial institutions should substitute net interest income for sales for purposes of determining items to be disclosed.) Dividends per share should be presented.

(iii) Cash flow statements should include cash flows from operating, investing and financing activities as well as cash at the beginning and end of each period and the increase or decrease in such balance.

(iv) Additional line items may be presented to facilitate the usefulness of the interim financial statements including their comparability with annual financial statements.

(2) *Disclosure required and additional instructions as to Content.* (i) *Footnotes.* Footnote and other disclosures should be provided as needed for fair presentation and to ensure that the financial statements are not misleading.

(ii) *Material Subsequent Events and Contingencies.* Disclosure must be provided of material subsequent events and material contingencies notwithstanding disclosure in the annual financial statements.

(iii) *Significant Equity Investees.* Sales, gross profit, net income (loss) from continuing operations and net income must be disclosed for equity investees which constitute 20% or more of a registrant's consolidated assets, equity or income from continuing operations.

(iv) *Significant Dispositions and Purchase Business Combinations.* If a significant disposition or purchase business combination has occurred during the most recent interim period and the transaction required the filing of a Form 8-K (§ 249.308 of this chapter), pro forma data must be presented which reflects revenue, income from continuing operations, net income and income per share for the current interim period and the corresponding interim period of the preceding fiscal year as though the transaction occurred at the beginning of the periods.

(v) *Material Accounting Changes.* Disclosure must be provided of the date and reasons for any material accounting change. The registrant's independent accountant must provide a letter in the

first Form 10-QSB (§ 249.308b of this chapter) filed subsequent to the change indicating whether or not the change is to a preferable method. Disclosure must be provided of any retroactive change to prior period financial statements, including the effect of any such change on income and income per share.

(vi) *Development Stage Companies.* A registrant in the development stage must provide cumulative from inception financial information.

(c) *Financial Statements of Businesses Acquired or to be Acquired.*

(1) Financial statements for the periods specified in paragraph (c)(3) of this Item should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(2) A business combination is considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the small business issuer's most recent annual financial statements filed at or prior to the date of acquisition indicates that the business acquired or to be acquired meets any of the following conditions:

(i) The small business issuer's and its other subsidiaries' investments in and advances to the acquiree exceeds 10 percent of the total assets of the small business issuer and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the small business issuer exceeds 10 percent of its total common shares outstanding at the date the combination is initiated) or

(ii) The small business issuer's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the acquiree exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year, or

(iii) The small business issuer's equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the acquiree exceeds 10 percent of such income of the small business issuer and its subsidiaries

consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied: If income of the small business issuer and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

(3)(i) Financial statements shall be furnished for the periods prior to the date of acquisition, for those periods for which the small business issuer is required to furnish financial statements.

(ii) The financial statements covering fiscal years shall be audited.

(iii) The separate audited balance sheet of the acquired business is not required when the small business issuer's most recent audited balance sheet filed is for a date after the acquisition was consummated.

(iv) If none of the conditions in the definitions of significant subsidiary in paragraph (c)(2) of this Item exceeds 20%, income statements of the acquired business for only the most recent fiscal year and any interim period need be filed.

(4) If consummation of more than one transaction has occurred or is probable, the significance tests shall be made using the aggregate impact of the businesses and the financial statements may be presented on a combined basis, if appropriate.

(5) If the small business issuer made a significant business acquisition subsequent to the latest fiscal year end and filed a report on Form 8-K which included audited financial statements of such acquired business for the periods required by paragraph (c)(3) and the pro forma financial information required by paragraph (d) of this Item, the determination of significance may be made by using the pro forma amounts for the latest fiscal year in the report on Form 8-K rather than by using the historical amounts for the latest fiscal year of the registrant. The tests may not be made by "annualizing" data.

(d) *Pro Forma Financial Information.*

(1) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this Item, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet is required by paragraph (b) of this Item, a significant business

combination accounted for as a purchase has occurred;

(ii) After the date of the most recent balance sheet filed pursuant to paragraph (a) or (b) of this Item, consummation of a significant business combination accounted for as a purchase or a pooling has occurred or is probable.

(2) The provisions of paragraphs (c)(2) and (4) of this Item apply to paragraph (d) of this Item.

(3) Pro forma statements should be condensed, in columnar form showing pro forma adjustments and results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or;

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet required by paragraph (a) or (b) of this Item, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet. For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the small business issuer are required.

(e) *Real Estate Operations Acquired or to be Acquired.* If, during the period for which income statements are required, the small business issuer has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required by paragraph (a) or (b) of this Item, has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements (not including earnings per unit) for the two most recent years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and federal and state income taxes; *Provided, however,* That such audited statements need be presented for only the most recent fiscal year if:

(i) the property is not acquired from a related party;

(ii) material factors considered by the small business issuer in assessing the property are described with specificity in the registration statement with regard to the property, including source of

revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expenses (including but not limited to, utilities, *ad valorem* tax rates, maintenance expenses, capital improvements anticipated); and

(iii) the small business issuer indicates that, after reasonable inquiry, it is not aware of any material factors relating to the specific property other than those discussed in response to paragraph (e)(1)(ii) of this Item that would cause the reported financial information not to be necessarily indicative of future operating results.

(2) If the property will be operated by the small business issuer, a statement shall be furnished showing the estimated taxable operating results of the small business issuer based on the most recent twelve-month period including such adjustments as can be factually supported. If the property will be acquired subject to a net lease, the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. Disclosure must be provided of the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, a table should be provided which shows, for a limited number of years, the estimated cash distribution per unit indicating the portion reportable as taxable income and the portion representing a return of capital with an explanation of annual variations, if any. If taxable net income per unit will be greater than the cash available for distribution per unit, that fact and approximate year of occurrence shall be stated, if significant.

(f) *Limited Partnerships.* (1) Small business issuers which are limited partnerships must provide the balance sheets of the general partners as described in paragraphs (f)(2) through (f)(4) of this Item.

(2) Where a general partner is a corporation, the audited balance sheet of the corporation as of the end of its most recently completed fiscal year must be filed. Receivables, other than trade receivables, from affiliates of the general partner should be deducted from shareholders' equity of the general partner. Where an affiliate has committed itself to increase or maintain the general partner's capital, the audited balance sheet of such affiliate must also be presented.

(3) Where a general partner is a partnership, there shall be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(4) Where the general partner is a natural person, there shall be filed, as supplemental information, a balance sheet of such natural person as of a recent date. Such balance sheet need not be audited. The assets and liabilities should be carried at estimated fair market value, with provisions for estimated income taxes on unrealized gains. The net worth of such general partner(s), based on such balance sheet(s), singly or in the aggregate, shall be disclosed in the registration statement.

(g) *Age of Financial Statements.* At the date of filing, financial statements included in filings other than filings on Form 10-KSB must be not less current than financial statements which would be required in Forms 10-KSB and 10-QSB if such reports were required to be filed. If required financial statements are as of a date 135 days or more prior to the date a registration statement becomes effective or proxy material is expected to be mailed, the financial statements shall be updated to include financial statements for an interim period ending within 135 days of the effective or expected mailing date. Interim financial statements should be prepared and presented in accordance with paragraph (b) of this Item:

(1) When the anticipated effective or mailing date falls within 45 days after the end of the fiscal year, the filing may include financial statements only as current as the end of the third fiscal quarter; *Provided, however,* That if the audited financial statements for the recently completed fiscal year are available or become available prior to effectiveness or mailing, they must be included in the filing;

(2) If the effective date or anticipated mailing date falls after 45 days but within 90 days of the end of the small business issuer's fiscal year, the small business issuer is not required to provide the audited financial statements for such year end provided that the following conditions are met:

(i) The small business issuer is a reporting company and all reports due have been filed;

(ii) For the most recent fiscal year for which audited financial statements are not yet available, the small business issuer reasonably and in good faith expects to report income from continuing operations before taxes; and

(iii) For at least one of the two fiscal years immediately preceding the most

recent fiscal year the small business issuer reported income from continuing operations before taxes.

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

(a) *Identify directors and executive officers.* (1) List the names and ages of all directors and executive officers and all persons nominated or chosen to become such;

(2) List the positions and offices that each such person held with the small business issuer;

(3) Give the person's term of office as a director and the period during which the person has served;

(4) Briefly describe the person's business experience during the past five years; and

(5) If a director, identify other directorships held in reporting companies naming each company.

(b) *Identify Significant Employees.* Give the information specified in paragraph (a) of this Item for each person who is not an executive officer but who is expected by the small business issuer to make a significant contribution to the business.

(c) *Family relationships.* Describe any family relationships among directors, executive officers, or persons nominated or chosen by the small business issuer to become directors or executive officers.

(d) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past five years that are material to an evaluation of the ability or integrity of any director, person nominated to become a director, executive officer, promoter or control person of the small business issuer:

(1) Any bankruptcy petition filed by or against any business of which such person was a general partner or executive officer either at the time of the bankruptcy or within two years prior to that time;

(2) Any conviction in a criminal proceeding or being subject to a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Being subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining, barring, suspending or otherwise limiting his involvement in any type of business, securities or banking activities; and

(4) Being found by a court of competent jurisdiction (in a civil action), the Commission or the Commodity Futures Trading Commission to have violated a federal or state securities or

commodities law, and the judgment has not been reversed, suspended, or vacated.

§ 228.402 (Item 402) Executive Compensation.

(a) *Cash compensation.* Complete the following table and include all cash compensation paid or to be paid to the following persons for services rendered in all capacities to the small business issuer during the last fiscal year:

(1) each of the small business issuer's five most highly paid executive officers whose cash compensation exceeds \$60,000, giving their names; and

(2) All executive officers as a group, stating the number of persons in the group without naming them.

CASH COMPENSATION TABLE

A	B	C
Name of individual or number in group	Capacities in which served	Cash compensation

Instructions to Item 402(a)

1. This table shall include:

(a) all cash bonuses paid or to be paid for all services rendered during the last fiscal year unless the amounts have not been allocated at the time of filing the registration statement or report and

(b) all compensation that would have been paid in cash but was deferred.

2. Paragraph (a) of this Item applies to any person who was an executive officer at any time in the most recent fiscal year. However, information need not be given for any part of that year during which a person was not an executive officer of the small business issuer, if it so states.

(b)(1) *Compensation under plans.* Describe briefly all plans under which the small business issuer paid or distributed cash or non-cash compensation during the most recent fiscal year and all plans under which the small business issuer proposes to pay or distribute cash or non-cash compensation in the future to the individuals and group named in paragraph (a) of this Item. State the amounts provided. No information need be given for:

(i) Any plans that do not discriminate in favor of officers or directors and that are available to all salaried employees; or

(ii) Any pension or retirement benefits where amounts to be paid are computed on an actuarial basis under any plan that provides for fixed benefits for retirement at a specified age or after a specified number of years of service.

(2) *Stock option plans.* (i) For stock options granted during the last fiscal year, indicate:

(A) the title and amount of securities subject to options;

(B) the average per share exercise price; and

(C) if the exercise price was less than 100 percent of the market value of the security on the date of grant, so state and give the market price on such date.

(ii) For stock options exercised during the last fiscal year, regardless of the year that the small business issuer granted the options, give the net value realized upon the exercise, calculated by subtracting the exercise price from the market value.

(c) *Other compensation.* Give the amount and a description of any other compensation paid or distributed during the last fiscal year to the named individuals and group specified in paragraph (a) of this Item. The compensation shall be valued on the basis of the issuers' aggregate incremental cost. No information need be provided if:

(1) For any individual, the total amount of such other compensation is less than \$25,000 or 10% of the compensation reported in the Cash Compensation Table for that person; or

(2) For the group, the total amount of such other compensation is the lesser of \$25,000 times the number of persons in the group or 10% of the compensation reported in the Cash Compensation Table for the group under paragraph (a) of this Item and a statement to that effect is made.

(d) *Compensation of directors.* Describe and give the amounts of all compensation received by directors of the small business issuer for all services as a director.

§ 228.403 (Item 403) Security Ownership of Certain Beneficial Owners and Management.

(a) *Security ownership of certain beneficial owners.* Complete the table below for any person (including any "group") who is known to the small business issuer to be the beneficial owner of more than five percent of any class of the small business issuer's voting securities.

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial owner	Percent of class

(b) *Security ownership of management.* Complete the following

table for each class of equity securities of the small business issuer or its parent beneficially owned by all directors and nominees, naming them, and directors and officers of the small business issuer as a group, without naming them.

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial owner	Percent of class

(c) *Changes in control.* Describe any arrangements which may result in a change in control of the small business issuer.

Instructions to Item 403

1. Of the number of shares shown in column (3) of paragraphs (a) and (b) of this Item, state in a footnote the amount which the listed beneficial owner has the right to acquire within sixty days, from options, warrants, rights, conversion privilege or similar obligations.

2. Where persons hold more than 5% of a class under a voting trust or similar agreement, provide the following:

- (a) the title of such securities;
- (b) the amount that they hold under the trust or agreement (if not clear from the table);
- (c) the duration of the agreement;
- (d) the names and addresses of the voting trustees; and
- (e) a brief outline of the voting rights and other powers of the voting trustees under the trust or agreement.

3. Calculate the percentages on the basis of the amount of outstanding securities plus, for each person or group, any securities that person or group has the right to acquire within 60 days pursuant to options, warrants, conversion privileges or other rights.

4. In this Item, a *beneficial owner* of a security means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares:

- (1) Voting power, which includes the power to vote, or to direct the voting of, such security; or
- (2) Investment power, which includes the power to dispose, or to direct the disposition of, such security.

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of divesting such person of beneficial

ownership of a security or preventing the vesting of such beneficial ownership.

5. All securities of the same class beneficially owned by a person, regardless of the form that such beneficial ownership takes, shall be totaled in calculating the number of shares beneficially owned by such person.

6. The small business issuer is responsible for knowing the contents of any statements filed with the Commission under section 13(d) or 13(g) of the Exchange Act concerning the beneficial ownership of securities and may rely upon the information in such statements unless it knows or has reason to believe that the information is not complete or accurate.

7. The term "group" means two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding or disposing of securities of an issuer.

8. Where the small business issuer lists more than one beneficial owner for the same securities, adequate disclosure should be included to avoid confusion.

§ 228.404 (Item 404) Certain Relationships and Related Transactions.

(a) Describe any transaction during the last two years, or proposed transactions, to which the small business issuer was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest. Give the name of the person, the relationship to the issuer, nature of the person's interest in the transaction and, the amount of such interest:

(1) Any director or executive officer of the small business issuer;

(2) Any nominee for election as a director;

(3) Any security holder named in response to Item 403 (§ 228.403); and

(4) Any member of the immediate family (including spouse, parents, children, siblings, and in-laws) of any of the persons in paragraphs (a) (1), (2) or (3) of this Item.

(b) No information need be included for any transaction where:

(1) Competitive bids determine the rates or charges involved in the transaction;

(2) The transaction involves services at rates or charges fixed by law or governmental authority;

(3) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(4) The amount involved in the transaction or a series of similar transactions does not exceed \$60,000; or

(5) The interest of the person arises solely from the ownership of securities of the small business issuer and the person receives no extra or special benefit that was not shared equally (pro rata) by all holders of securities of the class.

(c) List all parents of the small business issuer showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent if any.

(d) *Transactions with promoters.* Issuers organized within the past five years shall:

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

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

Instructions to Item 404

1. A person does not have a material indirect interest in a transaction within the meaning of this Item where:

(a) The interest arises only:

- (1) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction and/or
- (2) from the total ownership (direct or indirect) by all specified persons of less than a 10% equity interest in another person (other than a partnership) which is a party to the transaction;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other specified persons had an interest of less than 10 percent; or

(c) The interest of such person arises solely from holding an equity interest (but not a general partnership interest) or a creditor interest in another person that is a party to the transaction and the

transaction is not material to such other person.

2. Include information for any material underwriting discounts and commissions upon the sale of securities by the small business issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principle underwriter.

3. As to any transaction involving the purchase or sale of assets by or to the small business issuer otherwise than in the ordinary course of business, state the cost of the assets to the purchase and if acquired by the seller within two years before the transaction, the cost thereof to the seller.

§ 228.405 (Item 405) Compliance With Section 16(a) of the Exchange Act.

Every small business issuer that has a class of equity securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78f) shall:

(a) Based solely upon a review of Forms 3 and 4 (17 CFR 249.103 and 249.104 of this chapter) and amendments thereto furnished to the registrant under Rule 16a-3(d) (17 CFR 240.16a-3(e) of this chapter) during its most recent fiscal year and Forms 5 and amendments thereto (§ 249.105 of this chapter) furnished to the registrant with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(2)(i) of this Item:

(1) Identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of

equity securities of the registrant registered pursuant to section 12 ("reporting person") that failed to file on a timely basis, as disclosed in the above Forms, reports required by section 16(a) during the most recent fiscal year or prior years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form.

Note: The disclosure requirement is based on a review of the forms submitted to the registrant during and with respect to its most recent fiscal year, as specified above. Accordingly, a failure to file timely need only be disclosed once. For example, if in the most recently concluded fiscal year a reporting person filed a Form 4 disclosing a transaction that took place in the prior fiscal year, and should have been reported in that year, the registrant should disclose that late filing and transaction pursuant to this Item for the most recent fiscal year, but not in material filed with respect to subsequent years.

(b) With respect to the disclosure required by paragraph (a) of this Item:

(1) A form received by the registrant within three calendar days of the required filing date may be presumed to have been filed with the Commission by the required filing date.

(2) If the registrant:

(i) receives a written representation from the reporting person that no Form 5 is required; and

(ii) maintains the representation for two years, making a copy available to the Commission or its staff upon request, the registrant need not identify

such reporting person pursuant to paragraph (a) of this Item as having failed to file a Form 5 with respect to that fiscal year.

§ 228.501 (Item 501) Front of Registration Statement and Outside Front Cover of Prospectus.

(a) On the outside front cover page of the prospectus, give the following information:

(1) Name of the small business issuer;

(2) Title, amount and description of securities offered;

(3) If there are selling security holders, a statement to that effect;

(4) Cross reference to the risk factors section of the prospectus;

(5) The following statement in capital letters:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

(6) If the small business issuer is not a reporting company and a preliminary prospectus will be circulated, a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered, or a bona fide estimate of the principal amount of debt securities to be offered;

(7) The following table as to all securities to be registered (estimated, if necessary):

Per unit total, total minimum, total maximum	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
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The "total minimum" and "total maximum" items are required (in lieu of the "Total" item) only if the offering is made on a best efforts basis. If so, disclose in the summary section (or on the cover page if material): the date the offering will end; any minimum purchase requirement and any arrangements to place funds in an escrow, trust, or similar account. If there is an over-allotment option, the maximum-minimum information must be based on the purchase of all or none of the shares subject to that option in addition to any other minimum/maximum information;

(8) If a prospectus will be used before the effective date of the registration statement (or, prior to the determination of the initial public offering price in the

case of a prospectus that omits information as permitted by Rule 430A under the Securities Act (§ 230.430A of this chapter)), include the caption "Subject to Completion," the date of its issuance, and the following statement printed in type as large as that generally used in the body of the prospectus:

Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful

prior to registration or qualification under the securities laws of any such State.

(9) Any legend or information required by the law of any State in which the securities are to be offered;

(10) The date of the prospectus; and

(11) In a footnote to the table, disclose the other expenses of the offering specified in Item 511 of this Regulation S-B.

(b) [Reserved].

§ 228.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.

On the inside front cover page of the prospectus (or on the outside back cover page for paragraphs (e) and (f) of this Item) disclose the following:

(a)(1) *Available information.* State whether or not the small business issuer is a reporting company.

(2) If the small business issuer is a reporting company, state that the reports and other information filed by the small business issuer may be inspected and copied at the public reference facilities of the Commission in Washington, DC, and at some of its Regional Offices (include addresses), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, DC 20549 at prescribed rates; and

(3) Name any national securities exchange on which the small business issuer's securities are listed and state that reports and other information concerning the small business issuer can be inspected at such exchanges.

(b) *Reports to security holders.* Where a small business issuer is not required to deliver an annual report to security holders, indicate whether voluntary reports will be sent and, if so, the frequency of such reports and whether they will include audited financial statements.

(c) *Incorporation by reference.* State that small business issuer will provide without charge to each person who receives a prospectus, upon written or oral request of such person, a copy of any of the information that was incorporated by reference in the prospectus (not including exhibits to the information that is incorporated by reference unless the exhibits are themselves specifically incorporated by reference) and the address (including title or department) and telephone number to which such a request is to be directed.

(d) *Stabilization.* (1) Include the following statement, if true:

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF (IDENTIFY EACH CLASS OF SECURITIES IN WHICH SUCH TRANSACTIONS MAY BE EFFECTED) AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH TRANSACTIONS MAY BE EFFECTED ON (IDENTIFY EACH EXCHANGE ON WHICH STABILIZING TRANSACTIONS MAY BE EFFECTED; IF NONE, OMIT THIS SENTENCE.) SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

(2) If the stabilizing began before the effective date of the registration statement, state the amount of securities bought, the prices at which they were

bought and the period within which they were bought. In the event that Rule 430A under the Securities Act [§ 230.430A of this chapter] is used, the final prospectus must include information as to stabilizing transactions before the public offering price was set.

(3) If the securities are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public after the expiration of the rights offering period, state in the prospectus used to reoffer the securities:

(i) the amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which such securities were bought;

(ii) the amount of the offered securities subscribed for during such period;

(iii) the amount of the offered securities subscribed for by the underwriters during such period;

(iv) the amount of the offered securities sold during such period by the underwriters and the price, or range of prices, at which such securities were sold; and

(v) the amount of the offered securities to be reoffered to the public and the public offering price.

(e) *Delivery of prospectuses by dealers.* The following legend shall be printed in bold-face or italic type:

Until (insert date) all dealers effecting transactions in the registered securities, whether or not participating in this distribution, may be required to deliver a prospectus. This is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

The date to be inserted should be determined by reference to Section 4(3) of the Securities Act and Rule 174 (§ 230.174 of this chapter).

(f) *Table of contents.* Include a detailed table of contents showing the various sections or subdivisions of the prospectus and the page number on which each such section or subdivision begins.

Introduction

Canadian issuers should, in addition to the disclosure required by this Item, provide the information required by Item 502(f) of Regulation S-K.

§ 228.503 (Item 503) Summary Information and Risk Factors.

(a) *Summary.* A summary of the information contained in the prospectus where the length and complexity of the prospectus make a summary useful.

(b) *Address and telephone number.* In the beginning of the prospectus the complete mailing address and the telephone number of their principal executive offices.

(c) *Risk factors.* Immediately following the cover page of the prospectus or the summary section, discuss any factors that make the offering speculative or risky. These factors may include no operating history, no recent profit from operations, poor financial position, the kind of business in which the small business issuer is engaged or proposes to engage, or no market for the small business issuer's securities.

§ 228.504 (Item 504) Use of Proceeds.

State how the net proceeds of the offering will be used, indicating the amount to be used for each purpose and the priority of each purpose, if all of the securities are not sold. If all or a substantial part of the proceeds are not allocated for a specific purpose, so state and discuss the principal reasons for the offering.

Instructions to Item 504

1. If a material amount of proceeds will discharge debt, state the interest rate and maturity. If that debt was incurred within one year, describe the use of the proceeds of that debt other than short-term borrowings used for working capital.

2. If any material amount of the proceeds is to be used to acquire assets or finance the acquisitions of other businesses, describe the assets or businesses and identify the persons from whom they will be bought. State the cost of the assets and, where such assets are to be acquired from affiliates of the small business issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the small business issuer.

§ 228.505 (Item 505) Determination of Offering Price.

(a) If there is no established public market for the common equity being registered or if there is a significant difference between the offering price and the market price of the stock, give the factors that were considered in determining the offering price.

(b) If warrants, rights and convertible securities are being registered and there is no public market for the underlying securities, describe the factors considered in determining the exercise or conversion price.

§ 228.506 (Item 506) Dilution.

(a) If the small business issuer is not a reporting company and is selling common equity at a price significantly more than the price paid by officers, directors, promoters and affiliated persons for common equity purchased by them during the past five years (or which they have rights to purchase), compare these prices.

(b) If paragraph (a) of this Item applies and the issuer had losses in each of its last three fiscal years, or since its inception, whichever period is shorter, and there is a material dilution of the purchasers' equity interest, disclose the following:

- (1) The net tangible book value per share before and after the distribution;
- (2) The amount of the increase in such net tangible book value per share attributable to the cash payments made by purchasers of the shares being offered; and
- (3) The amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

§ 228.507 (Item 507) Selling Security Holders.

If security holders of a small business issuer are offering securities, name each selling security holder, state any position, office, or other material relationship which the selling security holder has had within the past three years with the small business issuer or any of its predecessors or affiliates, and state the amount of securities of the class owned by such security holder before the offering, the amount to be offered for the security holder's account, the amount and (if one percent or more) the percentage of the class to be owned by such security holder after the offering is complete.

Instruction

Responses to this item may be combined with disclosure in response to Item 403.

§ 228.508 (Item 508) Plan of Distribution.

(a) *Underwriters and underwriting obligation.* If the securities are to be offered through underwriters, name the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship with the small business issuer and state the nature of the relationship. State the nature of the obligation of the underwriter(s) to take the securities, i.e., firm commitment, best efforts.

(b) *New underwriters.* Describe the business experience of managing or principal underwriters that have been in

business less than three years, state their principal business function and identify any material relationships between the promoters of the issuer and the underwriter(s). This information need not be given if:

- (1) the issuer is a reporting company; and
 - (2) an offering has no material risks.
- (c) *Other distributions.* Outline briefly the plan of distribution of any securities to be registered that are to be offered otherwise than through underwriters.

(d) *Underwriter's representative on the board of directors.* Describe any arrangement whereby the underwriter has the right to designate or nominate a member or members of the board of directors of the small business issuer. Identify any director so designated or nominated and indicate any relationship with the small business issuer.

(e) *Indemnification of underwriters.* If the underwriting agreement provides for indemnification by the small business issuer of the underwriters or their controlling persons against any liability arising under the Securities Act, furnish a brief description of such indemnification provisions.

(f) *Dealers' compensation.* State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other considerations to be received by any dealer in connection with the sale of the securities.

(g) *Finders.* Identify any finder and describe the nature of any material relationship between such finder and the small business issuer or associates or affiliates of the small business issuer.

(h) *Discretionary accounts.* If the small business issuer is not a reporting company, identify any principal underwriter that intends to sell to any discretionary accounts and include an estimate of the amount of securities so intended to be sold. The response to this paragraph shall be contained in a pre-effective amendment which shall be circulated if the information is not available when the registration statement is filed.

§ 228.509 (Item 509) Interest of Named Experts and Counsel.

If an "expert" or "counsel" was hired on a contingent basis, will receive a direct or indirect interest in the small business issuer or was a promoter, underwriter, voting trustee, director, officer, or employee, of the small business issuer, describe the contingent basis, interest, or connection.

(a) *Expert*—is a person who is named as preparing or certifying all or part of the small business issuer's registration statement or a report or valuation for

use in connection with the registration statement.

(b) *Counsel*—is counsel named in the prospectus as having given an opinion on the validity of the securities being registered or upon other legal matters concerning the registration or offering of the securities.

Instruction to Item 509

1. The small business issuer does not need to disclose the interest of an expert (other than an accountant) or counsel if their interest (including the fair market value of all securities of the small business issuer received and to be received, or subject to options, warrants or rights received or to be received) does not exceed \$50,000.

§ 228.510 (Item 510) Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Describe the indemnification provisions for directors, officers and controlling persons of the small business issuer against liability under the Securities Act. This includes any provision in the underwriting agreement which indemnifies the underwriter or its controlling persons against such liabilities where a director, officer or controlling person of the small business issuer is such an underwriter or controlling person or a member of any firm which is such an underwriter. In addition, provide the undertaking in the first sentence of Item 512(e).

§ 228.511 (Item 511) Other Expenses of Issuance and Distribution.

(a) Give an itemized statement of all expenses of the offering, other than underwriting discounts and commissions. If any of the securities are registered for sale by security holders, state how much of the expenses the security holders will pay.

(1) The itemized list should generally include registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, legal, accounting, and engineering fees and any listing fees.

(2) Include as a separate item any premium paid by the small business issuer or any selling security holder on any policy to insure or indemnify directors or officers against any liabilities they may incur in the registration, offering, or sale of these securities.

(b) [Reserved.]

Instruction to Item 511

1. If the amounts of any items are not known, give estimates but identify them as such.

§ 228.512 (Item 512) Undertakings.

Include each of the following undertakings that apply to the offering.

(a) *Rule 415 Offering.* If the small business issuer is registering securities under Rule 415 of the Securities Act (§ 230.415 of this chapter), that the small business issuer will:

(1) File, during any period in which it offers or sells securities, a post-effective amendment to this registration statement to:

(i) Include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) Reflect in the prospectus any facts or events which, individually or together, represent a fundamental change in the information in the registration statement; and

(iii) Include any additional or changed material information on the plan of distribution.

Note: Small business issuers do not need to give the statements in paragraphs (a)(1)(i) and (a)(1)(ii) of this Item if the registration statement is on Form S-3 or S-8 (§§ 239.13 or 239.16b of this chapter), and the information required in a post-effective amendment is incorporated by reference from periodic reports filed by the small business issuer under the Exchange Act.

(2) For determining liability under the Securities Act, treat each post-effective amendment as a new registration statement of the securities offered, and the offering of the securities at that time to be the initial bona fide offering.

(3) File a post-effective amendment to remove from registration any of the securities that remain unsold at the end of the offering.

(b) *Warrants and rights offerings.* If the small business issuer will offer the securities to existing security holders under warrants or rights and the small business issuer will reoffer to the public any securities not taken by security holders, with any modifications that suit the particular case—The small business issuer will supplement the prospectus, after the end of the subscription period, to include the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities that the underwriters will purchase and the terms of any later reoffering. If the underwriters make any public offering of the securities on terms different from those on the cover page of the prospectus, the small business issuer will file a post-effective amendment to state the terms of such offering.

(c) *Competitive bids.* If the small business issuer is offering securities at competitive bidding, with modifications

to suit the particular case, the small business issuer will:

(1) use its best efforts to distribute before the opening of bids, to prospective bidders, underwriters, and dealers, a reasonable number of copies of a prospectus that meet the requirements of section 10(a) of the Securities Act, and relating to the securities offered at competitive bidding, as contained in the registration statement, together with any supplements; and

(2) file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters where required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless the issuer proposes no further public offering of such securities by the issuer or by the purchasers.

(d) *Equity offerings of nonreporting small business issuers.* If a small business issuer that before the offering had no duty to file reports with the Commission under section 13(a) or 15(d) of the Exchange Act is registering equity securities for sale in an underwritten offering—The small business issuer will provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(e) *Request for acceleration of effective date.* If the small business issuer will request acceleration of the effective date of the registration statement under Rule 461 under the Securities Act, include the following:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 (the "Act") may be permitted to directors, officers and controlling persons of the small business issuer pursuant to the foregoing provisions, or otherwise, the small business issuer has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable.

In the event that a claim for indemnification against such liabilities (other than the payment by the small business issuer of expenses incurred or paid by a director, officer or controlling person of the small business issuer in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the small business issuer

will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(f) If the issuer relies on Rule 430A under the Securities Act (§ 230.430A of this chapter), that the small business issuer will:

(1) For determining any liability under the Securities Act, treat the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the small business issuer under Rule 424(b)(1), or (4) or 497(h) under the Securities Act (§§ 230.424(b)(1), (4) or 230.497(h)) as part of this registration statement as of the time the Commission declared it effective.

(2) For determining any liability under the Securities Act, treat each post-effective amendment that contains a form of prospectus as a new registration statement for the securities offered in the registration statement, and that offering of the securities at that time as the initial bona fide offering of those securities.

§ 228.601 (Item 601) Exhibits.

(a) *Exhibits and index of exhibits.* (1) The exhibits required by the exhibit table must be filed or incorporated by reference.

(2) Each filing must have an index of exhibits. The exhibit index must list exhibits in the same order as the exhibit table. If the exhibits are incorporated by reference, this fact should be noted in the exhibit index. In the manually signed registration statement or report, the exhibit index should give the page number of each exhibit.

Instructions to Item 601(a)

1. If an exhibit (other than an opinion or consent) is filed in preliminary form and is later changed to include only interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters and the information appears elsewhere in the registration statement or a prospectus, no amendment need be filed.

2. Small business issuers may file copies of each exhibit, rather than originals, except as otherwise specifically noted.

EXHIBIT TABLE

	Securities Act forms					Exchange Act forms			
	SB-2	S-2	S-3	S-4***	S-8	10SB	8-K	10-QSB	10-KSB
(1) Underwriting agreement.....	X	X	X	X			X		
(2) Plan of acquisition, reorg., arrgmt., liquid, or succession.	X	X	X	X		X	X	X	
(3) Articles of Incorporation and by-laws.	X			X		X			X
(4) Instruments defining the rights of holders, incl. indentures.	X	X	X	X	X	X	X	X	X
(5) Opinion re: legality.....	X	X	X	X	X				
(6) No exhibit required.....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Opinion re: liquidation preference.....	X	X		X		X			
(8) Opinion re: tax matters.....	X	X	X	X					X
(9) Voting trust agreement.....	X			X		X			X
(10) Material contracts.....	X	X		X		X			X
(11) Statement re: computation of per share earnings.	X	X		X		X		X	X
(12) No exhibit required.....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual or quarterly reports, Form 10-Q*.	X	X		X					X
(14) Material foreign patents.....	X			X		X			
(15) Letter on unaudited interim financial information.	X	X	X	X	X			X	
(16) Letter on change in certifying accountant****.	X	X		X		X	X		X
(17) Letter on director resignation.....							X		
(18) Letter on change in accounting principles.								X	X
(19) Previously unfiled documents.....								X	X
(20) Reports furnished to security-holders.								X	
(21) Other documents or statements to securityholders.							X		
(22) Subsidiaries of the registrant.....	X			X		X			X
(23) Published report regarding matters submitted to vote.								X	X
(24) Consent of experts and counsel.....	X	X	X	X	X		X**	X**	X**
(25) Power of attorney.....	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee.....	X	X	X	X					
(27) Invitations for competitive bids.....	X	X	X	X					
(28) Additional exhibits.....	X	X	X	X	X	X	X	X	X
(29) Info. from reports furnished to State insurance authorities.	X	X	X	X	X	X			X

* Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10-KSB, where the annual report is incorporated by reference into the text of the Form 10-KSB.

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

*** An issuer need not provide an exhibit if: (1) an election was made under Form S-4 to provide S-2 or S-3 disclosure; and (2) the form selected (S-2 or S-3) would not require the company to provide the exhibit.

**** If required under item 304 of Regulation S-B.

(b) *Description of exhibits.* Below is a description of each document listed in the exhibit table.

(1) *Underwriting agreement.* Each agreement with a principal underwriter for the distribution of the securities. If the terms have been determined and the securities are to be registered on Form S-3 (§ 239.13), the agreement may be filed on Form 8-K (§ 249.308) after the effectiveness of the registration statement.

(2) *Plan of purchase, sale, reorganization, arrangement, liquidation or succession.* Any such plan described in the filing. Schedules or attachments may be omitted if they are listed in the index and provided to the Commission upon request.

(3) *Articles of incorporation and by-laws.* The complete copies of articles of incorporation and by-laws or comparable instruments, as amended.

(4) *Instruments defining the rights of security holders, including indentures.*

(i) All instruments that define the rights of holders of the equity or debt securities that the issuer is registering, including the pages from the articles of incorporation or by-laws that define those rights.

(ii) All instruments defining the rights of holders of long term debt unless the total amount of debt covered by the instrument does not exceed 10% of the total assets of the small business issuer.

(iii) Copies of indentures to be qualified under the Trust Indenture Act of 1939 shall include an itemized table of contents and a cross reference sheet showing the location of the provisions inserted in accordance with Sections 310 through 318(a) of that Act.

(5) *Opinion on legality.* (i) An opinion of counsel on the legality of the securities being registered stating

whether they will, when sold, be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the small business issuer.

(ii) If the securities being registered are issued under a plan that is subject to the requirements of ERISA furnish either:

(A) An opinion of counsel which confirms compliance with ERISA; or

(B) A copy of the Internal Revenue Service determination letter that the plan is qualified under section 401 of the Internal Revenue Code.

If the plan is later amended, the small business issuer must have the opinion of counsel and the IRS determination letter updated to confirm compliance and qualification.

(6) No Exhibit Required.

(7) *Opinion on liquidation preference.* If the liquidation preference of shares

exceeds their par or stated value, an opinion of counsel as to whether there are any resulting restrictions on surplus. The opinion should also state any remedies available to security holders before or after payment of any dividend that would reduce surplus to an amount less than the amount of such excess. The opinion shall cite to applicable constitutional and statutory provisions and controlling case law.

(8) *Opinion on tax matters.* If tax consequences of the transaction are material to an investor, an opinion of counsel, an independent public or certified public accountant or, a revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to the shareholders. The exhibit is required for filings to which Securities Act Industry Guide 5 applies.

(9) *Voting trust agreement and amendments.*

(10) *Material contracts.* (i) Every material contract, not made in the ordinary course of business, that will be performed after the filing of the registration statement or report or was entered into not more than two years before such filing. Also include the following contracts:

(A) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(B) Any contract upon which the small business issuer's business is substantially dependent, such as contracts with principal customers, principal suppliers, franchise agreements, etc.;

(C) Any contract for the purchase or sale of any property, plant or equipment for a consideration exceeding 15 percent of such assets of the small business issuer; or

(D) Any material lease under which a part of the property described in the registration statement or report is held by the small business issuer.

(ii)(A) Any management contract or any compensatory plan, contract or arrangement in which any director or any of the five most highly compensated executive officers of the small business issuer participates and any other management contract or any compensatory plan in which any other executive officer of the small business issuer participates shall be filed unless immaterial in amount or significance.

(B) The following management contracts or compensatory plans need not be filed:

(1) Ordinary purchase and sales agency agreements;

(2) Agreements with managers of stores in a chain organization or similar organization;

(3) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such;

(4) Any compensatory plan which is available to employees, officers or directors generally and provides for the same method of allocation of benefits between management and nonmanagement participants; and

(5) Any compensatory plan if the issuer is a wholly owned subsidiary of a reporting company and is filing a report on Form 10-KSB (§ 249.310b), or registering debt or non-voting preferred stock on Form S-2 (§ 239.12).

Instruction to Item 601(b)(10)

Only copies of the various remunerative plans need be filed. Each individual director's or executive officer's personal agreement under the plans need not be filed, unless they contain material provisions.

(11) *Statement re computation of per share earnings.* An explanation of the computation of per share earnings on both a primary and fully diluted basis unless the computation can be clearly determined from the registration statement or report.

(12) No exhibit required.

(13) Annual report to security holders for the last fiscal year, Form 10-Q or 10-QSB or quarterly report to security holders, if incorporated by reference in the filing. Such reports, except for the parts which are expressly incorporated by reference in the filing are not deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy. See Rule 411(b) (§ 230.411(b) of this chapter).

(14) *Material foreign patents.* Each material foreign patent for an invention not covered by a United States patent.

(15) *Letter on unaudited interim financial information.* A letter, where applicable, from the independent accountant which acknowledges awareness of the use in a registration statement of a report on unaudited interim financial information. The letter is not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of the Securities Act. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10-QSB (§ 249.306b) which is

incorporated by reference into the registration statement.

(16) *Letter on change in certifying accountant.* File the letter required by Item 304(a)(3).

(17) *Letter on director resignation.* Any letter from a former director which describes a disagreement with the small business issuer that led to the director's resignation or refusal to stand for re-election and which requests that the matter be disclosed.

(18) *Letter on change in accounting principles.* Unless previously filed, a letter from the issuer's accountant stating whether any change in accounting principles or practices followed by the issuer, or any change in the method of applying any such accounting principles or practices, which affected the financial statements being filed with the Commission in the report or which is expected to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable under the circumstances. No such letter need be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board that creates a new accounting principle, that expresses a preference for an accounting principle, or that rejects a specific accounting principle.

(19) *Previously unfiled documents.* (i) Any unfiled document, which was executed or in effect during the reporting period, if such document would have been required to be filed as an exhibit to a registration statement on Form 10-SB (§ 249.210b).

(ii) Any amendment or change to a document which was previously filed.

(20) *Report furnished to security holders.* If the issuer makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of Form 10-Q or 10-QSB, the information called for may be incorporated by reference to such published document or statement provided copies thereof are included as an exhibit to the registration statement or to Part I of the Form 10-Q or 10-QSB report.

(21) Other documents or statements to security holders or any document incorporated by reference.

(22) *Subsidiaries of the small business issuer.* A list of all subsidiaries, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business.

(23) *Published report regarding matters submitted to vote of security*

holders. Published reports containing all of the information called for by Item 4 of Part II of Form 10-Q (or 10-QSB) or Item 4 of Part I of Form 10-K or 10-KSB which is referred to therein in lieu of providing disclosure in Form 10-Q (10-QSB) or 10-K (10-KSB), which are required to be filed as exhibits by Rule 12b-23(a)(3) under the Exchange Act.

(24) *Consents of experts and counsel.* (i) Securities Act filings—Dated and manually signed written consents or a reference in the index to the location of the consent.

(ii) Exchange Act reports. If required to file a consent for material incorporated by reference in a previously filed registration statement under the Securities Act, the dated and manually signed consent to the material incorporated by reference. The consents shall be dated and manually signed.

(25) *Power of attorney.* If a person signs a registration statement or report under a power of attorney, a manually signed copy of such power of attorney or if located elsewhere in the registration statement, a reference in the index to where it is located. In addition, if an officer signs a registration statement for the small business issuer by a power of attorney, a certified copy of a resolution of the board of directors authorizing such signature.

(26) *Statement of eligibility of trustee.* Form T-1 (§ 269.1 of this chapter) if an indenture is being qualified under the Trust Indenture Act, bound separately from the other exhibits.

(27) *Invitations for competitive bids.* If the registration statement covers securities that the small business issuer is offering at competitive bidding, any invitation for competitive bid that the small business issuer will send or give to any person shall be filed.

(28) *Additional exhibits.* Any additional exhibits if listed and described in the exhibit index.

(29) *Information from reports furnished to state insurance regulatory authorities.* (i) If reserves for unpaid property-casualty ("P/C") claims and claim adjustment expenses of the small business issuer, its unconsolidated subsidiaries and the proportionate share of the small business issuer and the other subsidiaries in the unpaid P/C claims and claim adjustment expenses of its 50%-or-less-owned equity investees, taken in the aggregate after small business issuer eliminations, exceed one-half of the common stockholders' equity of the small business issuer as of the beginning of the latest fiscal year the following information should be supplied.

(ii) the information included in Schedules O and P of Annual

Statements provided to state regulatory authorities by the small business issuer or its P/C insurance small business issuer affiliates for the latest year on a combined or consolidated basis as appropriate, separately for each of the following:

- (A) the small business issuer;
- (B) its unconsolidated subsidiaries; and
- (C) fifty percent-or-less-owned equity investees of the small business issuer and its subsidiaries.

(iii) Small business issuers may omit the combined or consolidated Schedules O and P of fifty percent-or-less-owned equity investees, if they file the same information with the Commission as companies in their own right, and if they state that fact and the name and ownership percentage of such companies.

(iv) If ending reserves in paragraphs (b)(29)(ii)(A) and (b)(29)(ii)(B) of this Item or the proportionate share of the small business issuer and its other subsidiaries in paragraph (b)(29)(ii)(C) of this Item are less than 5% of the total ending reserves in paragraphs (b)(29)(ii)(A) and (b)(29)(ii)(B) of this Item, and the proportionate share of (b)(29)(ii)(C) of this Item, small business issuers may omit that category and note that fact. If the amount of the reserves attributable to fifty percent-or-less-owned equity investees that file this information as companies in their own right exceeds 95% of the total paragraph (b)(29)(ii)(C) of this Item small business issuers do not need to provide reserves, information for the other fifty percent-or-less-owned equity investees.

(v) Small business issuers do not need to include Schedules O and P information if they are not required to file Schedules O and P with insurance regulatory authorities. However, clearly note the nature and extent of any such exclusions in the Exhibit.

(vi) Companies whose fiscal year differs from the calendar year should present Schedules O and P as of the end of the calendar year that falls within their fiscal year.

(vii) The nature and amount of the difference between reserves for claims and claim adjustment expenses reflected on Schedules O and P and the total P/C statutory reserves for claims and disclose claim adjustment expenses as of the latest calendar year in a note to those Schedules.

§ 228.701 (Item 701) Recent Sales of Unregistered Securities.

Give the following information for all securities that the small business issuer sold within the past three years without

registering the securities under the Securities Act.

(a) The date, title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. If the small business issuer did not publicly offer any securities, identify the persons or class of persons to whom the small business issuer sold the securities.

(c) For securities sold for cash, the total offering price and the total underwriting discounts or commissions. For securities sold other than for cash, describe the transaction and the type and amount of consideration received by the small business issuer.

(d) The section of the Securities Act or the rule of the Commission under which the small business issuer claimed exemption from registration and the facts relied upon to make the exemption available.

§ 228.702 (Item 702) Indemnification of Directors and Officers.

State whether any statute, charter provisions, by-laws, contract or other arrangements that insures or indemnifies a controlling person, director or officer of the small business issuer affects his or her liability in that capacity.

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

5. 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.

6. In Section 229.801, paragraph (g) is added to read as follows:

§ 229.801 Securities Act industry guides.

(g) *Guide 7. Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations.*

Note: The text of Guide 7 will not appear in the CFR.

Guide 7

Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations

(a) *Definitions.* The following definitions apply to registrants engaged or to be engaged in significant mining operations:

(1) *Reserve*. That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination. Note. Reserves are customarily stated in terms of "ore" when dealing with metalliferous minerals; when other materials such as coal, oil, shale, tar, sands, limestone, etc. are involved, an appropriate term such as "recoverable coal" may be substituted.

(2) *Proven (Measured) Reserves*. Reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches, workings or drill holes; grade and/or quality are computed from the results of detailed sampling and (b) the sites for inspection, sampling and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth and mineral content of reserves are well-established.

(3) *Probable (Indicated) Reserves*. Reserves for which quantity and grade and/or quality are computed from information similar to that used for proven (measure) reserves, but the sites for inspection, sampling, and measurement are farther apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for proven (measured) reserves, is high enough to assume continuity between points of observation.

(4)(i) *Exploration Stage*—includes all issuers engaged in the search for mineral deposits (reserves) which are not in either the development or production stage.

(ii) *Development Stage*—includes all issuers engaged in the preparation of an established commercially minable deposit (reserves) for its extraction which are not in the production stage.

(iii) *Production Stage*—includes all issuers engaged in the exploitation of a mineral deposit (reserve).

Instruction to Paragraph (a)

1. Mining companies in the exploration stage should not refer to themselves as development stage companies in the financial statements, even though such companies should comply with FASB Statement No. 7, if applicable.

(b) *Mining Operations Disclosure*. Furnish the following information as to each of the mines, plants and other significant properties owned or operated, or presently intended to be owned or operated, by the registrant:

(1) The location and means of access to the property;

(2) A brief description of the title, claim, lease or option under which the registrant and its subsidiaries have or

will have the right to hold or operate the property, indicating any conditions which the registrant must meet in order to obtain or retain the property. If held by leases or options, the expiration dates of such leases or options should be stated. Appropriate maps may be used to portray the locations of significant properties;

(3) A brief history of previous operations, including the names of previous operators, insofar as known;

(4)(i) A brief description of the present condition of the property, the work completed by the registrant on the property, the registrant's proposed program of exploration and development, and the current state of exploration and/or development of the property. Mines should be identified as either open-pit or underground. If the property is without known reserves and the proposed program is exploratory in nature, a statement to that effect shall be made;

(ii) The age, details as to modernization and physical condition of the plant and equipment, including subsurface improvements and equipment. Further, the total cost for each property and its associated plant and equipment should be stated. The source of power utilized with respect to each property should also be disclosed.

(5) A brief description of the rock formations and mineralization of existing or potential economic significance on the property, including the identity of the principal metallic or other constituents insofar as known. If proven (measured) or probable (indicated) reserves have been established, state (i) the estimated tonnages and grades (or quality, where appropriate) of such classes of reserves, and (ii) the name of the person making the estimates and the nature of his relationship to the registrant.

Instructions to Paragraph (b)(5)

1. It should be stated whether the reserve estimate is of in-place material or of recoverable material. Any in-place estimate should be qualified to show the anticipated losses resulting from mining methods and beneficiation or preparation.

2. The summation of proven (measured) and probable (indicated) ore reserves is acceptable if the difference in degree of assurance between the two classes of reserves cannot be readily defined.

3. Estimates other than proved (measured) or probable (indicated) reserves, and any estimated values of such reserves shall not be disclosed unless such information is required to be disclosed by foreign or state law;

provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with, the registrant or otherwise to acquire the registrant's securities, such estimates may be included.

(6) If technical terms relating to geology, mining or related matters whose definition cannot readily be found in conventional dictionaries (as opposed to technical dictionaries or glossaries) are used, an appropriate glossary should be included in this report.

(7) Detailed geographic maps and reports, feasibility studies and other highly technical data should not be included in the report but should be, to the degree appropriate and necessary for the Commission's understanding of the registrant's presentation of business and property matters, furnished as supplemental information.

(c) Supplemental Information.

(1) If an estimate of proven (measured), or probable (indicated) reserves is set forth in the report, furnish:

(i) maps drawn to scale showing any mine workings and the outlines of the reserve blocks involved together with the pertinent sample-assay thereon.

(ii) all pertinent drill data and related maps.

(iii) the calculations whereby the basic sample-assay or drill data were translated into the estimates made of the grade and tonnage of reserves in each block and in the complete reserve estimate.

Instructions to Paragraph (c)(1)

1. Maps and drawings submitted to the staff should include:

(a) A legend or explanation showing, by means of pattern or symbol, every pattern or symbol used on the map or drawing; the use of the symbols used by the U.S. Geological Survey is encouraged;

(b) A graphical bar scale should be included; additional representations of scale such as "one inch equals one mile" may be utilized provided the original scale of the map has not been altered;

(c) A north arrow on the maps;

(d) An index map showing where the property is situated in relationship to the state or province, etc., in which it was located;

(e) A title of the map or drawing and the date on which it was drawn;

(f) In the event interpretive data is submitted in conjunction with any map, the identity of the geologist or engineer that prepared such data; and

(g) Any drawing should be simple enough or of sufficiently large scale to clearly show all features on the drawing.

(2) Furnish a complete copy of every material engineering, geological or metallurgical report concerning the registrant's property, including governmental reports, which are known and available to the registrant. Every such report should include the name of its author and the date of its preparation, if known to the registrant.

Instructions to Paragraph (c)(2)

1. Any of the above-required reports as to which the staff has access need not be submitted. In this regard, issuers should consult with the staff prior to filing the report. Any reports not submitted should be identified in a list furnished to the staff. This list should also identify any known governmental reports concerning the registrant's property.

(3) Furnish copies of all documents such as title documents, operating permits and easements needed to support representations made in the report.

7. In Section 229.802, paragraphs (e) and (f) are reserved and paragraph (g) is added to read as follows:

§ 229.802 Exchange Act industry guides.

(e) [Reserved].

(f) [Reserved].

(g) *Guide 7. Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations.* Note: The text of Guide 7 will not appear in the CFR. The text of Guide 7 is identical to § 229.801(g) of this chapter and is not reprinted here.

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

7. The authority citation for part 230 continues to read as follows:

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

8. By amending paragraph (b)(1)(i) of § 230.175 after the words "filed under the Act" add the words ", offering statement or solicitation of interest written document or broadcast script under Regulation A" and in paragraph (b)(2)(i) after the parenthetical " (§ 229.303 of this chapter)" add the words "or Regulation S-B (§ 228.303 of this chapter)".

9. By revising Regulation A—Conditional Small Issues Exemption, §§ 230.251–230.263, to read as follows:

Sec.
230.251 Scope of Exemption.
230.252 Offering Statement.

Sec.
230.253 Offering Circular.
230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.
230.255 Preliminary Offering Circulars.
230.256 Filing of Sales Material.
230.257 Reports of Sales and Use of Proceeds.
230.258 Suspension of the Exemption.
230.259 Withdrawal or Abandonment of Offering Statements.
230.260 Insignificant Deviations from a Term, Condition or Requirement of Regulation A.
230.261 Definitions.
230.262 Disqualification Provisions.
230.263 Consent to Service of Process.

Regulation A—Conditional Small Issues Exemption

Authority: Secs. 230.251 to 230.263 issued under 15 U.S.C. 77c, 77s.

§ 230.251 Scope of exemption.

A public offer or sale of securities that meets the following terms and conditions shall be exempt under section 3(b) from the registration requirements of the Securities Act of 1933 (the "Securities Act"):

- (a) *Issuer.* The issuer of the securities:
 - (1) is an entity organized under the laws of the United States or Canada, or any State, Province, Territory or possession thereof, or the District of Columbia, with its principal place of business in the United States or Canada;
 - (2) is not subject to section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq.) immediately before the offering;
 - (3) is not a development stage company that either has no specific business plan or purpose, or has indicated that its business plan is to merge with an unidentified company or companies;
 - (4) is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);
 - (5) is not issuing fractional undivided interests in oil or gas rights as defined in § 230.300, or a similar interest in other mineral rights; and
 - (6) is not disqualified because of § 230.262.

(b) *Aggregate Offering Price.* The sum of all cash and other consideration to be received for the securities ("aggregate offering price") shall not exceed \$5,000,000, including no more than \$1,500,000 offered by all selling security holders, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities in reliance upon Regulation A. No affiliate resales are permitted if the issuer has not had net income from continuing operations

in at least one of its last two fiscal years.

Note: Where a mixture of cash and non-cash consideration is to be received, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at a currency exchange rate in effect on or at a reasonable time prior to the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Valuations of non-cash consideration must be reasonable at the time made.

(c) Integration with Other Offerings.

Offers and sales made in reliance on this Regulation A will not be integrated with:

- (1) prior offers or sales of securities; or
- (2) subsequent offers or sales of securities that are:
 - (i) registered under the Securities Act, except as provided in § 230.254(d);
 - (ii) made in reliance on § 230.701;
 - (iii) made pursuant to an employee benefit plan;
 - (iv) made in reliance on Regulation S (§ 230.901–904); or
 - (v) made more than six months after the completion of the Regulation A offering.

Note: If the issuer offers or sells securities for which the safe harbor rules are unavailable, such offers and sales still may not be integrated with the Regulation A offering, depending on the particular facts and circumstances. See Securities Act Release No. 4552 (November 6, 1962) [27 FR 11316].

(d) Offering Conditions.

(1) Offers.

(i) Except as allowed by § 230.254, no offer of securities shall be made unless a Form 1-A offering statement has been filed with the Commission.

(ii) After the Form 1-A offering statement has been filed:

- (A) oral offers may be made;
- (B) written offers under § 230.255 may be made;

(C) printed advertisements may be published or radio or television broadcasts made, if they state from whom a Preliminary Offering Circular or Final Offering Circular may be obtained, and contain no more than the following information:

- (1) the name of the issuer of the security;
- (2) the title of the security, the amount being offered and the per unit offering price to the public;

(3) the general type of the issuer's business; and

(4) a brief statement as to the general character and location of its property.

(iii) after the Form 1-A offering statement has been qualified, other written offers may be made, but only if accompanied with or preceded by a Final Offering Circular.

(2) *Sales.*

(i) No sale of securities shall be made until:

(A) the Form 1-A offering statement has been qualified;

(B) A Preliminary Offering Circular or Final Offering Circular is furnished to the prospective purchaser at least 48 hours prior to the mailing of the confirmation of sale to that person; and

(C) A Final Offering Circular is delivered to the purchaser with the confirmation of sale, unless it has been delivered to that person at an earlier time.

(ii) Sales by a dealer (including an underwriter no longer acting in that capacity for the security involved in such transaction) that take place within 90 days after the qualification of the Regulation A offering statement may be made only if the dealer delivers a copy of the current offering circular to the purchaser before or with the confirmation of sale. The issuer or underwriter of the offering shall provide requesting dealers with reasonable quantities of the offering circular for this purpose.

(3) *Continuous or delayed offerings.* Continuous or delayed offerings may be made under this Regulation A if permitted by § 230.415.

§ 230.252 *Offering Statement.*

(a) *Documents to be included.* The offering statement consists of the facing sheet of Form 1-A [§ 239.90 of this chapter], the contents required by the form and any other material information necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

(b) *Paper, printing, language and pagination.* The requirements for offering statements are the same as those specified in § 230.403 for registration statements under the Act.

(c) *Confidential treatment.* A request for confidential treatment may be made under § 230.406 for information required to be filed, and § 200.83 of this chapter for information not required to be filed.

(d) *Signatures.* The issuer, its Chief Executive Officer, Chief Financial Officer, a majority of the members of its board of directors or other governing body, and each selling security holder shall sign the offering statement. If a

signature is by a person on behalf of any other person, evidence of authority to sign shall be filed, except where an executive officer signs for the issuer. If the issuer is Canadian, its authorized representative in the United States shall sign. If the issuer is a limited partnership, a majority of the board of directors of any corporate general partner also shall sign.

(e) *Number of copies and where to file.* Seven copies of the offering statement, at least one of which is manually signed, shall be filed either with the Commission's Office for the region in which the issuer's principal business operations are conducted or are proposed to be conducted or with the Commission's main office in Washington, DC. An issuer which has or proposes to have its principal business operations in Canada shall file with the Regional Office nearest the place where the issuer's principal business operations are conducted or proposed to be conducted or with the Commission's main office in Washington, DC., unless the offering is to be made through a principal underwriter located in the United States, in which case the appropriate Regional Office is the office for the region in which such underwriter has its principal office. Since no filing may be made with the Philadelphia Regional Office, filings within the jurisdiction of that office may be made either at the Atlanta or New York Regional Office or in Washington, DC.

(f) *Fee.* There is a filing fee of \$500 which shall accompany the initial filing of the offering statement. There is no fee for amendments.

(g) *Qualification.* (1) If there is no delaying notation as permitted by paragraph (g)(2) of this section or suspension proceeding under § 230.258, an offering statement is qualified without Commission action on the 20th calendar day after its filing.

(2) An offering statement containing the following notation can be qualified only by order of the Commission, unless such notation is removed prior to Commission action as described in paragraph (g)(3) of this section:

This offering statement shall only be qualified upon order of the Commission, unless a subsequent amendment is filed indicating the intention to become qualified by operation of the terms of Regulation A.

(3) The delaying notation specified in paragraph (g)(2) of this section can be removed only by an amendment to the offering statement that contains the following language:

This offering statement shall become qualified on the 20th calendar day following the filing of this amendment.

(h) *Amendments.*

(1) If any information in the offering statement is amended, an amendment, signed in the same manner as the initial filing, shall be filed. Seven copies of every amendment shall be filed with the Commission's Office that accepted the initial filing. Subsequent amendments to an offering shall recommence the time period for qualification.

(2) An amendment to include a delaying notation pursuant to paragraph (g)(2) or to remove one pursuant to paragraph (g)(3) of this section after the initial filing of an offering statement may be made by telegram or letter. Each such telegraphic amendment shall be confirmed in writing within a reasonable time by filing a signed copy. Such confirmation shall not be deemed an amendment.

§ 230.253 *Offering Circular.*

(a) *Contents.* An offering circular shall include the narrative and financial information required by Form 1-A.

(b) *Presentation of information.* Information in the offering circular shall be presented in a clear, concise and understandable manner and in a type size that is easily readable. Repetition of information should be avoided; cross-referencing of information within the document is permitted.

(c) *Date.* An offering circular shall be dated approximately as of the date of the qualification of the offering statement of which it is a part.

(d) *Cover page legend.* The cover page of every offering circular shall display the following statement in capital letters printed in boldfaced type at least as large as that used generally in the body of such offering circular:

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE. THESE SECURITIES ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE COMMISSION; HOWEVER, THE COMMISSION HAS NOT MADE AN INDEPENDENT DETERMINATION THAT THE SECURITIES OFFERED HEREUNDER ARE EXEMPT FROM REGISTRATION.

(e) *Revisions.* (1) An offering circular shall be revised during the course of an offering whenever the information it contains has become false or misleading in light of existing circumstances.

material developments have occurred, or there has been a fundamental change in the information initially presented.

(2) An offering circular for a continuous offering shall be updated to include, among other things, updated financial statements, 12 months after the date the offering statement was qualified.

(3) Every revised or updated offering circular shall be filed as an amendment to the offering statement and requalified in accordance with § 230.252.

§ 230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.

(a) An issuer may publish or deliver to prospective purchasers a written document or make scripted radio or television broadcasts to determine whether there is any interest in a contemplated securities offering. Following submission of the written document or script of the broadcast to the Commission, as required by paragraph (b) of this section, oral communications with prospective investors and other broadcasts are permitted. The written documents, broadcasts and oral communications are each subject to the antifraud provisions of the federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any prospective investor is permitted. No sale may be made until qualification of the offering statement.

(b) While not a condition to any exemption pursuant to this section:

(1) On or before the date of its first use, the issuer shall submit a copy of any written document or the script of any broadcast with the Commission's Regional Office for the region in which the issuer's principal business operations are conducted or are proposed to be conducted (*Attention: Small Issues Branch*) or with the Commission's main office in Washington, D.C. (*Attention: Office of Small Business Policy*). The document or broadcast script shall either contain or be accompanied by the name and telephone number of a person able to answer questions about the document or the broadcast.

Note: Only solicitation of interest material that contains substantive changes from or additions to previously submitted material needs to be submitted.

(2) The written document or script of the broadcast shall:

- (i) state that no money or other consideration is being solicited, and if sent in response, will not be accepted;
- (ii) state that no sales of the securities will be made or commitment to purchase

accepted until delivery of an offering circular that includes complete information about the issuer and the offering;

(iii) state that an indication of interest made by a prospective investor involves no obligation or commitment of any kind; and

(iv) identify the chief executive officer of the issuer and briefly and in general its business and products.

(3) Solicitations of interest pursuant to this provision may not be made after the filing of an offering statement.

(4) Sales may not be made until 20 calendar days after the last publication or delivery of the document or radio or television broadcast.

(c) Any written document under this section may include a coupon, returnable to the issuer indicating interest in a potential offering, revealing the name, address and telephone number of the prospective investor.

(d) Where an issuer has a bona fide change of intention and decides to register an offering after using the process permitted by this section without having filed the offering statement prescribed by § 230.252, the Regulation A exemption for offers made in reliance upon this section will not be subject to integration with the registered offering, if at least 30 calendar days have elapsed between the last solicitation of interest and the filing of the registration statement with the Commission, and all solicitation of interest documents have been submitted to the Commission. With respect to integration with other offerings, see § 230.251(c).

§ 230.255 Preliminary Offering Circulars.

(a) Prior to qualification of the required offering statement, but after its filing, a written offer of securities may be made if it meets the following requirements:

(1) The outside front cover page of the material bears the caption "Preliminary Offering Circular," the date of issuance, and the following statement, which shall run along the left hand margin of the page and be printed perpendicular to the text, in boldfaced type at least as large as that used generally in the body of such offering circular:

An offering statement pursuant to Regulation A relating to these securities has been filed with the _____ Office of the Securities and Exchange Commission.

Information contained in this Preliminary Offering Circular is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time an offering circular which is not designated as a Preliminary Offering Circular is delivered and the offering statement filed with the Commission becomes qualified. This

Preliminary Offering Circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sales of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the laws of any such state.

(2) The Preliminary Offering Circular contains substantially the information required in an offering circular by Form 1-A (§ 239.90 of this chapter), except that information with respect to offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, or other matters dependent upon the offering price may be omitted. The outside front cover page of the Preliminary Offering Circular shall include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered or a bona fide estimate of the principal amount of debt securities to be offered.

(3) The material is filed as a part of the offering statement.

(b) If a Preliminary Offering Circular is inaccurate or inadequate in any material respect, a revised Preliminary Offering Circular or a complete Offering Circular shall be furnished to all persons to whom securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or shall be sent to such persons under such circumstances that it would normally be received by them 48 hours prior to receipt of confirmation of the sale.

§ 230.256 Filing of Sales Material.

While not a condition to an exemption pursuant to this provision, seven copies of any advertisement or written communication, or the script of any radio or television broadcast, shall be filed with the Office of the Commission where the offering statement was qualified when the material is first published or delivered.

Note: Only sales material that contains substantive changes from or additions from previously filed material needs to be filed.

§ 230.257 Reports of Sales and Use of Proceeds.

While not a condition to an exemption pursuant to this provision, the issuer and/or each selling security holder shall file seven copies of a report concerning sales and use of proceeds on Form 2-A (§ 239.91 of this chapter), or other form prescribed by the Commission, with the Office of the Commission where the offering statement was qualified. This report shall be filed at the following times:

(a) Every six months after the qualification of the offering statement or any amendment until substantially all the proceeds have been applied; and

(b) within 30 calendar days after the termination, completion or final sale of securities in the offering, or the application of the proceeds from the offering, whichever is the latest event. This report should be labelled the final report. For purposes of this section, the temporary investment of proceeds pending final application shall not constitute application of the proceeds.

§ 230.258 Suspension of the Exemption.

(a) The Commission may at any time enter an order temporarily suspending a Regulation A exemption if it has reason to believe that:

(1) no exemption is available or any of the terms, conditions or requirements of the Regulation have not been complied with, including failures to provide the Commission a copy of the document or broadcast script under § 230.254, to file any sales material as required by § 230.256 or report as required by § 230.257;

(2) the offering statement, any sales or solicitation of interest material contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(3) the offering is being made or would be made in violation of section 17 of the Securities Act;

(4) an event has occurred after the filing of the offering statement which would have rendered the exemption hereunder unavailable if it had occurred prior to such filing;

(5) any person specified in paragraph (a) of § 230.262 has been indicted for any crime or offense of the character specified in paragraph (a)(3) of § 230.262, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (a)(4) of § 230.262;

(6) any person specified in paragraph (b) of § 230.262 has been indicted for any crime or offense of the character specified in paragraph (b)(1) of § 230.262, or any proceeding has been initiated for the purpose of enjoining any such person from engaging in or continuing any conduct or practice of the character specified in paragraph (b)(2) of § 230.262; or

(7) the issuer or any promoter, officer, director or underwriter has failed to cooperate, or has obstructed or refused to permit the making of an investigation

by the Commission in connection with any offering made or proposed to be made in reliance on Regulation A.

(b) Upon the entry of an order under paragraph (a) of this section, the Commission will promptly give notice to the issuer, any underwriter and any selling security holder:

(1) that such order has been entered, together with a brief statement of the reasons for the entry of the order; and

(2) that the Commission, upon receipt of a written request within 30 calendar days after the entry of the order, will within 20 calendar days after receiving the request, order a hearing at a place to be designated by the Commission.

(c) If no hearing is requested and none is ordered by the Commission, an order entered under paragraph (a) of this section shall become permanent on the 30th calendar day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission. Where a hearing is requested or is ordered by the Commission, the Commission will, after notice of and opportunity for such hearing, either vacate the order or enter an order permanently suspending the exemption.

(d) The Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the exemption for any reason upon which it could have entered a temporary suspension order under paragraph (a) of this section. Any such order shall remain in effect until vacated by the Commission.

(e) All notices required by this section shall be given by personal service, registered or certified mail to the addresses given by the issuer, any underwriter and any selling security holder in the offering statement.

§ 230.259 Withdrawal or Abandonment of Offering Statements.

(a) If none of the securities which are the subject of an offering statement have been sold and such offering statement is not the subject of a proceeding under § 230.258, the offering statement may be withdrawn with the Commission's consent. The application for withdrawal shall state the reason the offering statement is to be withdrawn, shall be signed by an authorized representative of the issuer and shall be directed to the Commission's Office where the offering statement was filed.

(b) When an offering statement has been on file with the Commission for nine months without amendment and has not become qualified, the Commission may, in its discretion, proceed in the following manner to determine whether such offering statement has been abandoned by the

issuer. If the offering statement has been amended, the 9-month period shall be computed from the date of the latest amendment.

(1) Notice will be sent to the issuer, and to any counsel for the issuer named in the offering statement, by registered or certified mail, return receipt requested, addressed to the most recent addresses for the issuer and issuer's counsel as reflected in the offering statement. Such notice will inform the issuer and issuer's counsel that the offering statement or amendments thereto is out of date and must be either amended to comply with applicable requirements of Regulation A or be withdrawn within 30 calendar days after the notice.

(2) If the issuer or issuer's counsel fail to respond to such notice by filing a substantive amendment or withdrawing the offering statement or does not furnish a satisfactory explanation as to why the issuer has not done so within 30 calendar days, the Commission may declare the offering statement abandoned.

§ 230.260 Insignificant Deviations from a Term, Condition or Requirement of Regulation A.

(a) A failure to comply with a term, condition or requirement of Regulation A will not result in the loss of the exemption from the requirements of section 5 of the Securities Act for any offer or sale to a particular individual or entity, if the person relying on the exemption establishes:

(1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity;

(2) the failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraphs (a), (b), (d) (1) and (3) of § 230.251 shall be deemed to be significant to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Regulation A.

(b) A transaction made in reliance upon Regulation A shall comply with all applicable terms, conditions and requirements of the regulation. Where an exemption is established only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

(c) This provision provides no relief or protection from a proceeding under § 230.258.

§ 230.261 Definitions.

As used in this Regulation A, all terms have the same meanings as in § 230.405, except that all references to "registrant" in those definitions shall refer to the issuer of the securities to be offered and sold under Regulation A. In addition, these terms have the following meanings:

(a) *Final Offering Circular*—The current offering circular contained in a qualified offering statement;

(b) *Preliminary Offering Circular*—The offering circular described in § 230.255(a).

§ 230.262 Disqualification provisions.

Unless, upon a showing of good cause and without prejudice to any other action by the Commission, the Commission determines that it is not necessary under the circumstances that the exemption provided by this Regulation A be denied, the exemption shall not be available for the offer or sale of securities, if:

(a) the issuer, any of its predecessors or any affiliated issuer:

(1) has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or has been the subject of any refusal order or stop order thereunder within 5 years prior to the filing of the offering statement required by § 230.252;

(2) is subject to any pending proceeding under § 230.258 or any similar section adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement;

(3) has been convicted within 5 years prior to the filing of such offering statement of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission;

(4) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the Commission; or

(5) is subject to a United States Postal Service false representation order entered under 39 U.S.C. § 3005 within 5 years prior to the filing of the offering statement, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C.

§ 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005. The entry of an order, judgment or decree against any affiliated entity before the affiliation with the issuer arose, if the affiliated entity is not in control of the issuer and if the affiliated entity and the issuer are not under the common control of a third party who was in control of the affiliated entity at the time of such entry does not come within the purview of this paragraph (a) of this section.

(b) any director, officer or general partner of the issuer, beneficial owner of 10 percent or more of any class of its equity securities, any promoter of the issuer presently connected with it in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of any such underwriter:

(1) has been convicted within 10 years prior to the filing of the offering statement required by § 230.252 of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(2) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily enjoining or restraining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, involving the making of a false filing with the Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(3) is subject to an order of the Commission entered pursuant to section 15(b), 15B(a), or 15B(c) of the Exchange Act, or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*);

(4) is suspended or expelled from membership in, or suspended or barred from association with a member of, a national securities exchange registered under section 6 of the Exchange Act or a national securities association registered under section 15A of the Exchange Act for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade; or

(5) is subject to a United States Postal Service false representation order entered under 39 U.S.C. § 3005 within 5 years prior to the filing of the offering

statement required by § 230.252, or is subject to a restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005.

(c) any underwriter of such securities was an underwriter or was named as an underwriter of any securities:

(1) covered by any registration statement which is the subject of any pending proceeding or examination under section 8 of the Act, or is the subject of any refusal order or stop order entered thereunder within 5 years prior to the filing of the offering statement required by § 230.252; or

(2) covered by any filing which is subject to any pending proceeding under § 230.258 or any similar rule adopted under section 3(b) of the Securities Act, or to an order entered thereunder within 5 years prior to the filing of such offering statement.

§ 230.263 Consent to Service of Process.

(a) If the issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing the offering statement required by § 230.252, furnish to the Commission a written irrevocable consent and power of attorney on Form F-X [§ 239.42 of this chapter].

(b) Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the relevant offering statement.

10. § 230.405 is amended by adding the following definition of "small business issuer" in the appropriate alphabetical order to read as follows:

§ 230.405 Definitions of terms.

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

(1) has revenues of less than \$25,000,000;

(2) is a U.S. or Canadian issuer;

(3) is not an investment company; and

(4) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the outstanding securities held by non-affiliates) of \$25,000,000 or more.

Note: The public float of a reporting company shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, on a date within 60 days prior to the

end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed.

In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

§ 230.481 [Amended]

11. By removing the words "in red ink," from paragraph (b)(2) of § 230.481.

§ 230.502 [Amended]

12. In § 230.502 by amending paragraph (b)(1) by removing the words "§ 230.504" and adding "§ 230.504a" and in the note to paragraph (b) by removing the words "§ 230.504(b)(2)(ii)" and adding the word "§ 230.504a(b)(2)(ii)" and in paragraph (c) by removing the words "§ 230.504(b)(1)" and adding the words "§ 230.504a(b)(1)" and in paragraph (d) by removing the words "230.504(b)(1)" and adding the words "§ 230.504a(b)(1)" and in the flush-text of paragraph (d) by removing the words "§ 230.504(b)(2)(ii)" and adding the words "§ 230.504a(b)(2)(ii)".

§ 230.504a [Redesignated from § 230.504]

13. By redesignating § 230.504 as § 230.504a and in newly redesignated § 230.504a revise the section heading to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding \$1,000,000.

14. By adding § 230.504 to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding \$1,000,000.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions in paragraph (b) of this § 230.504 by an issuer that is not:

- (1) subject to the reporting requirements of section 13 or 15(d) of the Exchange Act;
- (2) an investment company; or
- (3) a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person, shall be exempt from the provision of section 5 of the Act under section 3(b) of the Act.

(b) *Conditions to be met.*—(1) To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502, except that the provisions of § 230.502(c) and (d) shall not apply to

offers and sales made under this § 230.504.

(2) The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed \$1,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this § 230.504, in reliance on any exemption under section 3(b), or in violation of section 5(a) of the Securities Act.

Note 1: The calculation of the aggregate offering price is illustrated as follows:

If an issuer sold \$900,000 on June 1, 1987 under this § 230.504 and an additional \$4,100,000 on December 1, 1987 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1988. Until then the issuer must count the December 1, 1987 sale towards the \$1,000,000 limit within the preceding twelve months.

Note 2: If a transaction under § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold \$1,000,000 worth of its securities on January 1, 1988 under this § 230.504 and an additional \$500,000 worth on July 1, 1988, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 1988 sale.

15. By revising paragraph (b)(2)(iii) introductory text and (b)(2)(iii) (A) and (B) of § 230.505 to read as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding \$5,000,000.

(b) * * *

(2) * * *

(iii) *Disqualifications.* No exemption under this section shall be available for the securities of any issuer described in § 230.262 of Regulation A, except that for purposes of this section only:

(A) The term "filing of the offering statement required by § 230.252" as used in § 230.262(a), (b) and (c) shall mean the first sale of securities under this section;

(B) The term "underwriter" as used in § 230.262 (b) and (c) shall mean a person that has been or will be paid directly or indirectly remuneration for solicitation of purchasers in connection with sales of securities under this section; and

16. By revising paragraph (a)(2) of § 230.508 to read as follows:

§ 230.508. Insignificant deviations from a term, condition or requirement of Regulation D.

(a) * * *

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraph (c) of § 230.502, paragraph (b)(2) of § 230.504, paragraphs (b)(2)(i) and (ii) of § 230.505 and paragraph (b)(2)(i) of § 230.506 shall be deemed to be significant to the offering as a whole; and

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The authority citation for Part 239 continues to read as follows:

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

18. By removing §§ 239.28, 239.92, 239.93, 239.94, 239.95, and 239.96.

19. § 239.10 is added to read as follows:

§ 239.10 Form SB-2, optional form for the registration of securities to be sold to the public by small business issuers.

Small business issuers defined in Rule 405 (17 CFR 230.405 of this chapter) may use this form to register securities to be sold for cash. For further information concerning eligibility toward this form see Item 10(a) of Regulation S-B (17 CFR 228.10 et seq.)

Note: The Text and Instructions of Form SB-2 will not appear in the Code of Federal Regulations.

Form SB-2

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

OMB Approval

OMB Number: xxxx-xxxx

Expires: Approval Pending Estimated
average burden hours per response.—1.0

Registration Statement Under the Securities
Act of 1933 (Amendment No. _____)

(Name of small business issuer in its charter)

(State or jurisdiction of incorporation or
organization)

(Primary Standard Industrial Classification
Code Number)

(I.R.S. Employer Identification No.)

(Address and telephone number of principal
executive offices)

(Address of principal place of business or
intended principal place of business)

(Name, address and telephone number of agent for service)

Approximate date of proposed sale to the public

Calculation of Registration Fee

Title of each class of securities to be registered
Dollar Amount to be registered
Proposed maximum offering price per unit
Proposed maximum aggregate offering price
Amount of registration fee

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

General Instructions

A. Use of Form and Place of Filing

1. A "small business issuer," defined in Rule 405 of the Securities Act of 1933 (the "Securities Act") may use this form to register securities to be sold for cash. See also Item 10(a) of Regulation S-B (17 CFR 228.10 et seq.).

2. Initial public offerings on Form SB-2 should be filed in the regional office that is closest to its principal place of business or the Washington, D.C. office. However, no filing may be made in the Philadelphia regional office; small business issuers in that region should file in the Atlanta, New York or Washington, D.C. offices. The Commission may refer the filing to another office for processing.

3. If the small business issuer is a reporting company or a holding company of a bank (see the definition of "bank" in section 12(i) of the Exchange Act), it should file the registration statement in the Commission's Washington, D.C. headquarters.

4. Post-effective amendments should be filed with the office that declare the registration statement effective.

B. General Requirements

1. Issuers registering securities for the first time should be aware of Form SR and Rule 463 under the Securities Act concerning sales of registered securities and the use of proceeds. First time issuers also should be aware of Exchange Act Rule 15c2-8 (§ 240.15c2-8) which requires broker dealers to deliver a prospectus 48 hours before a sale of securities can be confirmed.

2. Issuers engaged in real estate, oil and gas or mining activities should consult the Industry Guides in Item 801 of Regulation S-K (17 CFR 229.801). Real estate companies also should refer to Item 13 [Investment Policies of Registrant], Item 14 [Description of Real Estate], and Item 15 [Operating Data] of Form S-11 (17 CFR 239.18).

3. If the issuer is not organized under the laws of any of the states or of the United States of America, it shall at the time of filing

this registration statement, file with the Commission a written irrevocable consent and power of attorney on Form F-X (§ 239.42). Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the registration statement.

Part I—Information Required in Prospectus

Item 1. Front of Registration Statement and Outside Front Cover of Prospectus

Furnish the information required by Item 501 of Regulation S-B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S-B.

Item 3. Summary Information and Risk Factors

Furnish the information required by Item 503 of Regulation S-B.

Item 4. Use of Proceeds

Furnish the information required by Item 504 of Regulation S-B.

Item 5. Determination of Offering Price

Furnish the information required by Item 505 of Regulation S-B.

Item 6. Dilution

Furnish the information required by Item 506 of Regulation S-B.

Item 7. Selling Security Holders

Furnish the information required by Item 507 of Regulation S-B.

Item 8. Plan of Distribution

Furnish the information required by Item 508 of Regulation S-B.

Item 9. Legal Proceedings

Furnish the information required by Item 103 of Regulation S-B.

Item 10. Directors, Executive Officers, Promoters and Control Persons

Furnish the information required by Item 401 of Regulation S-B.

Item 11. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S-B.

Item 12. Description of Securities

Furnish the information required by Item 202 of Regulation S-B.

Item 13. Interest of Named Experts and Counsel

Furnish the information required by Item 509 of Regulation S-B.

Item 14. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S-B.

Item 15. Organization Within Last Five Years

Furnish the information required by Item 404 of Regulation S-B.

Item 16. Description of Business

Furnish the information required by Item 101 of Regulation S-B.

Item 17. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S-B.

Item 18. Description of Property

Furnish the information required by Item 102 of Regulation S-B.

Item 19. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S-B.

Item 20. Market for Common Equity and Related Stockholder Matters

Furnish the information required by Item 201 of Regulation S-B.

Item 21. Executive Compensation

Furnish the information required by Item 402 of Regulation S-B.

Item 22. Financial Statements

Furnish the information required by Item 310 of Regulation S-B.

Item 23. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

Furnish the information required by Item 304 of Regulation S-B.

Part II—Information Not Required in Prospectus

Item 24. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S-B.

Item 25. Other Expenses of Issuance and Distribution

Furnish the information required by Item 511 of Regulation S-B.

Item 26. Recent Sales of Unregistered Securities

Furnish the information required by Item 701 of Regulation S-B.

Item 27. Exhibits

Furnish the exhibits required by Item 601 of Regulation S-B.

Item 28. Undertakings

Furnish the undertakings required by Item 512 of Regulation S-B.

Signatures

In accordance with the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form SB-2 and authorized this registration statement to be signed on its behalf by the undersigned, in the City of _____ State of _____, 19____.

(Registrant) _____
By (Signature and Title) _____

In accordance with the requirements of the Securities Act of 1933, this registration

statement was signed by the following persons in the capacities and on the dates stated.

(Signature) _____
(Title) _____
(Date) _____

Instructions for Signatures

(1) Who must sign: the small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation.

(2) Beneath each signature, type or print the name of each signatory. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. See Rule 402 of Regulation C concerning manual signatures and Item 601 of Regulation S-B concerning signatures by powers of attorney.

20. Form S-2 (§ 239.12) is amended by adding paragraph C to General Instruction II to read as follows:

Note: The text of Form S-2 does not appear in the Code of Federal Regulations.

Form S-2

General Instruction

II. Application of General Rules and Regulations

C. A "small business issuer," defined in Rule 405 (17 CFR 230.405), that is eligible to use Form S-2, shall refer to the disclosure items in Regulation S-B (17 CFR 228.10 *et seq.*) and not Regulation S-K. For example, while Item 1 of Form S-2 requires the information required by Item 501 of Regulation S-K, a small business issuer shall provide the information in Item 501 of Regulation S-B. Where Regulation S-B does not contain a comparable item, for example there is no Item "301" in Regulation S-B, then a small business issuer may omit the item. A small business issuer shall provide the financial information in Item 310 of Regulation S-B in lieu of the financial information called for by Item 11 of Form S-2.

21. Form S-3 (§ 239.13) is amended by adding paragraph C to General Instruction II to read as follows:

Note: The text of Form S-3 does not appear in the Code of Federal Regulations.

Form S-3

General Instruction

II. Application of General Rules and Regulations

C. A "small business issuer," defined in Rule 405 (17 CFR 230.405), that is eligible to

use Form S-3 shall refer to the disclosure items in Regulation S-B (17 CFR 228.10 *et seq.*) and not Regulation S-K. For example, while Item 1 of Form S-3 requires the information required by Item 501 of Regulation S-K, small business issuers shall provide the information in Item 501 of Regulation S-B. Where Regulation S-B does not contain a comparable item, for example there is no Item "301" in Regulation S-B, then small business issuers may omit the item. Small business issuers shall provide the financial information called for by Item 310 of Regulation S-B in lieu of the financial information called for by Item 11.

22. Form S-8 (§ 239.16b) is amended by adding instruction 3 to General Instruction B to read as follows:

Note: The text of Form S-8 does not appear in the Code of Federal Regulations.

Form S-8

General Instruction

B. Application of General Rules and Regulations

3. A "small business issuer," defined in § 230.405, shall refer to the disclosure items in Regulation S-B (17 CFR 228.10 *et seq.*) and not Regulation S-K (17 CFR 229.10 *et seq.*).

23. Form S-4 (§ 239.25) is amended by adding paragraph 3 to General Instruction D to read as follows:

Note: The text of Form S-4 will not appear in the Code of Federal Regulations.

Form S-4

General Instructions

D. Application of General Rules and Regulations

3. A *small business issuer*, defined in § 230.405, shall refer to the disclosure items in Regulation S-B (17 CFR 228.10 *et seq.*) and not Regulation S-K except with respect to disclosure called for by subpart 900 of Regulation S-K. Small business issuers shall provide or incorporate by reference the information called for by Item 310 of Regulation S-B.

24. By amending § 239.42 by revising the section heading and paragraph (a), removing the word "and" at the end of paragraph (d), removing the "period" at the end of paragraph (e) and adding to the end of paragraph (e) a "semi-colon" and the word "and" and adding a new paragraph (f) to read as follows: § 239.42. Form F-X, for appointment of agent for service of process and undertaking for issuers registering securities on Form F-8, F-9, F-10, or F-80 (§§ 239.38, 239.39, 239.40, or 239.41 of this chapter) or registering securities or filing periodic reports on Form 40-F (§ 249.240 of this chapter), or by any issuer or other non-

U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F (§§ 240.13e-102, 240.14d-102 or 240.14d-103 of this chapter), by any non-U.S. person acting as trustee with respect to securities registered on Form F-7 (§ 239.37 of this chapter), F-8, F-9, F-10, F-80 or SB-2 (§ 239.10 of this chapter), or by a Canadian issuer qualifying an offering statement pursuant to Regulation A (§ 230.251 *et seq.*) on Form 1-A (§ 239.90 of this chapter), or registering securities on Form SB-2.

(a) By any issuer registering securities on Form F-8, F-9, F-10, F-80 or SB-2 under the Securities Act of 1933;

(f) By a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A, or registering securities on Form SB-2.

25. By amending Form F-X (§ 239.42) to revise the title of the form, to remove the word "and" at the end of General Instruction I(d), to revise General Instruction I(e), to add General Instruction I(f), to revise General Instructions IIE(b)(i) and F and add General Instruction G and to revise Instructions 2 to read as follows.

(Note: Form F-X does not appear in the Code of Federal Regulations).

U.S. Securities and Exchange Commission,
Washington, DC 20549

Form F-X—Appointment of Agent for Service of Process and Undertaking, General Instructions

I. Form F-X shall be filed with the Commission:

(e) by any non-U.S. person acting as trustee with respect to securities registered on Form F-7, F-8, F-9, F-10, F-80, or SB-2; and

(f) by a Canadian issuer qualifying an offering statement pursuant to the provisions of Regulation A, or registering securities on Form SB-2.

II. . . .

E. . . .

(a)
(b) any civil suit or action brought against the Filer or to which the Filer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of any of its territories or possessions or of the District of Columbia, where the investigation, proceeding or cause of action arises out of or relates to or concerns (i) any offering made or purported to be made in connection with the securities registered or qualified by the Filer on Form (Name of form) _____ on (Date) _____ or any purchases or sales of any security in connection therewith;

F. Each person filing this Form in connection with:

(a) the use of Form F-9, F-10, 40-F, or SB-2 or Schedule 13E-4F, 14D-1F or 14D-9F stipulates and agrees to appoint a successor agent for service of process and file an

amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date the issuer of the securities to which such Forms and Schedules relate has ceased reporting under the Exchange Act;

(b) the use of Form F-8 or Form F-80 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed following the effective date of the latest amendment to such Form F-8 or Form F-80;

(c) its status as trustee with respect to securities registered on Form F-7, F-8, F-9, F-10, F-80, or SB-2 stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time during which any of the securities subject to the indenture remain outstanding; and

(d) the use of Form 1-A or other Commission form for an offering pursuant to Regulation A stipulates and agrees to appoint a successor agent for service of process and file an amended Form F-X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer at any time until six years have elapsed from the date of the last sale of securities in reliance upon the Regulation A exemption.

Each Filer further undertakes to advise the Commission promptly of any change to the Agent's name or address during the applicable period by amendment of this Form, referencing the file number of the relevant form in conjunction with which the amendment is being filed.

G. Each person filing this Form, other than a trustee filing in accordance with General Instruction I.(e) of this Form, undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to: the Forms, Schedules and offering statements described in General Instructions I.(a), I.(b), I.(c), I.(d) and I.(f) of this Form, as applicable; the securities to which such Forms, Schedules and offering statements relate; and the transactions in such securities.

Instructions

1. * * *

2. The name of each person who signs Form F-X shall be typed or printed beneath such person's signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which such person signs Form F-X. If any name is signed pursuant to a board resolution, a copy of the resolution shall be filed with each copy of Form F-X. A certified copy of such resolution shall be filed with the manually signed copy of Form F-X. If any name is signed pursuant to a power of attorney, a copy of the power of attorney shall be filed with each copy of Form F-X. A manually signed copy of such

power of attorney shall be filed with the manually signed copy of Form F-X.

26. By revising §§ 239.90 and 239.91 to read as follows:

§ 239.90 Form 1-A, offering statement under Regulation A.

This form shall be used for filing under Regulation A (§§ 230.251-230.263 of this chapter).

§ 239.91 Form 2-A, report pursuant to Rule 257 of Regulation A.

This form shall be used for reports of sales and use of proceeds pursuant to Rule 257 of Regulation A (§ 230.257 of this chapter).

27. By revising Form 1-A (§ 239.90) and Form 2-A (§ 239.91) to read as follows:

(Note: Forms 1-A and 2-A do not appear in the Code of Federal Regulations).

Securities and Exchange Commission

Form 1-A—Regulation A Offering Statement Under the Securities Act of 1933

(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Address, including zip code, and telephone number, including area code of issuer's principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification Number)

The following delaying notation is optional, but see Rule 252(g) before omitting it:

This offering statement shall only be qualified upon order of the Commission, under a subsequent amendment is filed indicating the intention to become qualified by operation of the terms of Regulation A.

General Instructions

I. Eligibility Requirements for Use of Form 1-A

This form is to be used for securities offerings made pursuant to Regulation A, 17 CFR 230.251 *et seq.* Careful attention should be directed to the terms, conditions and requirements of the regulation, especially Rule 251, inasmuch as the exemption is not available to all issuers or to every type of securities transaction. Further, the aggregate offering amount of securities which may be sold in any 12 month period is strictly limited to \$5 million.

II. Preparation and Filing of the Offering Statement

An offering statement shall be prepared by all persons seeking exemption pursuant to the

provisions of Regulation A. Parts I, II and III shall be addressed by all issuers. Part II of the form which relates to the content of the required offering circular provides several alternate formats depending upon the nature and/or business of the issuer; only one format needs to be followed and provided in the offering statement. General information regarding the preparation, format, content of, and where to file the offering statement is contained in Rule 252. Requirements relating to the offering circular are contained in Rules 253 and 255. The offering statement may be printed, mimeographed, lithographed, or typewritten or prepared by any similar process which will result in clearly legible copies. The Commission will attempt to process the offering statement at the place of filing. However, the Commission may refer processing to a different office.

III. Supplemental Information

The following information shall be furnished to the Commission as supplemental information:

(1) A statement as to whether or not the amount of compensation to be allowed or paid to the underwriter has been cleared with the NASD.

(2) Any engineering, management or similar report referenced in the offering circular.

(3) Such other information as requested by the staff in support of statements, representations and other assertions contained in the offering statement.

Part I—Notification

The information requested shall be provided in the order which follows specifying each item number; the text of each item as presented in this form may be omitted. All items shall be addressed and negative responses should be included.

Item 1. Significant Parties

List the full names and business and residential addresses, as applicable, for the following persons:

- (a) the issuer's directors;
- (b) the issuer's officers;
- (c) the issuer's general partners;
- (d) record owners of 5 percent or more of any class of the issuer's equity securities;
- (e) beneficial owners of 5 percent or more of any class of the issuer's equity securities;
- (f) promoters of the issuer;
- (g) affiliates of the issuer;
- (h) counsel to the issuer with respect to the proposed offering;
- (i) each underwriter with respect to the proposed offering;
- (j) the underwriter's directors;
- (k) the underwriter's officers;
- (l) the underwriter's general partners; and
- (m) counsel to the underwriter.

Item 2. Application of Rule 262

(a) State whether any of the persons identified in response to Item 1 are subject to any of the disqualification provisions set forth in Rule 262.

(b) If any such person is subject to these provisions, provide a full description including pertinent names, dates and other details, as well as whether or not an application has been made pursuant to Rule

262 for a waiver of such disqualification and whether or not such application has been granted or denied.

Item 3. Affiliate Sales

If any part of the proposed offering involves the resale of securities by affiliates of the issuer, confirm that the following description does not apply to the issuer.

The issuer has not had a net income from operations of the character in which the issuer intends to engage for at least one of its last two fiscal years.

Item 4. Jurisdictions in Which Securities Are to be Offered

(a) List the jurisdiction in which the securities are to be offered by underwriters, dealers or salespersons.

(b) List the jurisdictions in which the securities are to be offered other than by underwriters, dealers or salesmen and state the method by which such securities are to be offered.

Item 5. Unregistered Securities Issued or Sold Within One Year

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of this Form 1-A, state:

- (1) the name of such issuer;
- (2) the title and amount of securities issued;
- (3) the aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof;
- (4) the names and identities of the persons to whom the securities were issued.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within one year prior to the filing of this Form 1-A by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in subsections (1) through (4) of paragraph (a).

(c) Indicate the section of the Securities Act or Commission rule or regulation relied upon for exemption from the registration requirements of such Act and state briefly the facts relied upon for such exemption.

Item 6. Other Present or Proposed Offerings

State whether or not the issuer or any of its affiliates is currently offering or contemplating the offering of any securities in addition to those covered by this Form 1-A. If so, describe fully the present or proposed offering.

Item 7. Marketing Arrangements

(a) Briefly describe any arrangement known to the issuer or to any person named in response to Item 1 above or to any selling securityholder in the offering covered by this Form 1-A for any of the following purposes:

- (1) To limit or restrict the sale of other securities of the same class as those to be offered for the period of distribution;
- (2) To stabilize the market for any of the securities to be offered;
- (3) For withholding commissions, or otherwise to hold each underwriter or dealer

responsible for the distribution of its participation.

(b) Identify any underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be confirmed.

Item 8. Relationship with Issuer of Experts Named in Offering Statement

If any expert named in the offering statement as having prepared or certified any part HP LaserJet III/IIIDHPLAIII.PRSuer or any of its parents or subsidiaries or was connected with the issuer or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 9. Use of a Solicitation of Interest Document

Indicate whether or not a written document or broadcast script authorized by Rule 254 was used prior to the filing of this notification. If so, indicate the date(s) of such use.

Part II—Offering Circular

Financial Statement requirements, regardless of the applicable disclosure model, are specified in Part F/S of this Form 1-A.

The Commission encourages the use of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. See 17 CFR 228.10(e), 17 CFR 229.10. The Commission's safe harbor provision relative to projections is contained in Rule 175, 17 CFR 230.175.

The narrative disclosure contents of offering circulars are specified as follows:

- A: For all corporate issuers—the information required by Model A of this Part II of Form 1-A.
- B: For all other issuers and for any issuer that so chooses—the information required by either Part I of Form SB-2, 17 CFR 239.10, except for the financial statements called for there, or Model B of this Part II of Form 1-A. Offering circulars prepared pursuant to this instruction need not follow the order of the items or other requirements of the disclosure form. Such information shall not, however, be set forth in such a fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Information requested to be presented in a specified tabular format shall be given in substantially the tabular form specified in the item.

Offering Circular Model A.

General Instructions:

Each question in each paragraph of this part shall be responded to; and each question and any notes, but not any instructions thereto, shall be restated in its entirety. If the question or series of questions is inapplicable, so state. If the space provided in the format is insufficient, additional space should be created by cutting and pasting the format to add more lines.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may have liability to investors. The selling agents should exercise appropriate diligence to determine that no such inaccuracy or incompleteness has occurred, or they may be liable.

Cover Page

(Exact name of Company as set forth in Charter)

Type of securities offered: _____

Maximum number of securities offered: _____

Minimum number of securities offered: _____

Price per security: \$ _____

Total proceeds: If maximum sold: \$ _____

If minimum sold: \$ _____

(See Questions 9 and 10)

Is a commissioned selling agent selling the securities in this offering?

☐ Yes ☐ No

If yes, what percent is commission of price to public? _____ %.

Is there other compensation to selling agent(s)? ☐ Yes ☐ No

Is there a finder's fee or similar payment to any person?

☐ Yes ☐ No (See Question No. 22)

Is there an escrow of proceeds until minimum is obtained?

☐ Yes ☐ No (See Question No. 26)

Is this offering limited to members of a special group, such as employees of the Company or individuals? ☐ Yes ☐ No (See Question No. 25)

Is transfer of the securities restricted? ☐ Yes ☐ No (See Question No. 25)

Investment in small businesses involves a high degree of risk, and investors should not invest any funds in this offering unless they can afford to lose their entire investment. See Question No. 2 for the risk factors that management believes present the most substantial risks to an investor in this offering.

In making an investment decision investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended or approved by any federal or state securities commission or regulatory authority. Furthermore, these authorities have not passed upon the accuracy or adequacy of this document. Any representation to the contrary is a criminal offense.

The U.S. Securities and Exchange Commission does not pass upon the merits of any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering circular or selling literature. These securities are offered under an exemption from registration; however, the commission has not made an

independent determination that these securities are exempt from registration.

This Company:

- ☐ Has never conducted operations.
☐ Is in the development stage.
☐ Is currently conducting operations.
☐ Has shown a profit in the last fiscal year.
☐ Other (Specify): _____

(Check at least one, as appropriate)
 This offering has been registered for offer and sale in the following states:

State	State file No.	Effective date

Instruction: The Cover Page of the Offering Circular is a summary of certain essential information and should be kept on one page if at all possible. For purposes of characterizing the Company on the cover page, the term "development stage" has the same meaning as that set forth in Statement of Financial Accounting Standards No. 7 (June 1, 1975).

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This offering circular contains all of the representations by the company concerning this offering, and no person shall make different or broader statements than those contained herein. Investors are cautioned not to rely upon any information not expressly set forth in this offering circular.

This Offering Circular, together with Financial Statements and other Attachments, consists of a total of _____ pages.

The Company

1. Exact corporate name: _____
 State and date of incorporation: _____

Street address of principal office: _____

Company Telephone Number: () _____
 Fiscal year: _____
 (month) _____
 (day) _____

Person(s) to contact at Company with respect to offering: _____

Telephone Number (if different from above): () _____

RISK FACTORS

2. List in the order of importance the factors which the Company considers to be the most substantial risks to an investor in this offering in view of all facts and circumstances or which otherwise make the offering one of high risk or speculative (i. e., those factors which constitute the greatest threat that the investment will be lost in whole or in part, or not provide an adequate return).

- (1) _____
- (2) _____
- (3) _____
- (4) _____
- (5) _____
- (6) _____
- (7) _____
- (8) _____
- (9) _____
- (10) _____
- (11) _____
- (12) _____
- (13) _____
- (14) _____
- (15) _____
- (16) _____

Note: In addition to the above risks, businesses are often subject to risks not foreseen or fully appreciated by management. In reviewing this Offering Circular potential investors should keep in mind other possible risks that could be important.

Instruction: The Company should avoid generalized statements and include only those factors which are unique to the Company. No specific number of risk factors is required to be identified. If more than 16 significant risk factors exist, add additional lines and number as appropriate. Risk factors may be due to such matters as cash flow and liquidity problems, inexperience of management in managing a business in the particular industry, dependence of the Company on an unproven product, absence of an existing market for the product (even though management may believe a need exists), absence of an operating history of the Company, absence of profitable operations in recent periods, an erratic financial history, the financial position of the Company, the nature of the business in which the Company is engaged or proposes to engage, conflicts of interest with management, arbitrary establishment of offering price, reliance on the efforts of a single individual, or absence of a trading market if a trading market is not expected to develop. Cross references should be made to the Questions where details of the risks are described.

Business and Properties

3. With respect to the business of the Company and its properties:

(a) Describe in detail what business the Company does and proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

(b) Describe how these products or services are to be produced or rendered and how and when the Company intends to carry out its activities. If the Company plans to offer a new product(s), state the present stage of development, including whether or not a working prototype(s) is in existence. Indicate if completion of development of the product would require a material amount of the resources of the Company, and the estimated amount. If the Company is or is expected to be dependent upon one or a limited number of suppliers for essential raw materials, energy or other items, describe. Describe any major existing supply contracts.

(c) Describe the industry in which the Company is selling or expects to sell its products or services and, where applicable, any recognized trends within that industry.

Describe that part of the industry and the geographic area in which the business competes or will compete.

Indicate whether competition is or is expected to be by price, service, or other basis. Indicate (by attached table if appropriate) the current or anticipated prices or price ranges for the Company's products or services, or the formula for determining prices, and how these prices compare with those of competitors' products or services, including a description of any variations in product or service features. Name the principal competitors that the Company has or expects to have in its area of competition. Indicate the relative size and financial and market strengths of the Company's competitors in the area of competition in which the Company is or will be operating. State why the Company believes it can effectively compete with these and other companies in its area of competition.

Note: Because this Offering Circular focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

(d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

(e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: _____ / _____ / _____

\$ _____ (a recent date)

As of: _____ / _____ / _____

\$ _____ (one year earlier)

Explain the reason for significant variations between the two figures, if any.

Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

(f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

(g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

(h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, covenants-not-to-compete and the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

(i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

(j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

(k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization in anticipation of this offering, describe (and adjust historical per share figures elsewhere in this Offering Circular accordingly).

4.(a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(1)		

	Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(2)			
(3)			
(4)			
(5)			

(b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question Nos. 11 and 12)

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

Instruction: The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 4, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an

obstacle which the Company must overcome in order to become profitable.

Offering Price Factors

If the securities offered are common stock, or are exercisable for or convertible into common stock, the following factors may be relevant to the price at which the securities are being offered.

5. What were net, after-tax earnings for the last fiscal year? (If losses, show in parenthesis.)

Total \$ _____ (\$ _____ per share)

6. If the Company had profits, show offering price as a multiple of earnings. Adjust to reflect for any stock splits or recapitalizations, and use conversion or exercise price in lieu of offering price, if applicable.

Offering Price Per Share

Net After-Tax Earnings = (price/earnings
Last Year Per Share multiple)

7.(a) What is the net tangible book value of the Company? (If deficit, show in parenthesis.) For this purpose, net tangible book value means total assets (exclusive of copyrights, patents, goodwill, research and development costs and similar intangible items) minus total liabilities.

\$ _____ (\$ _____ per share)

If the net tangible book value per share is substantially less than this offering (or exercise or conversion) price per share, explain the reasons for the variation.

(b) State the dates on which the Company sold or otherwise issued securities during the last 12 months, the amount of such securities sold, the number of persons to whom they were sold, any relationship of such persons to the Company at the time of sale, the price at which they were sold and, if not sold for cash, a concise description of the consideration. (Exclude bank debt.)

8.(a) What percentage of the outstanding shares of the Company will the investors in this offering have? Assume exercise of outstanding options, warrants or rights and conversion of convertible securities, if the respective exercise or conversion prices are at or less than the offering price. Also assume exercise of any options, warrants or rights and conversions of any convertible securities offered in this offering.

If the maximum is sold: _____ %

If the minimum is sold: _____ %

(b) What post-offering value is management implicitly attributing to the entire Company by establishing the price per security set forth on the cover page (or exercise or conversion price if common stock

is not offered)? (Total outstanding shares after offering times offering price, or exercise or conversion price if common stock is not offered.)

If maximum is sold: \$ _____ *

If minimum is sold: \$ _____ *

(For above purposes, assume outstanding options are exercised in determining "shares" if the exercise prices are at or less than the offering price. All convertible securities, including outstanding convertible securities, shall be assumed converted and any options, warrants or rights in this offering shall be assumed exercised.)

*These values assume that the Company's capital structure would be changed to reflect any conversions of outstanding convertible securities and any use of outstanding securities as payment in the exercise of outstanding options, warrants or rights included in the calculation. The type and amount of convertible or other securities thus eliminated would be: _____. These values also assume an increase in cash in the Company by the amount of any cash payments that would be made upon cash exercise of options, warrants or rights included in the calculations. The amount of such cash would be: \$ _____.

Note: After reviewing the above, potential investors should consider whether or not the offering price (or exercise or conversion price, if applicable) for the securities is appropriate at the present stage of the Company's development.

Instruction: Financial information in response to Questions 5, 6 and 7 should be consistent with the Financial Statements. Earnings per share for purposes of Question 5 should be calculated by dividing earnings for the last fiscal year by the weighted average of outstanding shares during that year. No calculations should be shown for periods of less than one year or if earnings are negative or nominal. For purposes of Question 8, the "offering price" of any options, warrants or rights or convertible securities in the offering is the respective exercise or conversion price.

Use of Proceeds

9.(a) The following table sets forth the use of the proceeds from this offering:

	If minimum sold	If maximum sold
Total Proceeds	Amount %	Amount %
Less: Offering Expenses, Commissions & Finders Fees	\$ _____	\$ _____
Legal & Accounting	100%	100%
Copying & Advertising		
Other (Specify):		
Net Proceeds from Offering		
Use of Net Proceeds		
	\$ _____	\$ _____
	\$ _____	\$ _____

	If minimum sold	If maximum sold
	Amount %	Amount %
Total Use of Net Proceeds.....		
	\$ 100%	\$ 100%

(b) If there is no minimum amount of proceeds that must be raised before the Company may use the proceeds of the offering, describe the order of priority in which the proceeds set forth above in the column "If Maximum Sold" will be used.

Note: After reviewing the portion of the offering allocated to the payment of offering expenses, and to the immediate payment to management and promoters of any fees, reimbursements, past salaries or similar payments, a potential investor should consider whether the remaining portion of his investment, which would be that part available for future development of the Company's business and operations, would be adequate.

10.(a) If material amounts of funds from sources other than this offering are to be used in conjunction with the proceeds from this offering, state the amounts and sources of such other funds, and whether funds are firm or contingent. If contingent, explain.

(b) If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness, including interest rates. If the indebtedness to be discharged was incurred within the current or previous fiscal year, describe the use of proceeds of such indebtedness.

(c) If any material amount of proceeds is to be used to acquire assets, other than in the ordinary course of business, briefly describe and state the cost of the assets and other material terms of the acquisitions. If the assets are to be acquired from officers, directors, employees or principal stockholders of the Company or their associates, give the names of the persons from whom the assets are to be acquired and set forth the cost to the Company, the method followed in determining the cost, and any profit to such persons.

(d) If any amount of the proceeds is to be used to reimburse any officer, director, employee or stockholder for services already rendered, assets previously transferred, or monies loaned or advanced, or otherwise, explain:

11. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's trade payables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

12. Indicate whether proceeds from this offering will satisfy the Company's cash requirements for the next 12 months, and whether it will be necessary to raise additional funds. State the source of additional funds, if known.

Instruction: Use of net proceeds should be stated with a high degree of specificity. Suggested (but not mandatory) categories are: leases, rent, utilities, payroll (by position or type), purchase or lease of specific items of equipment or inventory, payment of notes, accounts payable, etc., marketing or advertising costs, taxes, consulting fees, permits, professional fees, insurance and supplies. Categories will vary depending on the Company's plans. Use of footnotes or other explanation is recommended where appropriate. Footnotes should be used to indicate those items of offering expenses that are estimates. Set forth in separate categories all payments which will be made immediately to the Company's executive officers, directors and promoters, indicating by footnote that these payments will be so made to such persons. If a substantial amount is allocated to working capital, set forth separate sub-categories for use of the funds in the Company's business.

If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect as one of the Use of Net Proceeds categories should be included together with a statement of the amount of proceeds not so allocated and a footnote explaining how the Company expects to employ such funds not so allocated.

Capitalization

13. Indicate the capitalization of the Company as of the most recent balance sheet date (adjusted to reflect any subsequent stock splits, stock dividends, recapitalizations or refinancings) and as adjusted to reflect the sale of the minimum and maximum amount of securities in this offering and the use of the net proceeds therefrom:

	Amount outstanding		
	As of: / / (date)	As adjusted	
		Minimum	Maximum
Debt:			
Short-term debt (average interest rate %).	\$.....	\$.....	\$.....
Long-term debt (average interest rate %).			
Total debt:			
Stockholders equity (deficit):			
Preferred stock—par or stated value (by class of preferred in order of preferences).			
Common stock—par or stated value.			
Additional paid in capital.			
Retained earnings (deficit).			
Total stockholders equity (deficit).			
Total Capitalization.			

Number of class of preferred	Par Value shares authorized	Per share
	\$	
	\$	

Number of common shares authorized: _____ shares. Par or stated value per share, if any: \$

Number of common shares reserved to meet conversion requirements or for the issuance upon exercise of options, warrants or rights: _____ shares.

Instruction: Capitalization should be shown as of a date no earlier than that of the most recent Financial Statements provided pursuant to Question 46. If the Company has mandatory redeemable preferred stock, include the amount thereof in "long term debt" and so indicate by footnote to that category in the capitalization table.

Description of Securities

14. The securities being offered hereby are:
☐ Common Stock
☐ Preferred or Preference Stock
☐ Notes or Debentures
☐ Units of two or more types of securities composed of:
☐ Other: _____

15. These securities have:

Yes No
☐ ☐ Cumulative voting rights
☐ ☐ Other special voting rights
☐ ☐ Preemptive rights to purchase in new issues of shares
☐ ☐ Preference as to dividends or interest
☐ ☐ Preference upon liquidation
☐ ☐ Other special rights or preferences (specify): _____

Explain:

16. Are the securities convertible? ☐ Yes ☐ No
 If so, state conversion price or formula.

Date when conversion becomes effective: / /

Date when conversion expires: / /

17.(a) If securities are notes or other types of debt securities:

(1) What is the interest rate? _____ %
 If interest rate is variable or multiple rates, describe: _____

(2) What is the maturity date? / /

If serial maturity dates, describe: _____

(3) Is there a mandatory sinking fund? ☐ Yes ☐ No
 Describe: _____

(4) Is there a trust indenture? ☐ Yes ☐ No
 Name, address and telephone number of Trustee: _____

(5) Are the securities callable or subject to redemption? ☐ Yes ☐ No
 Describe, including redemption prices: _____

(6) Are the securities collateralized by real or personal property?
☐ Yes ☐ No Describe: _____

(7) If these securities are subordinated in right of payment of interest or principal, explain the terms of such subordination. _____

How much currently outstanding indebtedness of the Company is senior to the securities in right of payment of interest or principal? \$

How much indebtedness shares in right of payment on an equivalent (pari passu) basis? \$

How much indebtedness is junior (subordinated) to the securities? \$

(b) If notes or other types of debt securities are being offered and the Company had earnings during its last fiscal year, show the ratio of earnings to fixed charges on an actual and pro forma basis for that fiscal year. "Earnings" means pretax income from continuing operations plus fixed charges and capitalized interest. "Fixed charges" means interest (including capitalized interest), amortization of debt discount, premium and expense, preferred stock dividend requirements of majority owned subsidiary, and such portion of rental expense as can be demonstrated to be representative of the interest factor in the particular case. The pro forma ratio of earnings to fixed charges should include incremental interest expense as a result of the offering of the notes or other debt securities.

	Last fiscal year		
	Actual	Pro forma	
		Minimum	Maximum
"Earnings" = "Fixed Charges"			
If no earnings show "Fixed Charges" only			

Note: Care should be exercised in interpreting the significance of the ratio of earnings to fixed charges as a measure of the "coverage" of debt service, as the existence of earnings does not necessarily mean that the Company's liquidity at any given time will permit payment of debt service requirements to be timely made. See Question Nos. 11 and 12. See also the Financial Statements and especially the Statement of Cash Flows.

18. If securities are Preference or Preferred stock: Are unpaid dividends cumulative?
☐ Yes ☐ No Are securities callable?
☐ Yes ☐ No
 Explain: _____

Note: Attach to this Offering Circular copies or a summary of the charter, bylaw or contractual provision or document that gives rise to the rights of holders of Preferred or Preference Stock, notes or other securities being offered.

19. If securities are capital stock of any type, indicate restrictions on dividends under loan or other financing arrangements or otherwise: _____

20. Current amount of assets available for payment of dividends if deficit must be first made up, show deficit in parenthesis):
 \$ _____

PLAN OF DISTRIBUTION

21. The selling agents (that is, the persons selling the securities as agent for the Company for a commission or other compensation) in this offering are:

Name: _____
 Address: _____

Telephone No. () _____

Name: _____
 Address: _____

Telephone No. () _____

22. Describe any compensation to selling agents or finders, including cash, securities, contracts or other consideration, in addition to the cash commission set forth as a percent of the offering price on the cover page of this Offering Circular. Also indicate whether the Company will indemnify the selling agents or finders against liabilities under the securities laws. ("Finders" are persons who for compensation act as intermediaries in obtaining selling agents or other-wise making introductions in furtherance of this offering.) _____

23. Describe any material relationships between any of the selling agents or finders and the Company or its management. _____

Note: After reviewing the amount of compensation to the selling agents or finders for selling the securities, and the nature of any relationship between the selling agents or finders and the Company, a potential investor should assess the extent to which it may be inappropriate to rely upon any recommendation by the selling agents or finders to buy the securities.

24. If this offering is not being made through selling agents, the names of persons at the Company through which this offering is being made:

Name: _____
 Address: _____

Telephone No. () _____

Name: _____
 Address: _____

Telephone No. () _____

25. If this offering is limited to a special group, such as employees of the Company, or is limited to a certain number of individuals (as required to qualify under Subchapter S of the Internal Revenue Code) or is subject to any other limitations, describe the limitations and any restrictions on resale that apply: _____

Will the certificates bear a legend notifying holders of such restrictions?
☐ Yes ☐ No

26. (a) Name, address and telephone number of independent bank or savings and loan association or other similar depository institution acting as escrow agent if proceeds are escrowed until minimum proceeds are raised: _____

(b) Date at which funds will be returned by escrow agent if minimum proceeds are not raised: _____

Will interest on proceeds during escrow period be paid to investors? ☐ Yes ☐ No

27. Explain the nature of any resale restrictions on presently outstanding shares, _____

and when those restrictions will terminate, if this can be determined: _____

Note: Equity investors should be aware that unless the Company is able to complete a further public offering or the Company is able to be sold for cash or merged with a public company that their investment in the Company may be illiquid indefinitely.

Dividends, Distributions and Redemptions

28. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when: _____

Officers and Key Personnel of the Company

29. Chief Executive Officer:

Title: _____
 Name: _____
 Age: _____
 Office Street Address: _____

Telephone No. () _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities. _____

Education (degrees, schools, and dates): _____

Also a Director of the Company ☐ Yes ☐ No

Indicate amount of time to be spent on Company matters if less than full time: _____

30. Chief Operating Officer:

Title: _____
 Name: _____
 Age: _____
 Office Street Address: _____

 (A) Name: _____
 Age: _____
 Title: _____
 Office Street Address: _____

Telephone No.: () _____
 Names of employers, titles and dates of
 positions held during past five years with an
 indication of job responsibilities.

 Telephone No.: () _____
 Names of employers, titles and dates of
 positions held during past five years with an
 indication of job responsibilities.

Instruction: The term "Chief Executive Officer" means the officer of the Company who has been delegated final authority by the board of directors to direct all aspects of the Company's affairs. The term "Chief Operating Officer" means the officer in charge of the actual day-to-day operations of the Company's business. The term "Chief Financial Officer" means the officer having accounting skills who is primarily in charge of assuring that the Company's financial books and records are properly kept and maintained and financial statements prepared.

The term "key personnel" means persons such as vice presidents, production managers, sales managers, or research scientists and similar persons, who are not included above, but who make or are expected to make significant contributions to the business of the Company, whether as employees, independent contractors, consultants or otherwise.

Directors of the Company

33. Number of Directors: _____. If Directors are not elected annually, or are elected under a voting trust or other arrangement, explain:

Education (degrees, schools, and dates):

Education (degrees, schools, and dates):

Also a Director of the Company? ☐ Yes
☐ No
 Indicate amount of time to be spent on
 Company matters if less than full time:

Also a Director of the Company? ☐ Yes
☐ No
 Indicate amount of time to be spent on
 Company matters if less than full time:

31. Chief Financial Officer:

Title: _____
 Name: _____
 Age: _____
 Office Street Address: _____

 (B) Name: _____
 Age: _____
 Title: _____
 Office Street Address: _____

Telephone No.: () _____
 Names of employers, titles and dates of
 positions held during past five years with an
 indication of job responsibilities.

 Telephone No.: () _____
 Names of employers, titles and dates of
 positions held during past five years with an
 indication of job responsibilities.

34. Information concerning outside or other
 Directors (i.e. those not described above):

(A) Name: _____
 Age: _____
 Office Street Address: _____

 Telephone No.: () _____
 Names of employers, titles and dates of
 positions held during past five years with an
 indication of job responsibilities.

Education (degrees, schools, and dates):

Education (degrees, schools, and dates):

Education (degrees, schools, and dates):

Also a Director of the Company? ☐ Yes
☐ No
 Indicate amount of time to be spent on
 Company matters if less than full time:

Also a Director of the Company? ☐ Yes
☐ No
 Indicate amount of time to be spent on
 Company matters if less than full time:

 (B) Name: _____
 Age: _____
 Office Street Address: _____

32. Other Key Personnel:

Telephone No.: ()

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

(b) If any of the Officers, Directors or other key personnel have ever worked for or managed a company in the same business or industry as the Company or in a related business or industry, describe what precautions, if any (including the obtaining of releases or consents from prior employers), have been taken to preclude claims by prior employers for conversion or theft of trade secrets, know-how or other proprietary information.

Education (degrees, schools, and dates):

(C) Name:

Age:

Office Street Address:

(c) If the Company has never conducted operations or is otherwise in the development stage, indicate whether any of the Officers or Directors has ever managed any other company in the start-up or development stage and describe the circumstances, including relevant dates.

Telephone No.: ()

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

(d) If any of the Company's key personnel are not employees but are consultants or other independent contractors, state the details of their engagement by the Company.

Education (degrees, schools, and dates):

35. (a) Have any of the Officers or Directors ever worked for or managed a company (including a separate subsidiary or division of a larger enterprise) in the same business as the Company? [] Yes [] No
Explain:

(e) If the Company has key man life insurance policies on any of its Officers, Directors or key personnel, explain, including the names of the persons insured, the amount of insurance, whether the insurance proceeds are payable to the Company and whether

there are arrangements that require the proceeds to be used to redeem securities or pay benefits to the estate of the insured person or a surviving spouse.

36. If a petition under the Bankruptcy Act or any State insolvency law was filed by or against the Company or its Officers, Directors or other key personnel, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of any such persons, or any partnership in which any of such persons was a general partner at or within the past five years, or any corporation or business association of which any such person was an executive officer at or within the past five years, set forth below the name of such persons, and the nature and date of such actions.

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

Principal Stockholders

37. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

Class of shares

Average
price per
shareNumber of
shares now
heldPercent of
totalNumber of
shares held
after
offering if all
securities
soldPercent of
total

Name:

Office Street Address:

Class of shares	Average price per share	Number of shares now held	Percent of total	Number of shares held after offering if all securities sold	Percent of total
..... Telephone No. () Principal occupation: Name: Office Street Address: Telephone No. () Principal occupation: Name: Office Street Address: Telephone No. () Principal occupation: Name: Office Street Address: Telephone No. () Principal occupation:					

38. Number of shares beneficially owned by Officers and Directors as a group:

Before offering: _____ shares (____ % of total outstanding)

After offering:

(a) Assuming minimum securities sold:
_____ shares (____ % of total
outstanding)

(b) Assuming maximum securities sold:
_____ shares (____ % of total
outstanding)

(Assume all options exercised and all convertible securities converted.)

Instruction: If shares are held by family members, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control—as, for example, a co-trustee) they should be included as being “beneficially owned.” An explanation of these circumstances should be set forth in a footnote to the “Number of Shares Now Held.”

Management Relationships, Transactions and Remuneration

39.(a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

(b) If the Company has made loans to or is doing business with any of its Officers, Directors, key personnel or 10% stockholders, or any of their relatives (or any entity controlled directly or indirectly by any such persons) within the last two years, or proposes to do so within the future, explain. (This includes sales or lease of goods, property or services to or from the Company, employment or stock purchase contracts, etc.) State the principal terms of any significant loans, agreements, leases, financing or other arrangements.

(c) If any of the Company's Officers, Directors, key personnel or 10% stockholders has guaranteed or co-signed any of the Company's bank debt or other obligations, including any indebtedness to be retired from

the proceeds of this offering, explain and state the amounts involved.

40.(a) List all remuneration by the Company to Officers, Directors and key personnel for the last fiscal year:

	Cash	Other
Chief Executive Officer	\$	\$
Chief Operating Officer.....		
Chief Accounting Officer.....		
Key Personnel:		
.....		
.....		
.....		
Others:		
.....		
.....		
.....		
Total:		
Directors as a group (number of persons).....		

(b) If remuneration is expected to change or has been unpaid in prior years, explain:

(c) If any employment agreements exist or are contemplated, describe:

41.(a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: _____ shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or option plans but not yet covered by outstanding purchase agreements, options or warrants: _____ shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

42. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

Instruction: For purposes of Question 39(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or

affairs. A person is typically a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 40, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

Litigation

43. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

Federal Tax Aspects

44. If the Company is an S corporation under the Internal Revenue Code of 1986, and it is anticipated that any significant tax benefits will be available to investors in this offering, indicate the nature and amount of such anticipated tax benefits and the material risks of their disallowance. Also, state the name, address and telephone number of any tax advisor that has passed upon these tax benefits. Attach any opinion or description of the tax consequences of an investment in the securities by the tax advisor.

Name of Tax Advisor: _____

Address: _____

Telephone No. (____) _____

Note: Potential investors are encouraged to have their own personal tax consultant contact the tax advisor to review details of the tax benefits and the extent that the

benefits would be available and advantageous to the particular investor.

Miscellaneous Factors

45. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions, etc.) or which are necessary to make any other information in this Offering Circular not misleading or incomplete.

Financial Statements

46. Provide the financial statements required by Part F/S of this Offering Circular section of Form 1-A.

Management's Discussion and Analysis of Certain Relevant Factors

47. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

48. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

49. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: ____%. What is the anticipated gross margin for next year of operations? Approximately ____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

50. Foreign sales as a percent of total sales for last fiscal year: ____%. Domestic government sales as a percent of total domestic sales for last fiscal year: ____%. Explain the nature of these sales, including any anticipated changes:

Offering Circular Model B.

Item 1. Cover Page

The cover page of the offering circular shall include the following information:

- Name of the issuer;
- The mailing address of the issuer's principal executive offices including the zip code and the issuer's telephone number;
- Date of the offering circular;
- Description and amount of securities offered (**Note:** this description should include, for example, appropriate disclosure of redemption and conversion features of debt securities);
- The statement required by Rule 253;
- The table(s) required by Item 2;
- The name of the underwriter or underwriters;
- Any materials required by the law of any state in which the securities are to be offered;
- If applicable, identify material risks in connection with the purchase of the securities; and
- Approximate date of commencement of proposed sale to the public.

Instruction: Where the name of the issuer is the same as the name of another well-known company or indicates a line of business in which the issuer is not engaged or is engaged to only a limited extent, a statement should be furnished to that effect. In some circumstances, however, disclosure may not be sufficient, and a change of name may be the only way to cure its misleading character.

Item 2. Distribution Spread

(a) The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the offering circular as to all securities being offered (estimate, if necessary).

Underwriting	Pro- ceeds price to public	Discount and commis- sions	To issuer or other persons
Per unit			
Total			

If the securities are to be offered on a best efforts basis, the cover page should set forth the termination date, if any, of the offering, any minimum required sale and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above.

	Price to public	Under- writing discount and commis- sions	Pro- ceeds to issuer or other persons
Total minimum			
Total maximum			

Instructions

- The term "commissions" shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made in connection with the sale of such security.
- Only commissions paid by the issuer in cash are to be indicated in the table. Commissions paid by other persons or any form of non-cash compensation shall be briefly identified in a note to the table with a cross-reference to a more complete description elsewhere in the offering circular.
- Prior to the commencement of sales pursuant to Regulation A, the issuer shall inform the Commission whether or not the amount of compensation to be allowed or paid to the underwriters, as described in the offering statement, has been cleared with the National Association of Securities Dealers, Inc.
- If the securities are not to be offered for cash, state the basis upon which the offering is to be made.
- If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained.
- Any finder's fees or similar payments shall be disclosed on the cover page with a reference to a more complete discussion in the offering circular. Such disclosure should identify the finder, the nature of the services rendered and the nature of any relationship between the finder and the issuer, its officers, directors, promoters, principal stockholders and underwriters (including any affiliates thereof).
- The amount of the expenses of the offering borne by the issuer, including underwriting expenses to be borne by the issuer, should be disclosed in a footnote to the table.

Item 3. Summary Information, Risk Factors and Dilution

(a) Where appropriate to a clear understanding by investors, there should be set forth in the forepart of the offering circular, under an appropriate caption, a carefully organized series of short, concise paragraphs, summarizing the principal factors which make the offering one of high risk or speculative. **Note:** These factors may be due to such matters as an absence of an operating history of the issuer, an absence of profitable operations in recent periods, an erratic financial history, the financial position of the issuer, the nature of the business in which the issuer is engaged or proposes to engage, conflicts of interest with management, reliance on the efforts of a single individual, or the method of determining the market price where no market currently exists. Issuers should avoid generalized statements and include only those factors which are unique to the issuer.

(b) Where there is a material disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons for shares acquired by them in a transaction during the past three years, or which they have a right to acquire, there should be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where the extent of the dilution makes it appropriate, the following shall be given: (1) the net tangible book value per share before and after the distribution; (2) the amount of the increase in such net tangible book value per share attributable to the cash payment made by purchasers of the shares being offered; and (3) the amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

Item 4. Plan of Distribution

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the underwriters' obligation to take the securities.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities.

(c) Outline briefly the plan of distribution of any securities being issued which are to be offered through the selling efforts of brokers or dealers or otherwise than through underwriters.

(d) If any of the securities are to be offered for the account of security holders, indicate on the cover page the total amount to be offered for their account and include a cross-reference to a fuller discussion elsewhere in the offering circular. Such discussion should identify each selling security holder, state the amount owned by him, the amount offered for

his account and the amount to be owned after the offering.

(e)(1) Describe any arrangements for the return of funds to subscribers if all of the securities to be offered are not sold; if there are no such arrangements, so state.

(2) If there will be a material delay in the payment of the proceeds of the offering by the underwriter to the issuer, the salient provisions in this regard and the effects on the issuer should be stated.

Instruction

Attention is directed to the provisions of Rules 10b-9 [17 CFR § 240.10b-9] and 15c2-4 [17 CFR § 240.15c2-4] under the Securities Exchange Act of 1934. These rules outline, among other things, antifraud provisions concerning the return of funds to subscribers and the transmission of proceeds of an offering to a seller.

Item 5. Use of Proceeds to Issuer

State the principal purposes for which the net proceeds to the issuer from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions

1. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated and how the registrant expects to employ such funds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purpose set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the issuer as shown under Item 2.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

4. If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe and state the cost of the assets. If the assets are to be acquired from affiliates of the issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the issuer.

6. The issuer may reserve the right to change the use of proceeds provided that such reservation is due to certain contingencies which are adequately disclosed.

Item 6. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products produced and services rendered and the principal markets for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

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

(iv) The number of persons employed by the issuer, indicating the number employed full time.

(v) The material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of factors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclical nature of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) The following requirement in subparagraph (i) applies only to issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the offering statement.

(i) Describe, if formulated, the issuer's plan of operation for the twelve months following the commencement of the proposed offering. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should

include, among other things, a statement indicating whether, in the issuer's opinion, the proceeds from the offering will satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(ii) Any engineering, management or similar reports which have been prepared or provided for external use by the issuer or by a principal underwriter in connection with the proposed offering should be furnished to the Commission at the time of filing the offering statement or as soon as practicable thereafter. There should also be furnished at the same time a statement as to the actual or proposed use and distribution of such report or memorandum. Such statement should identify each class of persons who have received or will receive the report or memorandum, and state the number of copies distributed to each such class. If no such report or memorandum has been prepared, the Commission should be so informed in writing at the time the report or memorandum would otherwise have been submitted.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference shall be included in the description of business.

Item 7. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction

What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 8. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected to his office or position:

- (1) directors;
- (2) persons nominated to become directors;
- (3) executive officers;
- (4) persons chosen to become executive officers;
- (5) significant employees.

Instructions

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

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

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses).

Item 9. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them.

Name of individual or identity of group

Capacities in remuneration was received

Aggregate remuneration

Instructions

1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurements of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Item 10. Security Ownership of Management and Certain Securityholders

(a) Voting securities and principal holders thereof. Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer; *Note*—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;

(2) all officers and directors as a group; (3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

(1) Title of class _____
(2) Name and address of owner _____
(3) Amount owned before the offering _____
(4) Amount owned after the offering _____
(5) Percent of class _____

Instruction

Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information

required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants, and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and referred to in subsection (a) above:

Name of holder _____
Title and amount securities called for by options, warrants or rights _____
Exercise price _____
Date of exercise _____

Instruction

Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed \$10,000 for any officer, director, or principal shareholder named in answer to this item, or \$50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection. If, as is the case with offerings of debt securities, the offering price cannot be determined at the time of filing the offering statement, the issuer may utilize any reasonable method of valuation.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 11. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;
(2) Any nominee for election as a director;
(3) Any principal securityholder named in answer to Item 10(a);
(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;
(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instructions

1. No information need be given in answer to this item as to any transaction where:

(a) The rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or

contract carrier fixed in conformity with law or governmental authority;

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

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments does not exceed \$50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

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

(a) the interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (5) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (5) above had an interest of less than 10 percent; or

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

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter

pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

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

Item 12. Securities Being Offered

(a) If capital stock is being offered, state the title of the class and furnish the following information:

(1) Outline briefly: (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) preemptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the issuer.

(2) Briefly describe potential liabilities imposed on shareholders under state statutes or foreign law, e.g., to laborers, servants or employees of the registrant, unless such disclosure would be immaterial because the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

(b) If debt securities are being offered, outline briefly the following:

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

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

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction

In the case of secured debt there should be stated (i) the approximate amount of unbonded property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being issued are to be issued against such property, against the deposit of cash, or otherwise.

(c) If securities described are to be offered pursuant to warrants, rights, or convertible securities, state briefly:

(1) the amount of securities called for by such warrants, convertible securities or rights;

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

(3) the amounts of warrants, convertible securities or rights outstanding; and

(4) any other material terms of such securities.

(d) In the case of any other kind of securities, appropriate information of a comparable character.

Part F/S

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor shall be filed as part of the offering statement and included in the offering circular which is distributed to investors.

Such financial statements shall be prepared in accordance with generally accepted accounting principles (GAAP) in the United States. If the issuer is a Canadian company, a reconciliation to GAAP in the United States shall be filed as part of the financial statements.

Issuers which have audited financial statements because they prepare them for other purposes, shall provide them.

The Commission's Regulation S-X, 17 CFR 210.1 et seq. relating to the form, content of and requirements for financial statements shall not apply to the financial statements required by this part, except that if audited financial statements are filed, the qualifications and reports of an independent auditor shall comply with the requirements of Article 2 of Regulation S-X.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) if such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the offering statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2

fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the offering statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Rule 405 of Regulation C, 17 CFR § 230.405.

(c) (i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) These financial statements need not be audited.

(iii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iv) If none of the conditions in the definitions of significant subsidiary in Rule 405 exceeds 20%, income statements of the acquired business for only the most recent fiscal year and any interim period need be filed.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be

furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method);

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3)(b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part III—Exhibits

Item 1. Index to Exhibits

(a) An index to the exhibits filed should be presented immediately following the cover page to Part III.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 1-A.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any offering statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 411(d) of Regulation C shall be followed.

Item 2. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the offering statement.

(1) Underwriting Agreement—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; where the terms have yet to be finalized, proposed formats may be provided.

(2) Charter and by-laws—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(3) Instruments defining the rights of security holders—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to: (i) Holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) Instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if such debt is not being issued pursuant to this Regulation A offering and the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; (ii) any instrument with respect to a class of securities which is to be retired or redeemed prior to the issuance or upon delivery of the securities being issued pursuant to this Regulation A offering and appropriate steps have been taken to assure such retirement or redemption; and (iii) copies of instruments evidencing scrip certificates or fractions of shares.

(4) Subscription agreement—The form of any subscription agreement to be used in connection with the purchase of securities in this offering.

(5) Voting trust agreement—Any voting trust agreements and amendments thereto.

(6) Material contracts—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the offering statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the offering statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or

license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the offering statement is held by the issuer.

(c) Any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(7) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(8) *Plan of acquisition, reorganization, arrangement, liquidation, or succession*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the offering statement. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the offering statement. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(9) *Escrow agreements*—Any escrow agreement or similar arrangement which has been executed in connection with the Regulation A offering.

(10) *Consents*—(a) Experts: The written consent of (i) any accountant, engineer, geologist, appraiser or any person whose profession gives authority to a statement made by them and who is named in the offering statement as having prepared or certified any part of the document or is named as having prepared or certified a report or evaluation whether or not for use in connection with the offering statement; (ii) the expert that authored any portion of a report quoted or summarized as such in the offering statement, expressly stating their consent to the use of such quotation or

summary; (iii) any persons who are referenced as having reviewed or passed upon any information in the offering statement, and that such information is being included on the basis of their authority or in reliance upon their status as experts.

(b) *Underwriters*: A written consent and certification in the form which follows signed by each underwriter of the securities proposed to be offered. All underwriters may, with appropriate modifications, sign the same consent and certification or separate consents and certifications may be signed by any underwriter or group of underwriters.

Consent and Certification by Underwriter

1. The undersigned hereby consents to being named as underwriter in an offering statement filed with the Securities and Exchange Commission by [insert name of issuer] pursuant to Regulation A in connection with a proposed offering of [insert title of securities] to the public.

2. The undersigned hereby certifies that it furnished the statements and information set forth in the offering statement with respect to the undersigned, its directors and officers or partners, that such statements and information are accurate, complete and fully responsive to the requirements of Parts I, II and III of the Offering Statement thereto, and do not omit any information required to be stated therein with respect of any such persons, or necessary to make the statements and information therein with respect to any of them not misleading.

3. If Preliminary Offering Circulars are distributed, the undersigned hereby undertakes to keep an accurate and complete record of the name and address of each person furnished a Preliminary Offering Circular and, if such Preliminary Offering Circular is inaccurate or inadequate in any material respect, to furnish a revised Preliminary Offering Circular or a Final Offering Circular to all persons to whom the securities are to be sold at least 48 hours prior to the mailing of any confirmation of sale to such persons, or to send such a circular to such persons under circumstances that it would normally be received by them 48 hours prior to their receipt of confirmation of the sale.

(Underwriter)

By _____
Date / /

(c) All written consents shall be dated and manually signed.

(11) *Opinion re legality*—An opinion of counsel as to the legality of the securities covered by the Offering Statement, indicating whether they will, when sold, be legally issued, fully paid and nonassessable, and if debt securities, whether they will be binding obligations of the issuer.

(12) *Sales Material*—Any material required to be filed by virtue of Rule 256.

(13) *"Test the Water" Material*—Any written document or broadcast script used under the authorization of Rule 254.

(14) *Appointment of Agent for Service of Process*—A Canadian issuer shall provide Form F-X.

(15) *Additional exhibits*—Any additional exhibits which the issuer may wish to file,

which shall be so marked as to indicate clearly the subject matters to which they refer.

Signatures

The issuer has duly caused this offering statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19____.

(Issuer) _____
By (Signature and Title) _____

This offering statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____
(Title) _____
(Selling security holder) _____
(Date) _____

Instructions

1. The offering statement shall be signed by the issuer, its Chief Executive Officer, Chief Financial Officer, a majority of the members of its board of directors or other governing instrumentality, and each person, other than the issuer, for whose account any of the securities are to be offered. If a signature is by a person on behalf of any other person, evidence of authority to sign shall be filed with the offering statement, except where an executive officer signs on behalf of the issuer. If the issuer is Canadian, its authorized representative in the United States also shall sign. Where the issuer is a limited partnership, the offering statement shall also be signed by a majority of the board of directors of any corporate general partner.

2. The name of each person signing the offering statement shall be typed or printed beneath the signature.

Securities and Exchange Commission

FORM 2-A—Report of Sales and Uses of Proceeds Pursuant to Rule 257 of Regulation A File No. 24—

For period ending / /
Indicate whether the report is an:
initial report []
amendment []
or final report []

If the report is an amendment, indicate the number of such amendment, / /

If the offering has terminated, indicate the date of termination / /

General Instructions

The report shall be filed in accordance with the provisions of Rule 257 of Regulation A.

Answer each item in the box(es) or spaces provided. If additional space is required for any response, continue the response on an attached sheet.

If the issuer is required to file any report(s) on this form subsequent to its initial filing, each subsequent filing shall be deemed to be an amendment to the initial filing. Do not report in any amendment responses to Items 3-11 unless the information has changed.

No fee is required to accompany this filing. Seven copies of the form shall be filed with the Commission Office where the Regulation A Offering Statement was qualified. At least one copy of the form shall be manually signed; other copies may bear typed or printed signatures.

1. _____
Exact name of issuer as specified in its charter.

2. Date of qualification of the offering statement: [] [] [] [] [] []

3. Has the offering commenced? [] Yes [] No.

If yes, date of commencement: [] [] [] [] [] []

If no, explain briefly:

4. Did the offering terminate before any securities were sold? [] Yes [] No.

If yes, explain briefly:

If "yes", do not answer Items 5-11.

5. Did the offering terminate prior to the sale of all the securities qualified under Regulation A? [] Yes [] No.

If yes, explain briefly:

6. Indicate the total number of shares or other units offered and sold to date: _____ (issuer's account) _____ (selling securityholders)

Indicate the number of shares or other units still being offered: _____ (issuer's account) _____ (selling securityholders)

7. Total amount of dollars received from the public to date, \$ _____

Total amount allocable to selling securityholders: \$ _____

Underwriting discount or commission \$ _____ allowed.

Underwriting expenses paid \$ _____

Finders' Fees \$ _____

Other expenses paid to date by or for issuer:

Legal (including organization) \$ _____

Accounting \$ _____

Engineering \$ _____

Printing and Advertising \$ _____

Other (specify) \$ _____

\$ _____

\$ _____

Total costs and expenses \$ _____

Total net proceeds remaining \$ _____

8. Uses of net proceeds to date.

Instructions

1. Do not include any amount in "working capital" to which a more specific category is applicable.

2. Round all amounts to the nearest dollar.

3. Specify under "other purposes" any purpose for which at least 5% of the issuer's

proceeds or \$50,000, whichever is less, has been used.

Salaries and fees \$ _____

Construction of plant, building and facilities \$ _____

Purchases and installation of machinery and equipment \$ _____

Purchase of real estate \$ _____

Acquisition of other business(es) \$ _____

Repayment of indebtedness \$ _____

Working capital \$ _____

Development expense (product development, research, patent costs, etc.) \$ _____

Temporary investment (specify) \$ _____

\$ _____

\$ _____

\$ _____

Other purposes (specify): \$ _____

\$ _____

\$ _____

\$ _____

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Issuer

By

Signature

Date

Instruction:

The report shall be signed by an executive officer, general partner or counsel of the issuer or by any other duly authorized person. The name and any title of the person who signs the report shall be typed or printed beneath the signature.

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

28. The authority citation for part 240 continues to read as follows:

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

§ 240.36-6 [Amended]

29. By amending § 240.36-6 paragraph (b)(1)(i) after the words "Securities Act of 1933" add the words ", offering statement or solicitation of interest written document or broadcast script under Regulation A" and in paragraph (b)(2)(i) after the parenthetical "(\$ 229.303 of this chapter)" add the words "or Regulation S-B (§ 228.303 of this chapter)" and after the words "Rule 3-20(c)" add the words "of Regulation S-X (§ 210.3-20(c))".

30. Section 240.12b-2 is amended by adding the definition of "small business issuer" in the appropriate alphabetical order to read as follows:

§ 240.12b-2 Definitions.

Small Business Issuer. The term "small business issuer" means an entity that meets the following criteria:

- (1) has revenues of less than \$25,000,000;
- (2) is a U.S. or Canadian issuer;
- (3) is not an investment company; and
- (4) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of \$25,000,000 or more.

Note: The public float of a reporting company shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange

Signature

Pursuant to the requirements of Rule 257 and Regulation A, _____ (duly authorized) has caused this report to be signed on its behalf by the undersigned thereunto.

Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

31. By amending paragraph (b)(5)(ii) of § 240.14a-3 to add the words "or, if applicable, a plan of operation required by Item 303(a) of Regulation S-B (§ 228.303(a) of this chapter)" after the words " (§ 229.303 of this chapter)" and to add the following Note after the introductory text of paragraph (b) to read as follows:

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

(b) ***

Note to Small Business Issuers—A "small business issuer," defined under Rule 12b-2 of the Exchange Act (§ 240.12b-2), shall refer to the disclosure items in Regulation S-B (§ 228.10 *et seq.* of this chapter) rather than Regulation S-K (§ 229.10 *et seq.*). If there is no comparable disclosure item in Regulation S-B, a small business issuer need not provide the information requested. A small business issuers shall provide the information in Item 310(a) of Regulation S-B in lieu of the financial information required by Rule 14a-3(b)(1) (§ 240.14a-3(b)(1)).

32. By adding Note F to § 240.14a-101 to read as follows:

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

Notes

F. Note to Small Business Issuers—Registrants and acquirers that meet the definition of "small business issuer" under Rule 12b-2 of the Exchange Act (§ 240.12b-2) shall refer to the disclosure items in Regulation S-B (§ 228.10 *et seq.* of this chapter) and not Regulation S-K (§ 229.10 *et seq.* of this chapter). If there is no comparable disclosure item in Regulation S-B, small business issuers need not provide the information requested. Small business issuers shall provide the financial information in Item 310 of Regulation S-B in lieu of the financial statements required in Schedule 14A.

33. By adding the following text to the end of the introductory Note to § 240.14c-101 to read as follows:

§ 240.14c-101 Schedule 14C. Information Required in Information Statement.

Note. * * * Registrants and acquirers that meet the definition of "small business issuer" under Rule 12b-2 of the Exchange Act (§ 240.12b-2) shall refer to the disclosure items in Regulation S-B (§ 228.10 *et seq.* of this chapter) and not Regulation S-K (§ 229.10 *et seq.* of this chapter). If there is no comparable disclosure item in Regulation S-B, small business issuers need not provide the information requested. Small business issuers shall provide the financial information in Item 310 of Regulation S-B in lieu of any financial statements required by Item 1 of § 240.14c-101.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

34. The authority for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted. 35. By adding § 249.210b to read as follows:

§ 249.210b Form 10-SB, optional form for the registration of securities of a small business issuer.

A "small business issuer," defined in Rule 12b-2 (§ 240.12b-2 of this chapter) may use Form 10-SB to register a class of its securities under Section 12 (b) or (g) of the Exchange Act. For further information concerning eligibility to use this form see Item 10(a) of Regulation S-B (17 CFR 228.10 *et seq.*).

Note: The text and instructions of Form 10-SB will not appear in the Code of Federal Regulations.

Form 10-SB

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

OMB Approval

OMB Number: xxxx-xxxx

Expires: Approval Pending

Estimated average burden hours per response: 1.0

General Form for Registration of Securities of Small Business Issuers Under Section 12 (b) or (g) of the Securities Exchange Act of 1934

(Name of Small Business Issuer in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address of principal executive offices)

(ZIP Code)

Issuer's telephone number, _____

Securities to be registered under Section 12(b) of the Act:

Title of each class
to be so registered

Name of each exchange on which
each class is to be registered

Securities to be registered under Section 12(g)
of the Act:

(Title of class)

(Title of class)

General Instructions

A. Use of Form 10-SB

1. This Form may be used by a "small business issuer," defined in Rule 12b-2 (§ 240.12b-2) of the Securities Exchange Act of 1934 (the "Exchange Act"), to register a class of securities under Section 12 (b) or (g) of the Exchange Act. For further information as to eligibility to use this form see Item 10(a) of Regulation S-B (17 CFR 228.10 *et seq.*).

2. If the small business issuer is not organized under the laws of any of the states of or the United States of America, it shall at the time of filing this registration statement, file with the Commission a written irrevocable consent and power of attorney on Form F-X [§ 239.42]. Any change to the name or address of the agent for service of the issuer shall be communicated promptly to the Commission through amendment of the requisite form and referencing the file number of the registration statement.

B. Signature and Filing of Registration Statement

1. File three "complete" copies and five "additional" copies of the registration statement with the Commission and file at least one complete copy with each exchange on which the securities will be registered. A "complete" copy includes financial statements, exhibits and all other papers and documents. An "additional" copy excludes exhibits.

2. Manually sign at least one copy of the report filed with the Commission and each exchange; other copies should have typed or printed signatures.

C. Information To Be Incorporated by Reference

Refer to Rule 12b-23 (§ 240.12b-23 of this chapter) if information will be incorporated by reference from other documents in answer or partial answer to any item of this Form.

Information Required in Registration Statement

Item 1. Description of Business

Furnish the information required by Item 101 of Regulation S-B.

Item 2. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S-B.

Item 3. Description of Property

Furnish the information required by Item 102 of Regulation S-B.

Item 4. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S-B.

Item 5. Directors, Executive Officers, Promoters and Control Persons

Furnish the information required by Item 401 of Regulation S-B.

Item 6. Executive Compensation

Furnish the information required by Item 402 of Regulation S-B.

Item 7. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S-B.

Item 8. Legal Proceedings

Furnish the information required by Item 103 of Regulation S-B.

Item 9. Market for Common Equity and Related Stockholder Matters

Furnish the information required by Item 201 of Regulation S-B.

Item 10. Recent Sales of Unregistered Securities

Furnish the information required by Item 701 of Regulation S-B.

Item 11. Description of Securities

Furnish the information required by Item 202 of Regulation S-B.

Item 12. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S-B.

Item 13. Financial Statements

Furnish the information required by Item 310 of Regulation S-B.

Item 14. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure

Furnish the information required by Item 304 of Regulation S-B.

Item 15. Financial Statements and Exhibits

(a) List separately all financial statements filed as part of the registration statement.

(b) Furnish the exhibits required by Item 601 of Regulation S-B.

Signatures

In accordance with Section 12 of the Securities Exchange Act of 1934, the registrant caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant)

Date _____

By _____

(Signature) *

* Print the name and title of each signing officer under his or her signature.

36. By adding § 249.310b to read as follows:

§ 249.310b Form 10-KSB, Optional Form for Annual and Transition Reports of Small Business Issuers Under Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act").

A small business issuer defined in Rule 12b-2 of the Exchange Act (§ 240.12b-2 of this chapter), may use this form for its annual and transitional reports under section 13 or 15(d) of the Exchange Act. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report and transition reports shall be filed after an issuer changes its fiscal year end in accordance with Rule 13a-10 or Rule 15d-10 (§§ 240.13a-10 or 240.15d-10 of this chapter).

Note: The text and instructions of Form 10-KSB will not appear in the Code of Federal Regulations.

Form 10-KSB

U.S. Securities and Exchange Commission,
Washington, DC 20549

OMB Approval

OMB Number: XXXX-XXXX

Expires: Approval Pending Estimated average burden hours per response—1.0

(Mark One)

☐ Annual Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934 [Fee Required]

For the fiscal year ended _____

☐ Transition Report Under Section 13 or 15(d) of the Securities Exchange Act of 1934 [No Fee Required]

For the transition period from _____ to _____

Commission file number _____

(Name of small business issuer in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

(Address of principal executive offices)

(ZIP Code)

Issuer's telephone number () _____

Securities registered under Section 12(b) of the Exchange Act:
Title of each class _____

Name of each exchange on which registered _____

Securities registered under Section 12(g) of the Exchange Act:

(Title of class)

(Title of class)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for past 90 days.
Yes _____ No _____

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B is not contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB. ☐

State issuer's revenues for its most recent fiscal year. _____

State the aggregate market value of the voting stock held by non-affiliates computed by reference to the price at which the stock was sold, or the average bid and asked prices of such stock, as of a specified date within the past 60 days. (See definition of affiliate in Rule 12b-2 of the Exchange Act).

Note: If determining whether a person is an affiliate will involve an unreasonable effort and expense, the issuer may calculate the aggregate market value of the common equity held by non-affiliates on the basis of reasonable assumptions, if the assumptions are stated.

(Issuers Involved in Bankruptcy Proceedings During the Past Five Years)

Check whether the issuer has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Exchange Act after the distribution of securities under a plan confirmed by a court. Yes _____ No _____

(Applicable Only to Corporate Registrants)

State the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date.

Documents Incorporated by Reference

If the following documents are incorporated by reference, briefly describe them and identify the part of the Form 10-KSB (e.g., Part I, Part II, etc.) into which the document is incorporated: (1) any annual report to security holders; (2) any proxy or information statement; and (3) any prospectus filed pursuant to Rule 424 (b) or (c) of the Securities Act of 1933 ("Securities Act"). The listed documents should be clearly described for identification purposes (e.g., annual report to security holders for fiscal year ended December 24, 1990).

General Instructions**A. Use of Form 10-KSB**

This Form may be used by a "small business issuer," defined in Rule 12b-2 of the Exchange Act, for its annual and transitional reports under section 13 or 15(d) of that Act. For further information as to eligibility to use this Form see Item 10(a) of Regulation S-B (17 CFR 228.10 et seq.). Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. Transition reports shall be filed within the time period specified in Rules 13a-10 or 15d-

10 of the Exchange Act (§§ 240.13a-10 or 240.15d-10 of this chapter).

B. Application of General Rules and Regulations

The General Rules and Regulations under the Exchange Act (§ 240.0-1 *et seq.*), particularly Regulation 12B (§ 240.12b-1 *et seq.*) contain certain general requirements for reports on any form which should be carefully read and observed in the preparation and filing of reports on this Form.

C. Signature and Filing of Report

1. File three "complete" copies and five "additional" copies of the registration statement with the Commission and file at least one complete copy with each exchange on which the securities will be registered. A "complete" copy includes financial statements, exhibits and all other papers and documents. An "additional" copy excludes exhibits. One of the copies filed with the Commission and each exchange should be manually signed; all other copies should have typed or printed signatures.

2. Who must sign: the small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the report. See Rule 12b-11 concerning manual signatures under powers of attorney.

D. Information as to Employee Stock Purchase, Savings and Similar Plans

Separate annual and other reports need not be filed under Section 15(d) of the Exchange Act for any employee stock purchase, savings or similar plan if the issuer of the securities offered under the plan furnishes to the Commission the information and documents specified in the Rule 15d-21 of the Exchange Act.

E. Information to be Incorporated by Reference

1. Refer to Rule 12b-23 (§ 240.12b-23 of this chapter) if information will be incorporated by reference from other documents in answer or partial answer to any item of this Form.

2. The information called for in Parts I and II of this Form, Items 1-9, may be incorporated by reference from:

(a) the registrant's annual report to security holders furnished to the Commission under Rule 14a-3(b) or Rule 14c-3(a) of the Exchange Act (§§ 240.14a-3(b), 240.14c-3(a) of this chapter); or

(b) the registrant's annual report to shareholders if it contains the information required by Rule 14a-3 (§ 240.14-3 of this chapter).

3. The information required by Part III may be incorporated by reference from the registrant's definitive proxy statement (filed or to be filed in accordance with § 240.14a-101, Schedule 14A) or definitive information statement (filed or to be filed pursuant to § 240.14c-101, Schedule 14C) which involves

the election of directors, if such definitive proxy or information statement is filed with the Commission not later than 120 days after the end of the fiscal year covered by this Form. If the definitive proxy or information statement is not filed within the 120-day period, the information called for in Part III information must be filed as part of the Form 10-KSB, or as an amendment to the Form 10-KSB under cover of Form 8 (§ 249.460 of this chapter), not later than the end of the 120-day period.

4. No item numbers of captions or items need be contained in the material incorporated by reference into the report. However, the registrant's attention is directed to Rule 12b-23(b) of the Exchange Act (§ 240.12b-23(b)) regarding the specific disclosure required in the report concerning information incorporated by reference. When the registrant combines all of the information in Parts I and II of this Form by incorporation by reference from the registrant's annual report to security holders and all of the information in Part III of this Form by incorporating by reference from a definitive proxy statement or information statement involving the election of directors, then this Form shall consist of the facing or cover page, those sections incorporated from the annual report to security holders, the proxy or information statement, and the information, if any, required by Part IV of this Form, signatures and a cross-reference sheet setting forth the item numbers and captions in Parts I, II and III of this Form and page and/or pages in the referenced materials where the corresponding information appears.

F. Integrated Reports to Security Holders

Annual reports to security holders may be combined with the required information of this Form and will be suitable for filing with the Commission if the following conditions are satisfied:

1. The combined report contains complete answers to all items required by Form 10-KSB. When responses to a certain item of required disclosure are separated within the combined report, an appropriate cross-reference should be made. If the information required by Part III of Form 10-KSB is omitted by virtue of General Instruction E, a definitive proxy or information statement shall be filed.

2. The cover page and required signatures are included. A cross-reference sheet should be filed indicating the location of information required by items of the Form.

G. Omission of Information by Certain Wholly-Owned Subsidiaries

If, on the date of the filing of its report on Form 10-KSB, the registrant meets the conditions specified in paragraph (1) below, then it may furnish the abbreviated narrative disclosure specified in paragraph (2) below.

1. Conditions for availability of relief specified in paragraph (2) below.

(a) All of the registrant's equity securities are owned, either directly or indirectly, by a single person which is a reporting company and which has filed all the material required to be filed under sections 13, 14 or 15(d), as applicable, and which is named in conjunction with the registrant's description of its business;

(b) During the past thirty-six months and any subsequent period of days, there has not been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within thirty days, with respect to any indebtedness of the registrant or its subsidiaries, and there has not been any material default in the payment of rental under material long-term leases; and

(c) There is prominently set forth on the cover page of the Form 10-KSB, a statement that the registrant meets the conditions set forth in General Instruction C(1) (a) and (b) of Form 10-KSB and therefore filing this Form with the reduced disclosure format.

2. Registrants meeting the conditions specified in paragraph 1 above are entitled to the following relief:

(a) Such registrants may omit the information called for by Item 303(b), Management's Discussion and Analysis, if required by the Instruction to that Item, provided that the registrant includes in the Form 10-KSB a narrative analysis of the results of operations explaining the reasons for material changes in the amount of revenue and expense items between the most recent fiscal year presented and the fiscal year immediately preceding it. Explanations of material changes should include, but not be limited to, changes in the various elements which determine revenue and expense levels, such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.

(b) Such registrants may omit the list of subsidiaries exhibit required by Item 601 of Regulation S-B.

(c) Such registrants may omit the information called for by the following Items: Item 4, Submission of Matters to a Vote of Security Holders; Item 10 Directors and Executive Officers, etc.; Item 11, Executive Compensation; Item 12, Security Ownership of Certain Beneficial Owners, etc.; Item 13, Certain Relationships and Related Transactions.

Part I

Item 1. Description of Business

Furnish the information required by Item 101 of Regulation S-B.

Item 2. Description of Property

Furnish the information required by Item 102 of Regulation S-B.

Item 3. Legal Proceedings

Furnish the information required by Item 103 of Regulation S-B.

Item 4. Submission of Matters to a Vote of Security Holders

If any matter was submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Rule 14a-11 of Regulation A under the Act) terminating any solicitation subject to Rule 14a-11, including the cost or anticipated cost to the registrant.

Instructions to Item 4

1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14A under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant published a report containing all of the information called for by this item, the item may be answered by reference to the information in that report.

Part II

Item 5. Market for Common Equity and Related Stockholder Matters

Furnish the information required by Item 201 of Regulation S-B.

Item 6. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S-B.

Item 7. Financial Statements

Furnish the information required by Item 310(a) of Regulation S-B.

Item 8. Changes In and Disagreements With Accountants on Accounting and Financial Disclosure

Furnish the information required by Item 304 of Regulation S-B.

Part III

Item 9. Directors, Executive Officers, Promoters and Control Persons; Compliance With Section 16(a) of the Exchange Act

Furnish the information required by Items 401 and 405 of Regulation S-B.

Instruction to Item 9

Checking the box provided on the cover page of this Form to indicate that Item 405 disclosure of delinquent Form 3, 4, or 5 filers is not contained herein is intended to facilitate Form processing and review. Failure to provide such indication will not create liability for violation of the federal securities laws. The space should be checked only if there is no disclosure in this Form of reporting person delinquencies in response to Item 405 of Regulation S-B (§ 228.405 of this chapter) and the registrant, at the time of filing of the Form 10-KSB, has reviewed the information necessary to ascertain, and has determined that, Item 405 disclosure is not expected to be contained in Part III of the Form 10-KSB or incorporated by reference.

Item 10. Executive Compensation

Furnish the information required by Item 402 of Regulation S-B.

Item 11. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S-B.

Item 12. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S-B.

Item 13. Exhibits and Reports on Form 8-K

(a) Furnish the exhibits required by Item 601 of Regulation S-B. Where any financial statement or exhibit is incorporated by reference, the incorporation by reference shall be set forth in the list required by this item. See Exchange Act Rule 12b-23 (§ 240.12b-23 of this chapter).

(b) Reports on Form 8-K. State whether any reports on Form 8-K were filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of such reports.

Signatures

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant) _____

By (Signature and Title)* _____

Date _____

In accordance with the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

By (Signature and Title)* _____

Date _____

By (Signature and Title)* _____

Date _____

* Print the name and title of each signing officer under his signature.

Supplemental information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Exchange Act By Non-reporting Issuers

(a) Except to the extent that the materials enumerated in (1) and/or (2) below are specifically incorporated into this Form by reference (in which case, see rule 12b-23(b)), every issuer which files an annual report on this Form under Section 15(d) of the Exchange Act shall furnish the Commission for its information, at the time of filing its report on this Form, four copies of the following:

(1) Any annual report to security holders covering the registrant's last fiscal year; and
(2) Every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant's security holders with respect to any annual or other meeting of security holders.

(b) The Commission will not consider the material to be "filed" or subject to the liabilities of Section 18 of the Exchange Act, except if the issuer specifically incorporates it in its annual report on this Form by reference.

(c) If no such annual report or proxy material has been sent to security holders, a statement to that effect shall be included under this caption. If such report or proxy material is to be furnished to security holders subsequent to the filing of the annual report on this Form, the registrant shall so state under this caption and shall furnish copies of such material to the Commission when it is sent to security holders.

37. Section 249.308b is added to read as follows:

§ 249.308b Form 10-QSB, Optional Form for Quarterly and Transition Reports of Small Business Issuers Under Section 13 or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act").

A small business issuer, defined in Rule 12b-2, may use this Form for its transition and quarterly reports under section 13 or 15(d) of the Exchange Act and Rules 13a-13 and 15d-13 (§§ 240.13a-13 or 240.15d-13 of this chapter). For further information as to eligibility to use this Form see Item 10(a) of Regulation S-B (17 CFR 228.10 et seq.). A small business issuer shall file a quarterly report on this form within 45 days after the end of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year. Transition reports shall be filed in accordance with the requirements set forth in Rule 13a-10 or Rule 15d-10.

Note: The text and instructions of Form 10-QSB will not appear in the Code of Federal Regulations.

Form 10-QSB

U.S. Securities and Exchange
Commission, Washington, DC 20549
OMB approval
OMB Number: XXXX-XXXX
Expires: Approval Pending Estimated
average burden hours per response—1.0

(Mark One)

☐ Quarterly Report Under Section 13 or
15(d) of the Securities Exchange Act of 1934.
For the quarterly period ended _____
☐ Transition Report Under Section 13 or
15(d) of the Exchange Act.
For the transition period from _____ to _____

Commission file number _____

(Exact name of small business issuer as
specified in its charter)(State or other jurisdiction of incorporation or
organization)

(IRS Employer Identification No.)

(Address of principal executive offices)

() - _____
(Issuer's telephone number)(Former name, former address and former
fiscal year, if changed since last report)

Check whether the issuer (1) filed all
reports required to be filed by Section 13 or
15(d) of the Exchange Act during the past 12
months (or for such shorter period that the
registrant was required to file such reports),
and (2) has been subject to such filing
requirements for the past 90 days. Yes _____
No _____

Applicable Only to Issuers Involved in
Bankruptcy Proceedings During the Preceding
Five Years

Check whether the registrant filed all
documents and reports required to be filed by
Section 12, 13 or 15(d) of the Exchange Act
after the distribution of securities under a
plan confirmed by a court. Yes _____ No _____

Applicable Only To Corporate Issuers

State the number of shares outstanding of
each of the issuer's classes of common
equity, as of the latest practicable date:

General Instructions**A. Use of Form 10-QSB**

1. A "small business issuer," defined in
Rule 12b-2, may use this Form for its
transition and quarterly reports under section
13 or 15(d) of the Exchange Act and Rules
13a-13 and 15d-13 (§§ 240.13a-13 and
240.15d-13 of this chapter). For further
information as to eligibility to use of this
Form see Item 10(a) of Regulation S-B (17
CFR 228.10 et seq.). A small business issuer
shall file a quarterly report on this form
within 45 days after the end of the first three
fiscal quarters of each fiscal year. No report

need be filed for the fourth quarter of any
fiscal year. Transition reports shall be filed in
accordance with the requirements set forth in
Rule 13a-10 or Rule 15d-10.

**B. Application of General Rules and
Regulations**

1. The General Rules and Regulations
under the Exchange Act (§ 240.0-1 et seq.),
particularly Regulation 12B (§ 240.12b-1 et
seq.) contain certain general requirements for
reports on any form which should be
carefully read and observed in the
preparation and filing of reports on this Form.

C. Incorporation by Reference

1. If the registrant makes available to its
stockholders or otherwise publishes, within
the period prescribed for filing the report, a
document or statement containing
information meeting some or all of the
requirements of Part I of this form, the
information may be incorporated by
reference from such published document or
statement, in answer or partial answer to any
item or items of Part I of this form provided
copies of the document or statement are filed
as an exhibit to Part I of the report on this
form.

2. Other information may be incorporated
by reference in answer or partial answer to
any item or items of Part II of this form in
accordance with the provisions of Rule 12b-
23 of the Exchange Act.

D. Integrated Reports to Security Holders

Quarterly reports to security holders may
be combined with the required information of
Form 10-QSB and will be suitable for filing
with the Commission if the following
conditions are satisfied:

1. The combined report contains full and
complete answers to all items required by
Part I of this form. When responses to a
certain item of required disclosure are
separated within the combined report, an
appropriate cross-reference should be made.
2. If not included in the combined report,
the cover page, appropriate responses to Part
II and the required signatures shall be
included in the Form 10-QSB. Additionally,
as appropriate, a cross-reference sheet
should be filed indicating the location of
information required by items of the form.

E. Filed Status of Information Presented

1. Under Rule 13a-13(d) and 15d-13(d) of
the Exchange Act (§§ 240.13a-13(d), 240.15d-
13(d) of this chapter), the information
presented in satisfaction of the requirements
of Items 1 and 2 of Part I of this form, whether
included directly in a report on this form,
incorporated therein by reference from a
report, document or statement filed as an
exhibit to Part I of this form pursuant to
Instruction D(1) above, included in an
integrated report pursuant to Instruction D
above, or contained in a statement regarding
computation of per share earnings or a letter
regarding a change in accounting principles
filed as an exhibit to Part I under Item 601 of
Regulation S-B (§ 228.601 of this chapter)
shall not be deemed filed for the purpose of
Section 18 of the Exchange Act or otherwise
subject to the liabilities of that section of the
Act but shall be subject to the other
provisions of the Act.

2. Information presented in satisfaction of
the requirements of this form other than those
of Items 1 and 2 of Part I shall be deemed
filed for the purpose of Section 18 of the
Exchange Act; except that, where information
presented in response to Item 1 or 2 of Part I
(or an exhibit thereto) is also used to satisfy
Part II requirements through incorporation by
reference, only that portion of Part I (or
exhibit thereto) consisting of the information
required by Part II shall be deemed so filed.

F. Signature and Filing of Report

1. File three "complete" copies and five
"additional" copies of the registration
statement with the Commission and file at
least one complete copy with each exchange
on which the securities will be registered. A
"complete" copy includes financial
statements, exhibits and all other papers and
documents. An "additional" copy excludes
exhibits.

2. Manually sign at least one copy of the
report filed with the Commission and each
exchange; other copies should have typed or
printed signatures. In the case where the
principal financial or chief accounting officer
is also authorized to sign on behalf of the
registrant, one signature is acceptable
provided that the registrant clearly indicates
the dual responsibilities of the signatory.

**G. Omission of Information by Certain
Wholly-Owned Subsidiaries**

If, on the date of the filing of its Form 10-
QSB, the registrant meets the conditions in
paragraph (1) below, then it may omit the
information in paragraph (2) below.

1. Conditions for availability of relief
specified in paragraph (2) below:

(a) All of the registrant's equity securities
are owned, either directly or indirectly, by a
single person which is a reporting company
and which has filed all the material required
to be filed pursuant to section 13, 14 or 15(d)
of the Exchange Act.

(b) During the past thirty-six calendar
months and any later period, there has not
been any material default in the payment of
principal, interest, a sinking or purchase fund
installment, or any other material default not
cured within thirty days, with respect to any
indebtedness of the small business issuer,
and there has not been any material default
in the payment of rentals under material long-
term leases; and

(c) There is prominently set forth, on the
cover page of the Form 10-QSB, a statement
that the registrant meets the conditions set
forth in this instruction and is therefore filing
this form with the reduced disclosure format.

2. Registrants meeting the conditions in
paragraph (1) above are entitled to:

(a) Omit the information called for by Item
303 of Regulation S-B (§ 228.303 of this
chapter), Management's Discussion and
Analysis provided that the issuer includes in
the Form 10-QSB a management's narrative
analysis of the results of operations
explaining the reasons for material changes
in the amount of revenue and expense items
between the most recent fiscal year-to-date
period presented and the corresponding year-
to-date period in the preceding fiscal year.
Explanations of material changes should
include, but not be limited to, changes in the

various elements which determine revenue and expense levels such as unit sales volume, prices charged and paid, production levels, production cost variances, labor costs and discretionary spending programs. In addition, the analysis should include an explanation of the effect of any changes in accounting principles and practices or method of application that have a material effect on net income as reported.

(b) Such registrants may omit the information called for by the following Items in Part II: Item 2, 3 and 4.

Part I—Financial Information

Item 1. Financial Statements

Furnish the information required by Item 310(b) of Regulation S-B.

Item 2. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S-B.

Part II—Other Information

Instruction to Part II

Any item which is inapplicable or to which the answer is negative may be omitted and no reference thereto need be made in the report. If substantially the same information has been previously reported by the registrant, an additional report of the information on this form need not be made. The term "previously reported" is defined in Rule 12b-2 of the Exchange Act. A separate response need not be presented in Part II where information called for is already disclosed in the financial information in Part I and is incorporated by reference into Part II of the report by means of a statement to that effect in Part II which specifically identifies the incorporated information.

Item 1. Legal Proceedings

Furnish the information required by Item 103 of Regulation S-B. As to proceedings that terminated during the period covered by this report, furnish information similar to that required by Item 103 of Regulation S-B.

Instruction to Item 1

A legal proceeding need only be reported in the Form 10-QSB filed for the quarter in which it first became a reportable event and in subsequent quarters in which there have been material developments. Subsequent Form 10-QSB filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous reports in that year.

Item 2. Changes in Securities

(a) If the instruments defining the rights of the holders of any class of registered securities have been materially modified, give the title of the class of securities involved and state briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of

securities upon the rights of the holders of the registered securities.

Instruction to Item 2

1. Working capital restrictions and other limitations upon the payment of dividends are to be reported.

Item 3. Defaults Upon Senior Securities

(a) If there has been any material default in the payment of principal, interest, a sinking or purchase fund installment, or any other material default not cured within 30 days, with respect to any indebtedness of the small business issuer exceeding 5 percent of the total assets of the issuer identify the indebtedness and state the nature of the default. In the case of such a default in the payment of principal, interest, or a sinking or purchase fund installment, state the amount of the default and the total arrearage on the date of filing this report.

Instruction to Item 3(a)

1. This paragraph refers only to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

(b) If any material arrearage in the payment of dividends has occurred or if there has been any other material delinquency not cured within 30 days, with respect to any class of preferred stock of the registrant which is registered or which ranks prior to any class of registered securities, or with respect to any class of preferred stock of any significant subsidiary of the registrant, give the title of the class and state the nature of the arrearage or delinquency. In the case of such a default in the payment of dividends, state the amount and the total arrearage on the date of filing this report.

Instruction to Item 3

1. Item 3 need not be answered as to any default or arrearage with respect to any class of securities all of which is held by, or for the account of, the registrant or its totally held subsidiaries.

Item 4. Submission of Matters to a Vote of Security Holders

If any matter was submitted to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Rule 14a-11 of Regulation A under the Exchange Act) terminating any solicitation subject to Rule 14a-11, including the cost or anticipated cost to the registrant.

Instructions to Item 4

If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14A under the Exchange Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant has published a report containing all of the information called for by this item, the item may be answered by reference to the information in that report.

Item 5. Other Information

(a) The registrant may, at its option, report under this item any information, not previously reported in a report on Form 8-K, with respect to which information is not otherwise called for by this form. If disclosure of such other information is made under this item, it need not be repeated in a Form 8-K which would otherwise be required to be filed with respect to such information or in a subsequent report on Form 10-QSB.

Item 6. Exhibits and Reports on Form 8-K

(a) Furnish the exhibits required by Item 601 of Regulation S-B.

(b) Reports on Form 8-K. State whether any reports on Form 8-K were filed during the quarter for which this report is filed, listing the items reported, any financial statements filed and the dates of such reports.

Signatures

In accordance with the requirements of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant)

Date

(Signature)¹

Date

(Signature)¹**§ 249.308 [Amended]**

38. Form 8-K (§ 249.308) is amended by adding paragraph 3 to General Instruction C to read as follows:

Note: The text and instructions of Form 8-K does not appear in the Code of Federal Regulations.

Form 8-K

General Instructions

C. Application of General Rules and Regulations.

3. A *small business issuer*, defined under Rule 12b-2 of the Exchange Act (§ 240.12b-2 of this chapter), shall refer to the disclosure items in Regulation S-B (17 CFR 228.10 *et seq.*) and not Regulation S-K. If there is no comparable disclosure item in Regulation S-B, a small business issuer need not provide the information requested. A small business issuer shall provide the information required by Item 310(a) of Regulation S-B in lieu of the financial information required by Item 7 of this Form.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

39. The authority citation for part 260 continues to read as follows:

¹ Print the name and title of each signing officer under his signature.

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78l(d), 80b-3, 80b-4, and 80b-11.

40. By revising § 260.4a-1 to read as follows:

§ 260.4a-1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been or will be issued otherwise than under an indenture. The same issuer may not claim this exemption within a period of twelve consecutive months for more than \$5,000,000 aggregate principal amount of any securities.

§ 260.4a-3 [Redesignated from § 260.4a-2 and Amended]

41. § 260.4a-2 is redesignated as § 260.4a-3, in newly redesignated § 260.4a-3 remove both cites to "\$5,000,000" and add in their place the words "\$10,000,000", and add new § 260.4a-2 to read as follows:

§ 260.4a-2 Exempted securities under section 304(d).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been issued or will be issued in accordance with the provisions of Regulation A (17 CFR 230.251 *et seq.*) under the Securities Act of 1933.

§ 260.4d-9 [Amended]

42. Amend the introductory text of paragraph (a) of § 260.4d-9 by replacing "on Form F-7, F-8, F-9, F-10 or F-80 [§§ 239.37 through 239.41 of this chapter]" with "on Form SB-2, [§ 239.10 of this chapter] F-7, F-8, F-9, F-10 or F-80 [§§ 239.37 through 239.41 of this chapter]".

§ 260.10a-5 [Amended]

43. Amend paragraph (a) of § 260.10a-5 by replacing "on Form F-7, F-8, F-9, F-10 or F-80 [§§ 239.37 through 239.41 of this chapter]" with "on Form SB-2, [§ 239.10 of this chapter] F-7, F-8, F-9, F-10 or F-80 [§§ 239.37 through 239.41 of this chapter]".

PARTS 210, 229, 230, 239, 240, 249, AND 260—[AMENDED]

44. In addition to the amendments set forth above, in 17 CFR parts 210, 229, 230, 239, 240, 249, and 260 all references to: a. "Form 10-Q" are revised to read "Form 10-Q and Form 10-QSB"; b. "Form 10-K" are revised to read "Form 10-K and Form 10-KSB"; c. "Form 10" are revised to read "Form 10 and Form 10-SB";

45. In addition to the amendments set forth above, in 17 CFR parts 210, 229, 230, 239, 240, 249, and 260 all references to: "Form S-18" are revised to read "Form SB-2."

46. In addition to the amendment set forth above, in 17 CFR parts 210, 229, 230, 240, 249, and 260 all references to "Rule 504" are revised to read "Rule 504 and 504a";

By the Commission.

Dated: July 30, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-18543 Filed 8-12-92; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 230, 239, 240, 249, and 260

[Release No. 33-6950, 34-30969, 39-2288; File No. S7-28-92]

RIN: 3235-AF63

Additional Small Business Initiatives

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is publishing for comment additional revisions to its rules to facilitate financings by small business issuers under the Securities Act of 1933 and their compliance with the reporting requirements under the Securities Exchange Act of 1934. These proposals, which would ease the entry of small businesses into the reporting system for public companies, include a transitional registration and reporting system for small business issuers that have not registered more than \$5 million of securities in any fiscal year, amendments to small business issuer financial statement requirements and revisions to the information and financial statement requirements contained in Rule 502 of Regulation D.

Newly adopted Rule 254 would be supplemented to provide that a "test the waters" solicitation document complying with Regulation A will not constitute a "prospectus." The deletion of Rule 504a is also proposed.

DATES: Comments must be submitted on or before September 29, 1992.

Comments regarding the proposed repeal of Rule 504a (§ 230.504a) must be submitted on or before September 14, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549. Comment letters should refer to File No. S7-28-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. With respect to Regulation A and Regulation D, Richard Wulff (202-272-2644); with respect to the SB registration and reporting system, Amy S. Bowerman, Darrell N. Braman, Jr., or Martin P. Dunn (202-272-2573); and with

respect to Item 310 of Regulation S-B, Teresa Iannaconi (202-272-2553).

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment new registration statement Form SB-1,¹ as well as amendments to Forms S-2,² S-4,³ 10-SB,⁴ 10-KSB⁵ and 10-QSB,⁶ Schedule 14A⁷ and the annual report requirements of Rules 14a-3⁸ and 14c-3.⁹ These proposals would provide transitional disclosure requirements for qualifying small business issuers under the Securities Act of 1933 ("Securities Act")¹⁰ and the Securities Exchange Act of 1934 ("Exchange Act").¹¹

The Commission also is proposing to revise the financial statement requirements for small business issuers, found in Item 310¹² of Regulation S-B.¹³ Amendments to Rule 502¹⁴ of Regulation D¹⁵ and Rule 254¹⁶ of Regulation A¹⁷ under the Securities Act are also published for comment. Further, the Commission is proposing that Rule 504a¹⁸ under Regulation D be rescinded.

Finally, the Commission proposes to revise the definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act to incorporate the definition of small business issuer used for the small business integrated disclosure system.¹⁹

I. Executive Summary and Background

In a companion release published today, the Commission adopted its Small Business Initiatives to facilitate the access of small business issuers to the public markets. That action effects significant revisions to the structure and operation of Regulation A and Rule 504²⁰ of Regulation D, as well as the

creation of an integrated registration and reporting system for small business issuers.²¹ Based on the comments and suggestions received in response to its Small Business Initiatives, the Commission is proposing additional measures to ease a small business issuer's transition from non-reporting to reporting status and to simplify the disclosure requirements for small business issuers that engage in exempt offerings.

Under these proposals, a small business issuer may enter the reporting system using Regulation A disclosure with audited financial statements, either through an Exchange Act registration statement or a public offering of not more than \$5 million registered under the Securities Act. These small business issuers would be permitted to meet their reporting requirements using the Regulation A model of disclosure until such time as they either (1) register more than \$5 million in a single fiscal year, (2) elect to graduate to the standard small business disclosure system, or (3) are no longer small business issuers.

In order to implement this transitional system, amendments to Forms S-2, S-4, 10-SB, 10-KSB, and 10-QSB are proposed, in addition to amendments to Schedule 14A under the proxy rules and the annual report to security holders requirements in the proxy and information statement rules. Further, a new Securities Act registration statement, Form SB-1, is proposed to permit qualifying small business issuers to make small registered offerings up to \$5 million annually using the Regulation A format with audited financial statements.

Two refinements to the financial statement requirements for small business issuers are also proposed. The first proposal would provide an automatic waiver of the requirements for audited financial statements of specified significant acquired businesses where such financial statements are not readily available. The other proposal would open the initial public offering ("IPO") financing window for small business issuers by permitting them to proceed in the first quarter of their fiscal years, without having to wait for

¹ 17 CFR 239.9.

² 17 CFR 239.12.

³ 17 CFR 239.25.

⁴ 17 CFR 249.210b.

⁵ 17 CFR 249.310b.

⁶ 17 CFR 249.308b.

⁷ 17 CFR 240.14a-101.

⁸ 17 CFR 240.14a-3.

⁹ 17 CFR 240.14c-3.

¹⁰ 15 U.S.C. § 77a *et seq.*

¹¹ 15 U.S.C. § 78a *et seq.*

¹² 17 CFR 228.310.

¹³ 17 CFR 228.10-702.

¹⁴ 17 CFR 230.502.

¹⁵ 17 CFR 230.501-508.

¹⁶ 17 CFR 230.254.

¹⁷ 17 CFR 230.251-262.

¹⁸ 17 CFR 230.504a.

¹⁹ 5 U.S.C. § 600 *et seq.* Revisions are proposed to Securities Act Rule 157(a) [17 CFR 230.157], Exchange Act Rule 0-10(a) [17 CFR 240.0-10], and Rule 0-7 [17 CFR 260.0-7] under the Trust Indenture Act of 1939 ("Trust Indenture Act"), 15 U.S.C. § 77aaa *et seq.*

²⁰ 17 CFR 230.504.

²¹ A "small business issuer" is defined as an entity: (1) with revenues of less than \$25,000,000 for its most recent fiscal year; (2) which is a U.S. or Canadian issuer; (3) which is not an investment company; and (4) which is not a majority-owned subsidiary of a non-"small business issuer," provided that an issuer does not qualify if its public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) is \$25,000,000 or more. See Securities Act Rule 405 [17 CFR 230.405]; Exchange Act Rule 12b-2 [17 CFR 240.12b-2].

completion of the audit for the preceding fiscal year.

In light of the amendments to Regulation A adopted today, the Commission is proposing to amend the financial statement and informational requirements of Regulation D. Rule 502 would no longer require audited financial statements in Regulation D offerings involving non-reporting issuers, where audited statements are not otherwise available. Further, that Rule's information requirements with respect to non-reporting companies would reference Regulation A. In light of public comment received regarding revisions to Rule 504 adopted today, the Commission is proposing that Rule 504a be deleted.

With respect to the Regulation A "test the waters" procedure adopted today,²² the Commission is publishing for comment revisions to Rule 254, which would provide that a written "test the waters" document complying with Regulation A is not a prospectus.

Finally, the Commission is proposing to incorporate into the definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act, the definition of small business used in the small business integrated disclosure system.

II. Proposed Transitional Disclosure Requirements for Small Business Issuers

A. Transitional Exchange Act Registration and Reporting

In the course of the adoption of the small business integrated registration and reporting disclosure system, the Commission received favorable comment on the use of the Regulation A question-and-answer disclosure format. To ease a small business issuer's transition from a non-reporting to an Exchange Act reporting company, the Commission proposes to allow small business issuers to transition from non-reporting to reporting status using the disclosures permitted under Regulation A, with the addition of audited financial statements. Small business issuers required to file Exchange Act reports²³ could make use of this transitional disclosure so long as they (1) do not register more than \$5 million under the Securities Act in a single fiscal year, (2) did not elect to file on a standard small business disclosure form (other than the proxy statement disclosure required by Schedule 14A), and (3) continue to satisfy the definition of small business

issuer. Once a small business had filed a non-transitional disclosure document, it will be deemed to have graduated to the standard small business integrated disclosure system. A reporting company could not return to the transitional disclosure forms.

Newly adopted Forms 10-SB, 10-KSB and 10-QSB are proposed to be amended by adding instructions setting forth the transitional disclosure that small business issuers could elect. In addition, Forms 10-KSB and 10-QSB would contain a space on the cover page for the small business issuer to indicate its use of the transitional reporting requirements. The proposed transitional filers would not require a quarterly updating of Management's Discussion and Analysis ("MD&A").

The transitional disclosure requirements mirror the two disclosure models currently included in Form 1-A²⁴ under Regulation A—the question-and-answer and the line-item disclosure models. These disclosure requirements have been modified only to the extent necessary to reflect their continuous reporting, rather than transactional, purposes. Just as for other small business issuers, those eligible to use the transitional requirements could use their simplified Exchange Act reports for incorporation by reference into Forms S-3,²⁵ S-4 and S-8.²⁶ Small business issuers could also use Form S-2, but in light of the changes proposed to Rules 14a-3 and 14c-3, would be required to deliver their Form 10-KSB annual report.

As proposed to be amended, Form 10-SB would be available for any non-reporting small business issuer. This would provide small business issuers registering under the Exchange Act an option with respect to the disclosure format in that registration statement. The proposed transitional disclosure within Form 10-KSB would be available to any small business issuer that has not registered more than \$5 million in securities offerings in any one fiscal year since it entered the Exchange Act reporting system (excluding registered offerings under employee benefit plans or dividend reinvestment programs).

Comment is requested as to the usefulness of, and the mechanics of operation for, the proposed small business transitional reporting system. Comment is also requested as to whether the yearly \$5 million limit in registered securities offerings should be raised for use of the transitional small business disclosure system. Should transitional small business issuers be

required to include MD&A in their quarterly reports on Form 10-QSB?

B. Proposed Form SB-1

As a complement to the transitional Exchange Act reporting system, the Commission today is proposing a new Securities Act registration statement, Form SB-1, which generally will be available to the same small business issuers eligible to use the transitional reporting system described above to sell up to \$5 million annually in registered offerings. Again, the disclosure requirements and format would be based on Regulation A, with the addition of audited financial statements.

Form SB-1 would be available to (1) any non-reporting small business issuer and (2) any reporting small business issuer eligible to use the transitional format in Form 10-KSB, provided—in both instances—that the aggregate amount registered during the fiscal year did not exceed \$5 million. In determining whether a small business issuer had registered more than \$5 million during the year, the amount being registered on the Form SB-1 would be added to previous registered offerings in that fiscal year. The \$5 million limit would exclude amounts, if any, registered for offerings under employee benefit plans on Form S-8 and dividend reinvestment plans on Form S-3.

Comment is requested as to whether other types of registered transactions, such as secondary offerings, should be excluded in calculating the ceiling for Securities Act and Exchange Act purposes. Comment is requested as to whether the \$5 million ceiling, which is based upon the Regulation A offering annual limit contained in section 3(b) of the Securities Act,²⁷ should be increased to, for example, \$10 million or \$15 million. Comment also is requested as to the utility of the Form SB-1 for small business issuers.

C. Narrative Disclosure Requirements for Transitional Small Business Issuers

The basic disclosure required of transitional small business issuers would be the same as that currently required by Form 1-A under Regulation A. Accordingly, small business issuers eligible to use the transitional reporting scheme would have the choice of three alternative narrative disclosure formats: (1) A question-and-answer format contained in Offering Circular Model A of Form 1-A; (2) the line-item disclosure model contained in Offering Circular Model B of Form 1-A; or (3) the disclosure required by Form SB-2.

²² See Securities Act Rule 254 [17 CFR 230.254].

²³ The requirement may arise either pursuant to section 13 [15 U.S.C. § 78m] or 15(d) [15 U.S.C. § 78o(d)] of the Exchange Act.

²⁴ 17 CFR 239.90.

²⁵ 17 CFR 239.13.

²⁶ 17 CFR 239.16b.

²⁷ 15 U.S.C. § 77c(b).

With respect to Form SB-1, several disclosure items—the undertakings contained in Item 512 of Regulation S-B,²⁸ the front and back cover page of prospectus requirements of Items 501 and 502 of Regulation S-B,²⁹ the additional offering expenses requirement of Item 511 of Regulation S-B,³⁰ selling security holder information of Item 507 of Regulation S-B,³¹ and the disclosure requirements (Items 510 and 702 of Regulation S-B) concerning the Commission's position on indemnification³²—have been added to the Regulation A disclosure formats. These additional disclosure items are necessary to make the two Form 1-A disclosure options appropriate for use in a registration statement under the Securities Act.

Comment is requested as to whether these additional disclosure requirements are necessary for inclusion in Form SB-1 and whether other disclosure items should be required of transitional small business issuers.

D. Financial Statement Requirements for Transitional Small Business Issuers

Small business issuers using the transitional disclosure requirements of Exchange Act Forms 10-SB and 10-KSB would be required to include the same financial information required by part F/S of Form 1-A, except that audited financial statements would be required. An initial registration statement on Form 10-SB would be required to contain audited financial statements for the issuer's most recent fiscal year, while subsequent Form 10-KSB filings, as well as offerings registered on Form SB-1, would be required to include audited financial statements for the two most recent fiscal years. Comment is requested as to the appropriateness of the proposed treatment of financial statements. Should the Form 10-SB require two years of audited financial statements? Should IPOs on Form SB-1 be permitted to include only one year of audited financial statements?

E. Annual Report to Security Holders and Proxy Requirements

To streamline and coordinate the disclosure requirements for small business issuers eligible to use the transitional disclosure requirements, the proxy and information statement rules regarding the annual report to security holders would also be revised. As proposed, Rules 14a-3 and 14c-3 would

require small business issuers using the transitional reporting requirements for their most recent annual report on Form 10-KSB to provide to security holders only the financial statements contained in that Form 10-KSB. Small business issuers eligible for this disclosure alternative would not, therefore, be required to provide security holders with the narrative disclosure otherwise required.

Modified disclosure formats with respect to the proxy statement disclosure requirements are also proposed for small business issuers eligible to use the transitional disclosure system. These modifications include instructions to Schedule 14A which reference the alternative disclosure formats presented in the transitional disclosure system. Eligible small business issuers which elect not to respond to these modified disclosure requirements may continue to use the transitional reporting system.

Comment is requested as to the appropriateness of the proposed modifications to the annual report requirements and the modifications to the proxy statement requirements.

F. Other Securities Act Forms

Under the proposed Rules and Forms, a transitional small business issuer would be permitted to use the transitional disclosure requirements applicable to its Exchange Act reports for purposes of Forms S-2, S-3, S-4 and S-8. Due to the \$5 million ceiling on registered offerings by transitional small business issuers in any one fiscal year, registered offerings on Forms S-2, S-3 and S-4 by transitional small business issuers would similarly be limited to that amount. As registered offerings under employee benefit plans are not included in the computation of the \$5 million ceiling, the use of Form S-8 by transitional small business issuers would not be subject to the \$5 million limit.

In light of the proposed streamlining of annual reports to security holders with respect to companies eligible to file on the proposed transitional small business issuer reporting system, a modified Form S-2 disclosure format is proposed. A new instruction to Form S-2 would specify that transitional small business issuers using the registration form furnish the Form 10-KSB in place of delivery of the annual report to security holders, and the financial statements required by Part F/S of Form SB-1 in place of the Regulation S-X requirements of that Form. Those small business issuers that do not elect to deliver the Form 10-KSB to their security holders would be required to

respond to the disclosure requirements of Form S-2 in the same manner as small business issuers that are not eligible for use of the transitional disclosure system.

In light of the proposed Exchange Act transitional disclosures, issuers eligible to use Form SB-1 and Form S-3 for an offering could use the forward and backward incorporation by reference permitted in Form S-3, using their Exchange Act reports. Similarly, the Commission is proposing to permit transitional small business issuers to use their Exchange Act filings to satisfy the informational requirements of Form S-4.

The Commission adopted substantial revisions to Form S-8 in 1990.³³ These revisions, as well as the modified disclosure required in Regulation S-B, have streamlined the disclosure requirements in Form S-8. As such, revisions to the disclosure provisions in Form S-8 appear unnecessary.

Comment is requested as to whether the treatment of offerings by transitional small business issuers on Forms S-2, S-3, S-4 and S-8 is appropriate. In particular, commenters should address whether the proposed Form S-4 structure is appropriate for these transitional small business issuers.

III. Small Business Integrated Disclosure System—Financial Statements

A. Proposed Amendment of Rule Applicable to Financial Statements of Significant Acquired Businesses

The proposals include an amendment to the financial statement requirement in Regulation S-B with regard to audited historical financial statements of significant acquired businesses.³⁴ Registration statements, certain proxy material and periodic reports on Form 8-K that are filed with the Commission are required to include financial statements of acquired businesses for periods of one or two years based on the significance of the acquisition. An acquisition is defined as significant if the investment in, assets of or income of the acquired business exceeds 10% of the assets or income of the acquirer. If none of the three significance tests exceeds 20%, one year of an acquirer's financial statements are required. Where significance exceeds 20%, two years of financial statements are required.

For small businesses, an acquisition at any percentage level will be smaller in

²⁸ 17 CFR 228.512.

²⁹ 17 CFR 228.501 and 502.

³⁰ 17 CFR 228.511.

³¹ 17 CFR 228.507.

³² 17 CFR 228.510 and 702.

³³ Securities Act Release No. 6867 (June 6, 1990).

³⁴ See Item 310(c)(3)(iv) of Regulation S-B [17 CFR 228.310(c)(3)(iv)].

absolute terms than an acquisition at the same percentage levels for a larger company. For example, under the current rule a small business with total assets of \$25 million would be required to obtain audited historical financial statements of an acquirer with total assets of anything over \$2.5 million. There is greater likelihood that audited historical financial statements of a very small acquired business would not be available and the cost of obtaining audits of such small business acquisitions would be disproportionately higher for small businesses. Accordingly, under the proposed amendment, where audited financial statements are not readily available, financial statements would be automatically waived where the acquired business' significance does not exceed 20%, and the earlier of the two years of financial statements would be waived where significance does not exceed 40%. In either case, where unaudited financial statements are available, they should be used. Where a small business issuer relies on such an automatic waiver, the pro forma financial information included in a Form 8-K to report the acquisition may not be used as the basis for measuring the significance of later acquisitions as otherwise permitted by Item 310(c)(5) of Regulation S-B.³⁵

Comments are requested concerning whether the proposed significance thresholds for waivers for acquisitions by small business issuers are too low, too high or whether some other criteria for requiring audited financial statements of significant acquired businesses should be considered. For example, should acquisitions below a certain dollar size always be exempt from audited financial statement requirements?

B. Proposed Amendment to Rule Applicable to Age of Small Business IPO Audited Financial Statements

The proposal would change the manner in which small business issuer IPOs are affected by Item 310(g) of Regulation S-B.³⁶ The current rule permits registration statements becoming effective and proxy material mailed during the period from 45 to 90 days after the end of a fiscal year to include financial statements as of the end of the third quarter provided the issuer meets four conditions. Those conditions are: (1) The issuer is a reporting company; (2) all reports due have been filed; (3) the issuer must

reasonably expect to report income in the most recently completed fiscal year; and (4) the issuer must have reported income in at least one of the other two prior fiscal years.

The practical effect of the first requirement is limited to IPOs. The proposed rule amendment would simply delete the reporting status requirement for small business issuers. Comments are requested concerning the appropriateness of the proposed change and whether a parallel change should be made to Regulation S-K.

IV. Proposed Revisions to Regulation D Information Requirements

The general conditions that must be met in an offering under Regulation D are set forth in Rule 502. Among these conditions is the requirement that specified information be delivered to non-accredited investors in connection with offerings under Rules 505³⁷ or 506.³⁸ The Commission proposes to revise the informational requirements of Regulation D to parallel the Small Business Initiatives adopted today. Specifically, a company would no longer be required to prepare audited financial statements solely for use in the Regulation D-exempt transaction.³⁹ In addition, the structure of the information requirements would be revised to conform to the changes in Regulation A and the replacement of Form S-18 with new Forms SB-1 and SB-2.

A. Proposed Revision of Financial Statement Requirements for Regulation D Offerings

As proposed, Regulation D offerings would no longer require that the financial statements included in the information provided to prospective investors by non-reporting issuers be certified by an independent certified public accountant.⁴⁰ Financial statements prepared in accordance with U.S. generally accepted accounting principles would continue to be required. Issuers that have audited financial statements would be required to provide them to purchasers in the Regulation D offering.⁴¹

³⁷ 17 CFR 230.505.

³⁸ 17 CFR 230.506.

³⁹ See Rule 502(b)(2)(i) [17 CFR 230.502(b)(2)(i)].

⁴⁰ Due to this revision in the requirements regarding financial statements, the discussion in the rule of corporate and limited partnership issuers that cannot obtain audited financial statements without unreasonable expense is proposed to be deleted.

⁴¹ Rule 502(b)(2)(ii) [17 CFR 230.502(b)(2)(ii)], which requires that reporting issuers provide information specified in their Exchange Act reports, would not be revised under today's proposals. Such revision is not necessary, as Exchange Act reporting issuers will already have prepared audited financial

The financial statement requirements in Regulation D would be premised upon the issuer's status as a small business issuer. Non-reporting small business issuers would provide only one year of financial statements; non-reporting companies which do not satisfy the definition of small business issuer would provide three years of financial statements. As noted above, however, none of the financial statements would be required to be certified.

Comment is requested as to the appropriateness of paralleling the Regulation D requirements to those of revised Regulation A. Should a different standard apply for Rule 506 offerings in excess of \$5 million? Comment is also requested as to the appropriateness of differentiating between small business issuers and non-small business issuers with respect to the financial statement requirements for non-reporting companies under Regulation D. Should offerings in excess of \$5 million include audited financial statements? Should non-reporting companies which are not small business issuers include audited financial statements?

B. Proposed Revision to Other Informational Requirements

The information required to be delivered by non-reporting issuers to non-accredited investors in offerings under Rules 505 and 506 of Regulation D currently depends upon the dollar amount offered.⁴² As proposed, the different informational requirements would depend upon the issuer's eligibility to use a particular registration statement form or Regulation A. The dollar amount of the particular offering would no longer be determinative. Thus, non-reporting issuers conducting Regulation D offerings would be required to provide the same kind of information as is required in Part I of a Securities Act registration statement form that the issuer would be entitled to use. Non-reporting issuers eligible to use Regulation A would have the option of providing the same kind of information as required in Part II of Form 1-A. No substantive changes are proposed with respect to the informational requirements for reporting issuers.

Comment is requested as to the appropriateness of keying the information requirements to eligibility for other Commission disclosure formats, in lieu of staging disclosure thresholds to the dollar amount of an offering. Comment is also requested as

statements in connection with their reporting requirements.

⁴² See Rule 502(b)(2)(i)(A)-(C).

³⁵ 17 CFR 228.310(c)(5).

³⁶ 17 CFR 228.310(g).

to whether one of the three alternative disclosure formats found in Form 1-A should be specified for use in Regulation D.

V. Repeal of Rule 504a

Revised Rule 504 adopted today by the Commission as part of its Small Business Initiatives is not available to blank check companies—development stage companies with no specific business plan or purpose or a business plan to engage in mergers or acquisitions with unidentified companies, or other entities.⁴³ Old rule 504, now designated Rule 504a, continues to be available to these offerings. The exclusion of blank check companies from revised Rule 504 is premised upon the Commission's own experience, as well as concerns raised in the public comment process following the proposal of the Small Business Initiatives. Blank check offerings have been found to be a common vehicle for fraud and manipulation. Focusing on demonstrated abuses in connection with blank check offerings, Congress in the Securities Enforcement Remedies and Penny Stock Reform Act of 1990⁴⁴ found that such offerings cause harm to investors and directed the Commission to adopt rules governing registration statements filed in connection with blank check offerings.⁴⁵ The Commission responded with the adoption of a special regulatory scheme for registered blank check offerings.⁴⁶ The Commission today is proposing that Rule 504a be rescinded, thereby excluding blank check companies from Rule 504-type offerings. Comment is requested as to the appropriateness of this proposal and the definition of blank check company in Rule 504. Commenters are also reminded of the 30-day comment period regarding the proposed exclusion.

VI. Regulation A—"Test the Waters" Document

In connection with the newly adopted rule permitting solicitation of indications of interest by issuers wishing to use Regulation A, public commenters expressed uncertainty with respect to the status of the written "test the waters" material under the Securities Act and the relationship of the disclosures in the test the waters

document and those in the offering statement. To address these questions, the Commission is proposing to amend Rule 254 to specify that this material is not a "prospectus" as defined in Section 2(10)⁴⁷ of the Securities Act. In order to fall within the non-prospectus exclusion, the written test the waters material must be submitted to the Commission and otherwise fully comply with the requirements of Rule 254. This proposed treatment of the written test the waters document is analogous to that provided for advertising of registered offerings pursuant to Rule 134 of the Securities Act.⁴⁸ The anti-fraud provisions of the federal securities laws, however, would continue to apply to any written "test the waters" material. Also, any test the waters activity would be an "offer" as defined in Section 2(3)⁴⁹ under the Securities Act.⁵⁰

Comment is requested as to the appropriateness of the proposed rule. Should the coverage of proposed Rule 254(e)—which is limited to written materials that are submitted to the Commission and otherwise fully comply with Rule 254—be broader or narrower?

VII. Definitions of "Small Business" and "Small Organization" Under the Regulatory Flexibility Act

In recognition of the definition of small business issuer adopted in the companion release, the Commission also proposes to revise certain Securities Act, Exchange Act and Trust Indenture Act⁵¹ definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act ("RFA") to incorporate the definition used for the small business integrated disclosure system.⁵²

⁴⁷ 15 U.S.C. § 77(b)(10).

⁴⁸ 17 CFR 230.134.

⁴⁹ 15 U.S.C. § 77b(3).

⁵⁰ Thus, the proposed revision to Rule 254 would not affect the status of oral test the waters activity as "oral communications" for purposes of Section 12(2).

⁵¹ Securities Act Rule 157(a) [17 CFR 230.157(a)], Exchange Act Rule 0-10(a) [17 CFR 240.0-10] and Trust Indenture Act Rule 0-7 [17 CFR 260.07] would be revised.

⁵² This action is taken only with respect to those entities which would fall within the definition of "small business issuer." As such, it does not affect the RFA definitions of "small business" and "small organization" as those terms apply to investment companies.

Certain of the Commission's definitions under the RFA specifically address the operation of a regulated entity. These definitions are not to be revised. As such, the Commission action discussed above would not affect the RFA definitions regarding public utility holding companies, brokers, dealers, clearing agencies, exchanges, bank municipal securities dealers, securities information processors and transfer agents.

VIII. General Request for Comment

Any interested person wishing to submit written comments on the proposed rule amendments or suggest additional changes or comments on other matters that might have an impact on the proposals set forth in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Comment is requested as to the impact of the proposals from the point of view of the public, as well as the entities or persons making filings with the Commission. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act.⁵³ The Commission further requests comment on any competitive burdens that may result from adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.⁵⁴ Comment letters should refer to File No. S7-28-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

IX. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. § 603 regarding the proposed revisions.

The analysis notes that small businesses seeking to register their securities and become reporting issuers will benefit from the transitional disclosure alternatives proposed in Form SB-1 and the Exchange Act reporting forms.

The analysis also notes that the new provision specifying that written test the waters materials complying with Regulation A are not prospectuses under Section 2(10) of the Securities Act would benefit small businesses by specifying the application of the statute.

The analysis notes that Regulation D is proposed to be amended in connection with the Commission's ongoing efforts to aid small businesses in connection with the raising of capital. The analysis also notes that small businesses seeking to offer exempt securities under Regulation D will benefit from the proposed revisions, due to the coordination of the informational

⁵³ 15 U.S.C. § 77s(a).

⁵⁴ 15 U.S.C. § 78w(a).

⁴³ In connection with the revision of Rule 504, the Commission redesignated previously existing Rule 504 as 504a, which, pending action on this proposal, remains in effect.

⁴⁴ S.647, Pub. L. 101-429.

⁴⁵ See H.R. Rep. No. 101-617; 101 Cong., 2d Sess. 10-11, 15 (1990).

⁴⁶ See Securities Act Release No. 6932 (April 28, 1992).

requirements with other exemptions and registration statement forms and the elimination of the requirement that audited financial statements be developed solely for use in the exempt offering.

Finally, the analysis notes that the proposed changes to the Regulatory Flexibility Act definitions of small business and small organization would expand the category of covered entities, consistent with the benefits accorded to small businesses by the other proposals.

A copy of the Initial Regulatory Flexibility Act Analysis may be obtained from Twanna M. Young, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

X. Cost-Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views and other supporting information of the public. It appears to the Commission that the proposals, if adopted, would work significant cost savings for issuers without compromising investor protection.

XI. Statutory Basis, Text of Proposals and Authority

The amendments to the Commission's rules and forms are being proposed pursuant to Sections 2, 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 12, 13, 15(d), 16(a) and 23(a) of the Exchange Act and Section 319 of the Trust Indenture Act.

List of Subjects

17 CFR Parts 228, 230, 239, 240, 249 and 260

Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Proposals

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—SMALL BUSINESS DISCLOSURE REQUIREMENTS

1. The authority citation for part 228 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, 781, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

2. By amending § 228.310 by revising paragraphs (c)(3)(i) and (c)(3)(ii); by removing paragraph (c)(3)(iv); by adding one sentence to the end of paragraph

(c)(5); and by revising paragraph (g)(2)(i) to read as follows:

§ 228.310 (Item 310) Financial Statements.

(c) * * *

(3)(i) Financial statements shall be furnished for the periods prior to the date of acquisition, for the same periods for which the small business issuer is required to furnish financial statements. The financial statements covering fiscal years shall be audited.

(ii) If none of the conditions in the definitions of significant subsidiary in paragraph (c)(2) of this Item exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(c)(5) * * *

If a Form 8-K was filed to report a significant acquisition but audited financial statements were not furnished pursuant to the automatic waiver provisions of paragraph (c)(3), upon written request from the issuer, the staff will consider permitting the use of previously filed pro forma financial information which was based on unaudited financial statements as the basis for measurement for the significance tests.

(g)(2) * * *

(i) If the small business issuer is a reporting company, all reports due must have been filed;

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

3. The authority citation for part 230 continues to read as follows:

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

4. Amend paragraph (a) of § 230.157 by replacing "whose total assets on the

last day of its most recent fiscal year were \$5 million or less" with "whose annual revenues for its most recent fiscal year were less than \$25,000,000 and who has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of less than \$25,000,000".

5. By adding paragraph (e) to § 230.254 to read as follows:

§ 230.254 Solicitation of Interest Document for Use Prior to an Offering Statement.

(e) Written solicitation of interest materials submitted to the Commission and otherwise in compliance with this section shall not be deemed to be a prospectus as defined in Section 2(10) of the Securities Act [15 U.S.C. 77b(10)].

6. By revising paragraph (b)(2)(i) and adding a note thereafter § 230.502 to read as follows:

§ 230.502 General conditions to be met.

(b) * * *

(2) * * *

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and is eligible to use Regulation A, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser, to the extent material to an understanding of the issuer, its business and the securities being offered, the same kind of information as would be required in Part II of Form 1-A [17 CFR 239.90]. If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and is not eligible to use Regulation A, it shall furnish the same kind of information as would be required in Part I of a Securities Act registration form that the issuer would be entitled to use. Small business issuers, as defined in Rule 405, shall provide financial information for the most recent fiscal year only. All other issuers shall provide financial information for the three most recent fiscal years. Financial statements need not be certified by an independent public or certified accountant, but issuers that have audited financial statements available shall provide them. Financial statements shall be prepared in accordance with U.S. generally accepted accounting principles.

Note: The Commission's Regulation S-X, 17 CFR 210.1 et seq. relating to the form, content of and requirements for financial statements shall not apply to the financial statements required to be provided, except that if audited financial statements are provided, the qualifications and reports of an

independent auditor shall comply with the requirements of Article 2 of Regulation S-X.

7. Amend § 230.502 by removing the last sentence in the note to paragraph (b)(1) and in the flush text of paragraph (d) by removing the words "and § 230.504a(b)(2)(ii) require" and adding the word "requires".

8. By removing § 230.504a.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

9. The authority citation for part 239 continues to read as follows:

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

10. § 239.9 is added to read as follows:

§ 239.9 Form SB-1, optional form for the registration of securities to be sold to the public by certain small business issuers.

Small business issuers defined in Rule 405 (17 CFR 230.405 of this chapter) may use this form to register up to \$5,000,000 of securities to be sold for cash, if they have not registered more than \$5,000,000 in securities offerings in any one fiscal year, including the transaction being registered, and excluding any amounts sold pursuant to employee benefits plans on Form S-8 (§ 239.16b of this chapter) and registered dividend reinvestment plans.

Note: The Text and Instructions of Form SB-1 will not appear in the Code of Federal Regulations.

Form SB-1

U.S. Securities and Exchange Commission,
Washington, DC 20549

OMB Approval

OMB Number: xxxx-xxxx

Expires: Approval Pending

Estimated average burden hours per response: 1.0

Registration Statement Under the Securities Act of 1933

(Amendment No. _____)

(Name of small business issuer in its charter)

(State or jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address and telephone number of principal executive offices)

(Address of principal place of business or intended principal place of business)

(Name, address and telephone number of agent for service)

Approximate date of proposed sale to the public _____

Calculation of Registration Fee

Title of each class of securities to be registered _____

Dollar Amount to be registered _____

Proposed maximum offering price per unit _____

Proposed maximum aggregate offering price _____

Amount of registration fee _____

The following delaying amendment is optional, but see Rule 473 before omitting it: The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Disclosure alternative used (check one):

Alternative 1 _____; Alternative 2 _____;

Alternative 3 _____

General Instructions

A. Use of Form and Place of Filing

1. A "small business issuer," defined in Rule 405 of the Securities Act of 1933 (the "Securities Act") may use this form to register securities to be sold for cash, so long as that issuer has not registered more than \$5,000,000 of securities offerings in any one fiscal year, including the securities offered in the transaction being registered. Registered offerings of securities under employee benefit and/or dividend reinvestment plans may be excluded for purposes of computing this \$5,000,000 ceiling.

2. If the small business issuer is not a reporting company, it should file the registration statement in the regional office that is closest to its principal place of business or the Washington, DC office. However, no filing may be made in the Philadelphia regional office; small business issuers in that region should file in the Atlanta, New York or Washington, DC offices.

3. If the small business issuer is a reporting company or a holding company of a bank (see the definition of "bank" in section 12(i) of the Securities Exchange Act of 1934), it should file the registration statement in the Commission's Washington, DC headquarters.

4. Post-effective amendments should be filed with the office that declared the registration statement effective.

5. The Commission may refer processing to an office other than that where filing was made.

B. General Requirements

1. Regulation S-B (17 CFR 228.10 *et seq.*) contains the disclosure requirements for the Form SB-2 disclosure alternative in Part I of this form. In preparing a registration

statement on this Form, reference also should be made to the General Rules and Regulations under the Securities Act, particularly Regulation C which sets forth requirements for the preparation and filing of a registration statement such as paper type and size.

2. Issuers registering securities for the first time should be aware of Form SR and Rule 463 under the Securities Act concerning sales of registered securities and the use of proceeds. First-time issuers also should be aware of Exchange Act Rule 15c2-8 (§ 240.15c2-8), which requires broker-dealers to deliver a prospectus 48 hours before a sale of securities can be confirmed.

3. Issuers engaged in real estate, oil and gas or mining activities should consult the Industry Guides in Item 801 of Regulation S-K (17 CFR 229.801). Real estate companies also should refer to Item 13 [Investment Policies of Registrant], Item 14 [Description of Real Estate], and Item 15 [Operating Data] of Form S-11 (17 CFR 239.18).

C. Preparation and Filing of the Registration Statement

Part I of this form, which relates to the content of certain information about the issuer, provides several alternative disclosure formats. The registrant may elect any of these alternative formats.

D. Financial Statement Requirements

Regardless of the disclosure model used, all registrants shall provide the financial statements required by Part F/S of this Form SB-1.

E. Composition of Prospectus

The information required by Part I and Part F/S of this registration statement shall comprise the prospectus.

F. Registration of Securities to be Offered for the Account of Security Holders

If any of the securities registered on this Form SB-1 are to be offered for the account of security holders, Part I of this registration statement should include the information required by Item 507 of Regulation S-B.

G. Canadian Issuer—Consent of Service

Canadian issuers eligible to use this Form should file as an exhibit to this registration statement a written irrevocable consent and power of attorney on Form F-X (§ 239.42 of this title).

Part I—Narrative Information Required in Prospectus

Alternative 1

Any issuer may elect to provide the information required by Part I of Form SB-2, except for the financial statements called for there.

Alternative 2

Corporate issuers may elect to provide the information required by Model A of Form 1-A, as well as the following information.

Item 1. Front of Registration Statement and Outside Front Cover of Prospectus

Furnish the information required by Item 501 of Regulation S-B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S-B.

Item 3. Significant Parties

(a) List the full names and business and residential addresses, as applicable, for the following persons:

- (1) the issuer's directors;
- (2) the issuer's officers;
- (3) the issuer's general partners;
- (4) record owners of 5 percent or more of any class of the issuer's equity securities;
- (5) beneficial owners of 5 percent or more of any class of the issuer's equity securities;
- (6) promoters of the issuer;
- (7) affiliates of the issuer;
- (8) counsel to the issuer with respect to the proposed offering;
- (9) each underwriter with respect to the proposed offering;
- (10) the underwriter's directors;
- (11) the underwriter's officers;
- (12) the underwriter's general partners; and
- (13) counsel to the underwriter.

Item 4. Relationship With Issuer of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a material interest in the issuer or any of its parents or subsidiaries or was connected with the issuer or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 5. Selling Security Holders

Furnish the information required by Item 507 of Regulation S-B.

Item 6. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S-B.

Alternative 3

Any issuer may elect to provide the information required by Model B of Part II of Form 1-A, as well as the following information.

Item 1. Front of Registration Statement and Outside Front Cover of Prospectus

Furnish the information required by Item 501 of Regulation S-B.

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Furnish the information required by Item 502 of Regulation S-B.

Item 3. Significant Parties

(a) List the full names and business and residential addresses, as applicable, for the following persons:

- (1) The issuer's directors;
- (2) The issuer's officers;
- (3) The issuer's general partners;
- (4) Record owners of 5 percent or more of any class of the issuer's equity securities;

- (5) Beneficial owners of 5 percent or more of any class of the issuer's equity securities;
- (6) Promoters of the issuer;
- (7) Affiliates of the issuer;
- (8) Counsel to the issuer with respect to the proposed offering;
- (9) Each underwriter with respect to the proposed offering;
- (10) The underwriter's directors;
- (11) The underwriter's officers;
- (12) The underwriter's general partners; and
- (13) Counsel to the underwriter.

Item 4. Relationship With Issuer of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a material interest in the issuer or any of its parents or subsidiaries or was connected with the issuer or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer or employee furnish a brief statement of the nature of such contingent basis, interest or connection.

Item 5. Selling Security Holders

Furnish the information required by Item 507 of Regulation S-B.

Item 6. Disclosure of Commission Position on Indemnification for Securities Act Liabilities

Furnish the information required by Item 510 of Regulation S-B.

Part F/S—Financial Information Required in Prospectus

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor, shall be filed as part of the registration statement and included in the prospectus which is distributed to investors. Such financial statements and the financial statements required to be provided for any significant business acquired or to be acquired shall be audited.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) If such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the registration statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2 fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the registration statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Item 310(c)(2) of Regulation S-B.

(c)(i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iii) If none of the conditions in the definitions of significant subsidiary in Item 310(c)(2) of Regulation S-B exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial

statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3) (b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b)(1). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part II—Information Not Required in Prospectus

Item 1. Indemnification of Directors and Officers

Furnish the information required by Item 702 of Regulation S-B.

Item 2. Other Expenses of Issuance and Distribution

Furnish the information required by Item 511 of Regulation S-B.

Item 3. Undertakings

Furnish the undertakings required by Item 512 of Regulation S-B.

Item 4. Unregistered Securities Issued or Sold Within One Year

(a) As to any unregistered securities issued by the issuer or any of its predecessors or affiliated issuers within one year prior to the filing of this Form SB-1, state:

(1) The name of such issuer;

(2) The title and amount of securities issued;

(3) The aggregate offering price or other consideration for which they were issued and the basis for computing the amount thereof;

(4) The names and identities of the persons to whom the securities were issued.

(b) As to any unregistered securities of the issuer or any of its predecessors or affiliated issuers which were sold within one year prior to the filing of this Form SB-1 by or for the account of any person who at the time was a director, officer, promoter or principal security holder of the issuer of such securities, or was an underwriter of any securities of such issuer, furnish the information specified in subsections (1) through (4) of paragraph (a).

(c) Indicate the section of the Securities Act or Commission rule or regulation relied upon for exemption from the registration requirements of such Act and state briefly the facts relied upon for such exemption.

Item 5. Index to Exhibits

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form SB-1.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 411(d) of Regulation C shall be followed.

Item 6. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the registration statement.

(1) *Underwriting Agreement*—Each underwriting contract or agreement with a principal underwriter or letter pursuant to which the securities are to be distributed; where the terms have yet to be finalized, proposed formats may be provided.

(2) *Charter and by-laws*—The charter and by-laws of the issuer or instruments

corresponding thereto as presently in effect and any amendments thereto.

(3) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if such debt is not being issued pursuant to this offering and the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; (ii) any instrument with respect to a class of securities which is to be retired or redeemed prior to the issuance or upon delivery of the securities being issued pursuant to this offering and appropriate steps have been taken to assure such retirement or redemption; and (iii) copies of instruments evidencing scrip certificates or fractions of shares.

(4) *Subscription agreement*—The form of any subscription agreement to be used in connection with the purchase of securities in this offering.

(5) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(6) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant

or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the registration statement is held by the issuer.

(c) Any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(7) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(8) *Plan of acquisition, reorganization, arrangement, liquidation, or succession*—Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the registration statement. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the registration statement. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(9) *Escrow agreements*—Any escrow agreement or similar arrangement which has been executed in connection with the offering.

(10) *Consents*—(a) Experts: The written consent of (i) any accountant, engineer, geologist, appraiser or any person whose profession gives authority to a statement made by them and who is named in the registration statement as having prepared or certified any part of the document or is named as having prepared or certified a report or evaluation whether or not for use in connection with the registration statement; (ii) the expert that authored any portion of a report quoted or summarized as such in the registration statement, expressly stating their consent to the use of such quotation or summary; (iii) any persons who are referenced as having reviewed or passed upon any information in the registration

statement, and that such information is being included on the basis of their authority or in reliance upon their status as experts.

(b) All written consents shall be dated and manually signed.

(11) *Opinion re legality*—An opinion of counsel as to the legality of the securities covered by the Registration Statement, indicating whether they will, when sold, be legally issued, fully paid and nonassessable, and if debt securities, whether they will be binding obligations of the issuer.

(12) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

(13) *Form F-X*—Canadian issuers eligible to use this Form SB-1 shall file a written irrevocable consent and power of attorney on Form F-X.

Signatures

In accordance with the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form SB-1 and authorized this registration statement to be signed on its behalf by the undersigned, in the City of _____, State of _____, on _____, 19____.

(Registrant) _____

By (Signature and Title) _____

In accordance with the requirements of the Securities Act of 1933, this registration statement was signed by the following persons in the capacities and on the dates stated.

(Signature) _____

(Title) _____

(Date) _____

Instructions for Signatures

(1) Who must sign: the small business issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least the majority of the board of directors or persons performing similar functions. If the issuer is a limited partnership then the general partner and a majority of its board of directors if a corporation.

(2) Beneath each signature, type or print the name of each signatory. Any person who occupies more than one of the specified positions shall indicate each capacity in which he or she signs the registration statement. See Rule 402 of Regulation C concerning manual signatures and Item 601 of Regulation S-B concerning signatures by powers of attorney.

11. Form S-2 (§ 239.12) is amended by adding Paragraph D to General Instruction II to read as follows:

Note: The text of Form S-2 will not appear in the Code of Federal Regulations.

Form S-2

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General Instruction

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II. Application of General Rules and Regulations

D. A "small business issuer," defined in Rule 405 (17 CFR 230.405) that is eligible to use Form SB-1 and Form S-2, shall deliver its most recent Form 10-KSB in lieu of the annual report to security holders required by Rule 14a-3 [17 CFR 240.14a-3] or Rule 14c-3 [17 CFR 240.14c-3] in response to Item 11(a). Issuers relying upon this General Instruction II.D. may respond to Item 11(a)(3) by providing the financial information required in Part F/S of Form SB-1 with respect to acquired businesses and pro forma financial statements. Transitional small business issuers which do not elect to deliver their most recent Form 10-KSB, and instead set forth the disclosure required by Item 11(b), shall refer to General Instruction II.C.

12. Form S-4 (§ 239.25) is amended by adding Paragraph 4 to General Instruction D to read as follows:

Note: The text of Form S-4 will not appear in the Code of Federal Regulations.

Form S-4

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General Instructions

• • • • •

D. Application of General Rules and Regulations

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4. A "small business issuer," defined in Rule 405 (17 CFR 230.405) that is eligible to use Form SB-1 shall respond to Part I.B. and I.C. in the following manner: (1) Registrants and Companies to be Acquired which are eligible to use Form SB-1 and Form S-2 may provide all information required pursuant to General Instruction II.D. of Form S-2; and (2) Registrants and Companies to be Acquired which are eligible to use Form SB-1 shall provide the information required by that form.

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

13. The authority citation for part 240 continues to read as follows:

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

14. Amend paragraph (a) of § 240.0-10 by replacing "that, on the last day of its most recent fiscal year, had assets of \$5 million or less" with "whose annual

revenues for its most recent fiscal year were less than \$25,000,000 and who has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of less than \$25,000,000".

15. By revising the Note following the introductory text of paragraph (b) of § 240.14a-3 to read as follows:

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

(b) ***

Note to Small Business Issuers—A "small business issuer," defined under Rule 12b-2 of the Exchange Act (§ 240.12b-2), shall refer to the disclosure items in Regulation S-B (§ 228.10 *et seq.* of this chapter) rather than Regulation S-K (§ 229.10 *et seq.*). If there is no comparable disclosure item in Regulation S-B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S-B in lieu of the financial information required by Rule 14a-3(b)(1) (§ 240.14a-3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10-KSB need not provide the information specified below. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10-KSB.

16. Amend § 240.14a-101 by adding Note G, an Instruction 3 after Item 6, an Instruction after paragraph (a) of Item 7, a Special Instruction after the Instruction to Item 8, an Instruction 6 to Item 10, an Instruction to paragraph (b) of Item 11, an Instruction to paragraph (b) of Item 12, an Instruction to paragraph (a)(1) of Item 13, an Instruction to paragraph (a)(3) of Item 13, and an Instruction to paragraph (b)(3)(i) of Item 14 to read as follows:

§ 249.14a-101 Schedule 14A. Information required in proxy statement.

Notes: ***

G. Special Note to Small Business Issuers

Registrants and acquirers which meet the definition of "small business issuer" in Rule 12b-2 of the Exchange Act and filed their latest annual report in accordance with Alternative 2 or Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in Form 10-KSB shall refer to the "Special Instructions for Certain Small Business

Issuers" which follow specific items in this Schedule. If there is no such special instruction, small business issuers should comply with the disclosure item in this schedule, as modified by Instruction F.

* * * * *

Item 6 * * *

Instruction

* * * * *

3. Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 14 and 15 of that disclosure format instead of paragraph (d) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 5 of that disclosure format instead of paragraph (d) of this Item.

* * * * *

Item 7

* * * * *

(a) ***

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 20 of that disclosure format instead of paragraph (a) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 3(d) of that disclosure format instead of paragraph (a) of this Item.

* * * * *

(b) ***

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 6-13 and 16 of that disclosure format instead of paragraph (b) of this Item.

(b) Small business issuers which filed their most recent annual report on Form

10-KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 3(a)-(c) and Item 6 of that disclosure format instead of paragraph (b) of this Item.

* * * * *

Item 8

* * * * *

Instruction

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Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Questions 16-18 of that disclosure format instead of this Item. (b) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 4 of that disclosure format instead of this Item.

* * * * *

Item 10

* * * * *

Instructions

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6. Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 2 under "Information Required in Annual Reports of Transitional Small Business Issuers" in that Form, shall respond to Questions 17(c), 18 and 19 of that disclosure format instead of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form, shall respond to Item 4 of that disclosure format instead of this Item.

* * * * *

Item 11

* * * * *

(b) * * *

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with "Information Required

in Annual Report of Transitional Small Business Issuers" need not respond to this paragraph (b).

Item 12

(b)

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with "Information Required in Annual Report of Transitional Small Business Issuers" need not respond to this paragraph (b).

Item 13

(a)

(1)

Special Instruction for Certain Small Business Issuers. Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with "Information Required in Annual Report of Transitional Small Business Issuers" shall provide the information required by part F/S of that Form, instead of this paragraph.

(3)

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Questions 4 and 22-25 of that disclosure format instead of this paragraph.

(b) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Item 1(a)(3) of that disclosure format instead of this paragraph.

Item 14

(b)

(3)(i)

Special Instruction for Certain Small Business Issuers. (a) Small business issuers which filed their most recent annual report on Form 10-KSB in

accordance with Alternative 2 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Questions 2 and 3 of that disclosure format instead of paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this Item. These issuers may also respond to questions 4 and 22-25 of that disclosure format instead of paragraph (b)(3)(i)(H) of this Item.

(b) Small business issuers which filed their most recent annual report on Form 10-KSB in accordance with Alternative 3 under "Information Required in Annual Report of Transitional Small Business Issuers" in that Form shall respond to Items 1 and 2 of that disclosure format instead of paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this Item. These issuers may also respond to Item 1(a)(3) of that disclosure format instead of paragraph (b)(3)(i)(H) of this Item.

17. By adding the following Note after paragraph (a)(2) of § 240.14c-3 to read as follows:

§ 240.14c-3 Annual Report to be Furnished Security Holders.

(a) * * *

(2) * * *

Note to Small Business Issuers—In responding to the disclosure items under paragraph (b) of Rule 14a-3, (§ 240.14a-3 of this chapter) a "small business issuer," defined under Rule 12b-2 of the Exchange Act (§ 240.12b-2), shall refer to the disclosure items in Regulation S-B (§ 228.10 *et seq.* of this chapter) rather than Regulation S-K (§ 229.10 *et seq.*). If there is no comparable disclosure item in Regulation S-B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S-B in lieu of the financial information required by Rule 14a-3(b)(1) (§ 240.14a-3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10-KSB need not provide the information required by paragraph (b) of Rule 14a-3. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10-KSB.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

17a. The authority for Part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

Note: The following forms will not appear in the Code of Federal Regulations.

18. By adding General Instruction E to Form 10-SB [§ 249.210b] to read as follows:

Form 10-SB

General Instructions

E. Alternative Disclosure Formats

Small business issuers which were not previously subject to the reporting requirements of section 13 or 15(d) of the Exchange Act may elect any one of the three alternative disclosure models of part I. Regardless of the disclosure model used, all registrants shall also complete parts II and III, and provide the financial statements required by part F/S.

19. By removing Items 1 through 15 under "Information Required in Registration Statement" of Form 10-SB [17 CFR 249.210b].

20. By adding part I; part II; part F/S and Part III after "Information Required in Registration Statement" of Form 10-SB [17 CFR 249.210b]:

Form 10-SB

Information Required in Registration Statement

Part I

Alternative 1

Any issuer may elect to provide the following information.

Item 1. Description of Business

Furnish the information required by Item 101 of Regulation S-B.

Item 2. Management's Discussion and Analysis or Plan of Operation

Furnish the information required by Item 303 of Regulation S-B.

Item 3. Description of Property

Furnish the information required by Item 102 of Regulation S-B.

Item 4. Security Ownership of Certain Beneficial Owners and Management

Furnish the information required by Item 403 of Regulation S-B.

Item 5. Directors, Executive Officers, Promoters and Control Persons

Furnish the information required by Item 401 of Regulation S-B.

Item 6. Executive Compensation

Furnish the information required by Item 402 of Regulation S-B.

Item 7. Certain Relationships and Related Transactions

Furnish the information required by Item 404 of Regulation S-B.

Item 8. Description of Securities

Furnish the information required by Item 202 of Regulation S-B.

Alternative 2

Corporate issuers may elect to provide the following information.

General Instructions:

Each question in each paragraph of this part shall be responded to; and each question and any notes, but not any instructions thereto, shall be restated in its entirety. If the question or series of questions is inapplicable, so state. If the space provided in the format is insufficient, additional space should be created by cutting and pasting the format to add more lines.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may have liability to investors. Appropriate diligence should be exercised to determine that no such inaccuracy or incompleteness has occurred.

The Company

1. Exact corporate name: _____
State and date of incorporation: _____

Street address of principal office: _____

Company Telephone Number: (____) _____
Fiscal year: _____

(month) (day)
Person(s) to contact at Company with respect to offering: _____

Telephone Number (if different from above): (____) _____

Business and Properties

2. With respect to the business of the Company and its properties:

(a) Describe in detail what business the Company does and proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

(b) Describe how these products or services are to be produced or rendered and how and when the Company intends to carry out its activities. If the Company plans to offer a new product(s), state the present stage of development, including whether or not a working prototype(s) is in existence. Indicate if completion of development of the product would require a material amount of the resources of the Company, and the estimated amount. If the Company is or is expected to be dependent upon one or a limited number

of suppliers for essential raw materials, energy or other items, describe. Describe any major existing supply contracts.

(c) Describe the industry in which the Company is selling or expects to sell its products or services and, where applicable, any recognized trends within that industry. Describe that part of the industry and the geographic area in which the business competes or will compete.

Indicate whether competition is or is expected to be by price, service, or other basis. Indicate (by attached table if appropriate) the current or anticipated prices or price ranges for the Company's products or services, or the formula for determining prices, and how these prices compare with those of competitors' products or services, including a description of any variations in product or service features. Name the principal competitors that the Company has or expects to have in its area of competition. Indicate the relative size and financial and market strengths of the Company's competitors in the area of competition in which the Company is or will be operating. State why the Company believes it can effectively compete with these and other companies in its area of competition.

Note: Because this registration statement focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

(d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

(e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: ____/____/____

\$ _____

(a recent date)

As of: ____/____/____

\$ _____

(one year earlier)

Explain the reason for significant variations between the two figures, if any. Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

(f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

(g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization in anticipation of this offering, describe (and adjust historical per share figures elsewhere in this registration statement accordingly).

3. (a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(1).....		
(2).....		
(3).....		
(4).....		
(5).....		

(b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question No. 4)

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

Instruction: The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the

suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 3, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an obstacle which the Company must overcome in order to become profitable.

4. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's trade payables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

Description of Securities

5. The securities being registered on this Form 10-SB are:

- ☐ Common Stock
☐ Preferred or Preference Stock
☐ Notes or Debentures
☐ Units of two or more types of securities composed of: _____
☐ Other: _____

6. These securities have:

- Yes No
☐ ☐ Cumulative voting rights
☐ ☐ Other special voting rights
☐ ☐ Preemptive rights to purchase in new issues of shares
☐ ☐ Preference as to dividends or interest
☐ ☐ Preference upon liquidation
☐ ☐ Other special rights or preferences (specify): _____

Explain: _____

7. Are the securities convertible? ☐

- Yes ☐ No
 If so, state conversion price or formula: _____
 Date when conversion becomes effective: _____/_____/_____

(h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, covenants-not-to-compete and the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

(i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

(j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

(k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss

Date when conversion expires: _____/_____/_____

8. (a) If securities are notes or other types of debt securities:

(1) What is the interest rate? _____%
If interest rate is variable or multiple rates, describe: _____

(2) What is the maturity date?

If serial maturity dates, describe: _____

(3) Is there a mandatory sinking fund?

☐ Yes ☐ No

Describe: _____

(4) Is there a trust indenture? ☐ Yes

☐ No

Name, address and telephone number of Trustee: _____

(5) Are the securities callable or subject to redemption? ☐ Yes ☐ No

Describe, including redemption prices: _____

(6) Are the securities collateralized by real or personal property?

☐ Yes ☐ No Describe: _____

(7) If these securities are subordinated in right of payment of interest or principal, explain the terms of such subordination.

How much currently outstanding indebtedness of the Company is senior to the securities in right of payment of interest or principal? \$ _____

How much indebtedness shares in right of payment on an equivalent (pari passu) basis? \$ _____

How much indebtedness is junior (subordinated) to the securities? \$ _____

9. If securities are Preference or Preferred stock:

Are unpaid dividends cumulative?

☐ Yes ☐ No

Are securities callable? ☐ Yes ☐ No

Explain: _____

Note: Include as an exhibit to this registration statement copies or a summary of the charter, bylaw or contractual provision or document that gives rise to the rights of holders of Preferred or Preference Stock, notes or other securities being offered.

10. If securities are capital stock of any type, indicate restrictions on dividends under loan or other financing arrangements or otherwise: _____

11. Current amount of assets available for payment of dividends if deficit must be first made up, show deficit in parenthesis): \$ _____

Dividends, Distributions and Redemptions

12. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when: _____

Officers and Key Personnel of the Company

13. Chief Executive Officer:

Title: _____

Name: _____

Age: _____

Office Street Address: _____

Telephone No.: () _____

Name of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company? ☐ Yes ☐ No

Indicate amount of time to be spent on Company matters if less than full time: _____

14. Chief Operating Officer:

Title: _____

Name: _____

Age: _____

Office Street Address: _____

Telephone No.: () _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company? ☐ Yes ☐ No.

Indicate amount of time to be spent on Company matters if less than full time: _____

15. Chief Financial Officer: Title: _____

Name: _____ Age: _____

Office Street Address: _____

Telephone No.: () _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company? ☐ Yes ☐ No.

Indicate amount of time to be spent on Company matters if less than full time: _____

16. Other Key Personnel:

(A) Name: _____

Age: _____

Title: _____

Office Street Address: _____

Telephone No.: () _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

employees, independent contractors, consultants or otherwise.

Directors of the Company

17. Number of Directors: _____ If Directors are not elected annually, or are elected under a voting trust or other arrangement, explain:

Telephone No.: (____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Also a Director of the Company? []

Yes-[] No

Indicate amount of time to be spent on Company matters if less than full time:

(B) Name: _____ Age: _____

Title: _____

Office Street Address: _____

18. Information concerning outside or other Directors (i.e. those not described above):

(A) Name: _____

Age: _____

Office Street Address: _____

Education (degrees, schools, and dates):

Telephone No.: (____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Telephone No.: _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? []

Yes [] No

Indicate amount of time to be spent on Company matters if less than full time:

Education (degrees, schools, and dates):

(B) name: _____

Age: _____

Office Street Address: _____

Instruction: The term "Chief Executive Officer" means the officer of the Company who has been delegated final authority by the board of directors to direct all aspects of the Company's affairs. The term "Chief Operating Officer" means the officer in charge of the actual day-to-day operations of the Company's business. The term "Chief Financial Officer" means the officer having accounting skills who is primarily in charge of assuring that the Company's financial books and records are properly kept and maintained and financial statements prepared.

The term "key personnel" means persons such as vice presidents, production managers, sales managers, or research scientists and similar persons, who are not included above, but who make or are expected to make significant contributions to the business of the Company, whether as

Telephone No.: (____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

19. (a) Have any of the Officers or Directors ever worked for or managed a company (including a separate subsidiary or division of a larger enterprise) in the same business as the Company? [] Yes [] No

Explain: _____

(b) If any of the Officers, Directors or other key personnel have ever worked for or managed a company in the same business or industry as the Company or in a related business or industry, describe what precautions, if any, (including the obtaining of releases or consents from prior employers) have been taken to preclude claims by prior employers for conversion or theft of trade secrets, know-how or other proprietary information.

(c) If the Company has never conducted operations or is otherwise in the development stage, indicate whether any of the Officers or Directors has ever managed any other company in the start-up or development stage and describe the circumstances, including relevant dates.

Education (degrees, schools, and dates):

(C) Name: _____

Age: _____

Office Street Address: _____

(d) If any of the Company's key personnel are not employees but are consultants or other independent contractors, state the details of their engagement by the Company.

Class of shares	Average price per share	No. of shares now held	Percent of total
Name:			

(e) If the Company has key man life insurance policies on any of its Officers, Directors or key personnel, explain, including the names of the persons insured, the amount of insurance, whether the insurance proceeds are payable to the Company and whether there are arrangements that require the proceeds to be used to redeem securities or pay benefits to the estate of the insured person or a surviving spouse.

Office Street Address:

Telephone No. () - -

Principal occupation:

Name:

Office Street Address:

Telephone No. () - -

Principal occupation:

Name:

Office Street Address:

Telephone No. () - -

Principal occupation:

Name:

Office Street Address:

Telephone No. () - -

Principal occupation:

22. Number of shares beneficially owned by Officers and Directors as a group: _____ shares (____% of total outstanding) (Assume all options exercised and all convertible securities converted.)

Instruction: If shares are held by family members, through corporations or

partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control—as, for example, a co-trustee) they should be included as being "beneficially owned." An explanation of these circumstances should be set forth in a footnote to the "Number of Shares Now Held."

Management Relationships, Transactions and Remuneration

23.(a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

(b) If the Company has made loans to or is doing business with any of its Officers, Directors, key personnel or 10% stockholders, or any of their relatives (or any entity controlled directly or indirectly by any such persons) within the last two years, or proposes to do so within the future, explain. (This includes sales or lease of goods, property or services to or from the Company, employment or stock purchase contracts, etc.) State the principal terms of any significant loans, agreements, leases, financing or other arrangements.

(c) If any of the Company's Officers, Directors, key personnel or 10% stockholders has guaranteed or co-signed any of the Company's bank debt or other obligations, including any indebtedness to be retired from the proceeds of this offering, explain and state the amounts involved.

24.(a) List all remuneration by the Company to Officers, Directors and key personnel for the last fiscal year:

	Cash	Other
Chief Executive Officer...	\$	\$
Chief Operating Officer...		
Chief Accounting Officer...		
Key Personnel:		
Others:		

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

Principal Stockholders

21. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

	Cash	Other
Total:	\$	\$
Directors as a group (number of persons _____)	\$	\$

(b) If remuneration is expected to change or has been unpaid in prior years, explain:

(c) If any employment agreements exist or are contemplated, describe:

25.(a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: _____ shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or option plans but not yet covered by outstanding purchase agreements, options or warrants: _____ shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

26. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key

personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

Instruction: For purposes of Question 23(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or affairs. A person is typically a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 24, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

Litigation.

27. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

Miscellaneous Factors

28. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions, etc.) or which are necessary to make any other information in this registration statement not misleading or incomplete.

Management's Discussion and Analysis of Certain Relevant Factors

29. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

30. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

31. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: ____%. What is the anticipated gross margin for next year of operations? Approximately ____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

32. Foreign sales as a percent of total sales for last fiscal year: ____%. Domestic government sales as a percent of total domestic sales for last fiscal year: ____%. Explain the nature of these sales, including any anticipated changes:

Alternative 3

Any issuer may elect to provide the following information.

Item 1. Description of Business

(a) Narrative description of business.
(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products produced and services rendered and the principal markets

for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

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

(iv) The number of persons employed by the issuer, indicating the number employed full time.

(v) The material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of factors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclical nature of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) Issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the registration statement shall describe, if formulated, the issuer's plan of operation for the twelve months following the date of this registration statement. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the issuer will be able to satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference shall be included in the description of business.

Item 2. Description of Property

State briefly the location and general character of the principal plants, and other

materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction:

What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 3. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected to his office or position:

- (1) directors;
- (2) persons nominated to become directors;
- (3) executive officers;
- (4) persons chosen to become executive officers;
- (5) significant employees.

Instructions:

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice-president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction:

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the

nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

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

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses).

Item 4. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them. Name of individual or identity of group
Capacities in remuneration was received
Aggregate remuneration

Instructions:

1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurements of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Item 5. Security Ownership of Management and Certain Securityholders

(a) Voting securities and principal holders thereof. Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

(1) each of the three highest paid persons who are officers and directors of the issuer; *Note*—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;

(2) all officers and directors as a group;

(3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

- (1) Title of class
(2) Name and address of owner
(3) Amount owned before the offering
(4) Amount owned after the offering
(5) Percent of class

Instruction:

Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants, and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and referred to in subsection (a) above:

Name of holder
Title and amount securities called for by options, warrants or rights
Exercise price
Date of exercise

Instruction:

Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed \$10,000 for any officer, director, or principal shareholder named in answer to this item, or \$50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection. If, as is the case with offerings of debt securities, the offering price cannot be determined at the time of filing the registration statement, the issuer may utilize any reasonable method of valuation.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 6. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

- (1) Any director or officer of the issuer;
(2) Any nominee for election as a director;
(3) Any principal securityholder named in answer to Item 10(a);
(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;
(5) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same house as such person or who is a director or officer of any parent or subsidiary of the issuer.

Instructions:

1. No information need be given in answer to this item as to any transaction where:

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

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

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments does not exceed \$50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by all of the holders of securities of the class.

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

(a) the interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (5) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from such person's position as a limited partner in a partnership in which he and all other persons

specified in (1) through (5) above had an interest of less than 10 percent; or

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

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

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

Item 7. Securities Being Registered

(a) If capital stock is being registered, state the title of the class and furnish the following information:

(1) Outline briefly: (i) dividend rights; (ii) voting rights; (iii) liquidation rights; (iv) preemptive rights; (v) conversion rights; (vi) redemption provisions; (vii) sinking fund provisions; and (viii) liability to further calls or to assessment by the issuer.

(2) Briefly describe potential liabilities imposed on shareholders under state statutes or foreign law, e.g., to laborers, servants or employees of the registrant, unless such disclosure would be immaterial because the financial resources of the registrant are such as to make it unlikely that the liability will ever be imposed.

(b) If debt securities are being registered, outline briefly the following:

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

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

(3) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves or the maintenance of properties.

(4) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions.

Instruction:

In the case of secured debt there should be stated (i) the approximate amount of unbonded property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being issued are to be issued against such property, against the deposit of cash, or otherwise.

(c) If securities described are to be offered pursuant to warrants, rights, or convertible securities, state briefly:

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

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

(3) The amounts of warrants, convertible securities or rights outstanding; and

(4) Any other material terms of such securities.

(d) In the case of any other kind of securities, appropriate information of a comparable character.

Part II

Item 1. Market Price of and Dividends on the Registrant's Common Equity and Other Shareholder Matters

Provide the information required by Item 201 of Regulation S-B.

Item 2. Legal Proceedings

Provide the information required by Item 103 of Regulation S-B.

Item 3. Changes in and Disagreements with Accountants

Provide the information required by Item 304 of Regulation S-B.

Item 4. Recent Sales of Unregistered Securities

Provide the information required by Item 701 of Regulation S-B.

Item 5. Indemnification of Directors and Officers

Provide the information required by Item 702 of Regulation S-B.

Part F/S

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor shall be filed as part of this form. Such financial statements and the financial

statements required to be provided for any significant business acquired or to be acquired shall be audited for the most recent fiscal year, except that if audited financial statements for the preceding fiscal year are otherwise available, those financial statements shall also be provided.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) if such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the registration statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2 fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the registration statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Item 310(c)(2) of Regulation S-B.

(c)(i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iii) If none of the conditions in the definitions of significant subsidiary in Item 310(c)(2) of Regulation S-B exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3) (b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part III

Item 1. Index to Exhibits

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 10-QSB.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions:

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 12b-23 shall be followed.

Item 2. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the registration statement.

(1) *Charter and by-laws*—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(2) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) instruments

defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; and (ii) copies of instruments evidencing scrip certificates or fractions of shares.

(3) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(4) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the registration statement is held by the issuer.

(c) Any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(5) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights, furnish a list showing the number and a brief identification of each such patent or patent right.

(6) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

21. Form 10-QSB (§ 249.308b) is amended by adding General Instruction H to read as follows:

General Instructions

H. (1) A small business issuer that has not registered more than \$5,000,000 in securities offerings in any one fiscal year since it became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may omit the information required by Item 2 of Part I of this Form 10-QSB. In determining the \$5,000,000 limit, small business issuers should exclude registered offerings under employee benefit plans or dividend reinvestment programs.

(2) In response to Item 6(a) of this Form 10-QSB, a small business issuer that has not registered more than \$5,000,000 in securities offerings in any one fiscal year since it became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may include only those exhibits required by Part III of "Information Required in Annual Report of Transitional Small Business Issuers" of Form 10-KSB. See General Instruction H(1) of this Form 10-QSB with respect to determination of the \$5,000,000 limit.

22. By adding the following at the end of the cover page of Form 10-KSB § 249.310b:

Form 10-KSB

Transitional Small Business Disclosure Format (Check one): Yes ☐ No ☐

23. By adding General Instruction H to Form 10-KSB (§ 249.310b) to read as follows:

Form 10-KSB

General Instructions

H. Transitional Small Business Issuers.

In lieu of the disclosure requirements set forth under Parts I, II and III, a small business issuer that has not registered more than \$5,000,000 in securities offerings in any one fiscal year since it became subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act may include the information required under "Information Required in Annual Report of Transitional Small Business Issuers." In determining the \$5,000,000 limit, small business issuers should exclude registered offerings under employee benefit plans or dividend reinvestment programs.

24. By adding Part I, Part II, Part F/S and Part III after Item 13 of Form 10-KSB [§ 249.310b] to read as follows:
Form 10-KSB

Item 13**Information Required in Annual Report of Transitional Small Business Issuers****PART I**

Note: Regardless of the disclosure model used, all registrants shall provide the financial statements required by Part F/S.

Alternative 1

Any issuer may elect to provide the information required under Parts I, II and III, above, except for the financial statements called for there.

Alternative 2

Corporate issuers may elect to provide the following information, as well as the information in Parts II and III, below.

General Instructions:

Each question in each paragraph of this part shall be responded to; and each question and any notes, but not any instructions thereto, shall be restated in its entirety. If the question or series of questions is inapplicable, so state. If the space provided in the format is insufficient, additional space should be created by cutting and pasting the format to add more lines.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may have liability to investors. Appropriate diligence should be exercised to determine that no such inaccuracy or incompleteness has occurred.

The Company

1. Exact corporate name: _____
State and date of incorporation: _____

Street address of principal office: _____

Company Telephone Number: (____) _____

Fiscal year: _____
(month)

(day)

Person(s) to contact at Company with respect to offering: _____

Telephone Number (if different from above): (____) _____

Business and Properties

2. With respect to the business of the Company and its properties:

(a) Describe in detail what business the Company does and proposes to do, including what products or goods are or will be produced or services that are or will be rendered.

(b) Describe how these products or services are to be produced or rendered and how and when the Company intends to carry out its activities. If the Company plans to offer a new product(s), state the present stage of development, including whether or not a working prototype(s) is in existence. Indicate if completion of development of the product would require a material amount of the resources of the Company, and the estimated amount. If the Company is or is expected to be dependent upon one or a limited number of suppliers for essential raw materials, energy or other items, describe. Describe any major existing supply contracts.

(c) Describe the industry in which the Company is selling or expects to sell its products or services and, where applicable, any recognized trends within that industry. Describe that part of the industry and the geographic area in which the business competes or will compete.

Indicate whether competition is or is expected to be by price, service, or other basis. Indicate (by attached table if appropriate) the current or anticipated prices

or price ranges for the Company's products or services, or the formula for determining prices, and how these prices compare with those of competitors' products or services, including a description of any variations in product or service features. Name the principal competitors that the Company has or expects to have in its area of competition. Indicate the relative size and financial and market strengths of the Company's competitors in the area of competition in which the Company is or will be operating. State why the Company believes it can effectively compete with these and other companies in its area of competition.

Note: Because this annual report focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

(d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

(e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: ____/____/____
(a recent date)

\$ _____
As of: ____/____/____
(one year earlier)

\$ _____
Explain the reason for significant variations between the two figures, if any. Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

(f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

(g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

(h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, covenants-not-to-compete and

the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

(i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

(j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

(k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization, describe (and adjust historical per share figures elsewhere in this annual report accordingly).

3. (a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

Event or milestone	Expected manner of occurrence or method of achievement	Date or number of months after receipt of proceeds when should be accomplished
(1)		
(2)		
(3)		
(4)		
(5)		

(b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question No. 4)

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

Instruction: The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 3, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an obstacle which the Company must overcome in order to become profitable.

4. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's trade payables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

Dividends, Distributions and Redemptions

5. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when:

Officers and Key Personnel of the Company

6. Chief Executive Officer:
Name:
Office Street Address:

Title: _____

Age: _____

Telephone No.: (____) _____

Name of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? ☐ Yes
☐ No

Indicate amount of time to be spent on Company matters if less than full time:

7. Chief Operating Officer:

Name: _____

Office Street Address: _____

Title: _____

Age: _____

Telephone No.: (____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? ☐ Yes
☐ No

Indicate amount of time to be spent on Company matters if less than full time:

8. Chief Financial Officer:

Name: _____

Office Street Address: _____

Title: _____

Age: _____

Telephone No.: (____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? ☐ Yes
☐ No

Indicate amount of time to be spent on Company matters if less than full time:

9. Other Key Personnel:

(A) Name: _____

Office Street Address: _____

Title: _____

Age: _____

Telephone No.: (____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates):

Also a Director of the Company? ☐ Yes
☐ No

Indicate amount of time to be spent on Company matters if less than full time:

(B) Name: _____

Office Street Address: _____

Title: _____

Age: _____

Telephone No.: (____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

(B) Name: _____
Office Street Address: _____

Education (degrees, schools, and dates): _____

Age: _____

Telephone No.: (____) _____
Names of employers, titles and dates of
positions held during past five years with an
indication of job responsibilities. _____

Also a Director of the Company? ☐ Yes
☐ No
Indicate amount of time to be spent on
Company matters if less than full time: _____

precautions, if any, (including the obtaining
of releases or consents from prior employers)
have been taken to preclude claims by prior
employers for conversion or theft of trade
secrets, know-how or other proprietary
information. _____

INSTRUCTION: The term "Chief Executive
Officer" means the officer of the Company
who has been delegated final authority by the
board of directors to direct all aspects of the
Company's affairs. The term "Chief
Operating Officer" means the officer in
charge of the actual day-to-day operations of
the Company's business. The term "Chief
Financial Officer" means the officer having
accounting skills who is primarily in charge
of assuring that the Company's financial
books and records are properly kept and
maintained and financial statements
prepared.

The term "key personnel" means persons
such as vice presidents, production
managers, sales managers, or research
scientists and similar persons, who are not
included above, but who make or are
expected to make significant contributions to
the business of the Company, whether as
employees, independent contractors,
consultants or otherwise.

Directors of the Company

10. Number of Directors: _____ If Directors
are not elected annually, or are elected under
a voting trust or other arrangement, explain:

11. Information concerning outside or other
Directors (i.e. those not described above):

(A) Name: _____
Office Street Address: _____

Age: _____

Telephone No.: (____) _____
Names of employers, titles and dates of
positions held during past five years with an
indication of job responsibilities. _____

Education (degrees, schools, and dates): _____

Education (degrees, schools, and dates): _____

(C) Name: _____
Age: _____

Office Street Address: _____

Telephone No.: (____) _____
Names of employers, titles and dates of
positions held during past five years with an
indication of job responsibilities. _____

(c) If the Company has never conducted
operations or is otherwise in the development
stage, indicate whether any of the Officers or
Directors has ever managed any other
company in the start-up or development stage
and describe the circumstances, including
relevant dates. _____

(d) If any of the Company's key personnel
are not employees but are consultants or
other independent contractors, state the
details of their engagement by the Company. _____

(e) If the Company has key man life
insurance policies on any of its Officers,
Directors or key personnel, explain, including
the names of the persons insured, the amount
of insurance, whether the insurance proceeds
are payable to the Company and whether
there are arrangements that require the
proceeds to be used to redeem securities or
pay benefits to the estate of the insured
person or a surviving spouse. _____

12. (a) Have any of the Officers or Directors
ever worked for or managed a company
(including a separate subsidiary or division of
a larger enterprise) in the same business as
the Company? ☐ Yes ☐ No
Explain: _____

(b) If any of the Officers, Directors or other
key personnel have ever worked for or
managed a company in the same business or
industry as the Company or in a related
business or industry, describe what _____

13. If a petition under the Bankruptcy Act
or any State insolvency law was filed by or
against the Company or its Officers, Directors
or other key personnel, or a receiver, fiscal
agent or similar officer was appointed by a
court for the business or property of any such
persons, or any partnership in which any of
such persons was a general partner at or
within the past five years, or any corporation
or business association of which any such
person was an executive officer at or within _____

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

14. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

Class of shares	Average price per share	No. of shares now held	Percent of total
Name:			

Telephone No. () - -
Principal occupation:

Office Street Address:

Principal occupation:

15. Number of shares beneficially owned by Officers and Directors as a group: _____ shares (% of total outstanding) (Assume all options exercised and all convertible securities converted.)

Instruction: If shares are held by family members, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control—as, for example, a co-trustee) they should be included as being “beneficially owned.” An explanation of these circumstances should be set forth in a footnote to the “Number of Shares Now Held.”

16. (a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

(b) If the Company has made loans to or is doing business with any of its Officers, Directors, key personnel or 10% stockholders, or any of their relatives (or any entity controlled directly or indirectly by any such persons) within the last two years, or proposes to do so within the future, explain. (This includes sales or lease of goods, property or services to or from the Company employment or stock purchase contracts, etc.) State the principal terms of any significant loans, agreements, leases, financing or other arrangements.

(c) If any of the Company's Officers, Directors, key personnel or 10% stockholders has guaranteed or co-signed any of the Company's bank debt or other obligations, including any indebtedness to be retired from the proceeds of this offering, explain and state the amounts involved.

17.(a) List all remuneration by the Company to Officers, Directors and key personnel for the last fiscal year:

	Cash	Other
Chief Executive Officer.....	\$	\$
Chief Operating Officer.....		
Chief Accounting Officer.....		
Key Personnel:		
.....		
.....		
.....		
Others:		
.....		
.....		
Total:.....		
Directors as a group (number of persons—).		

(b) If remuneration is expected to change or has been unpaid in prior years, explain:

(c) If any employment agreements exist or are contemplated, describe:

18.(a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: _____ shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or

option plans but not yet covered by outstanding purchase agreements, options or warrants: _____ shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

19. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

INSTRUCTION: For purposes of Question 16(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or affairs. A person is typically a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 40, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

Litigation

20. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

Miscellaneous Factors

21. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions,

etc.) or which are necessary to make any other information in this annual report not misleading or incomplete.

Management's Discussion and Analysis of Certain Relevant Factors

22. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

23. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

24. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: ____%. What is the anticipated gross margin for next year of operations? Approximately ____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

25. Foreign sales as a percent of total sales for last fiscal year: ____%. Domestic government sales as a percent of total domestic sales for last fiscal year: ____%. Explain the nature of these sales, including any anticipated changes:

Alternative 3

Any issuer may elect to provide the following information, as well as the information required by Parts II and III, below.

Item 1. Description of Business

(a) Narrative description of business.

(1) Describe the business done and intended to be done by the issuer and its subsidiaries and the general development of the business during the past five years or such shorter period as the issuer may have been in business. Such description should include, but not be limited to, a discussion of the following factors if such factors are material to an understanding of the issuer's business:

(i) The principal products produced and services rendered and the principal markets for and method of distribution of such products and services.

(ii) The status of a product or service if the issuer has made public information about a new product or service which would require the investment of a material amount of the assets of the issuer or is otherwise material.

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

(iv) The number of persons employed by the issuer, indicating the number employed full time.

(v) The material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, may have upon the capital expenditures, earnings and competitive position of the issuer and its subsidiaries. The issuer shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and for such further periods as the issuer may deem material.

(2) The issuer should also describe those distinctive or special characteristics of the issuer's operation or industry which may have a material impact upon the issuer's future financial performance. Examples of actors which might be discussed include dependence on one or a few major customers or suppliers (including suppliers of raw materials or financing), existing or probable governmental regulation, material terms of and/or expiration of material labor contracts or patents, trademarks, licenses, franchises, concessions or royalty agreements, unusual competitive conditions in the industry, cyclicity of the industry and anticipated raw material or energy shortages to the extent management may not be able to secure a continuing source of supply.

(3) Issuers (including predecessors) which have not received revenue from operations during each of the three fiscal years immediately prior to the filing of the annual report shall describe, if formulated, the issuer's plan of operation for the twelve months following the period covered by this annual report. If such information is not available, the reasons for its unavailability shall be stated. Disclosure relating to any plan should include, among other things, a statement indicating whether, in the issuer's opinion, the issuer will be able to satisfy its cash requirements and whether, in the next six months, it will be necessary to raise additional funds.

(b) Segment Data. If the issuer is required to include segment information in its financial statements, an appropriate cross-reference shall be included in the description of business.

Item 2. Description of Property

State briefly the location and general character of the principal plants, and other materially important physical properties of the issuer and its subsidiaries. If any such property is not held in fee or is held subject to any major encumbrance, so state and briefly describe how held.

Instruction

What is required is information essential to an investor's appraisal of the securities being offered. Such information should be furnished as will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and should not be given.

Item 3. Directors, Executive Officers and Significant Employees

(a) List the names and ages of each of the following persons stating his term of office and any periods during which he has served as such and briefly describe any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected to his office or position:

- (1) directors;
- (2) persons nominated to chosen to become directors;
- (3) executive officers;
- (4) persons chosen to become executive officers;
- (5) significant employees.

Instructions

1. No nominee or person chosen to become a director or person chosen to be an executive officer who has not consented to act as such should be named in response to this item.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the issuer.

3. The term "significant employee" means persons such as production managers, sales managers, or research scientists, who are not

executive officers, but who make or are expected to make significant contributions to the business of the issuer.

(b) Family relationships. State the nature of any family relationship between any director, executive officer, person nominated or chosen by the issuer to become a director or executive officer or any significant employee.

Instruction

The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(c) Business experience. Give a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each significant employee, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or significant employee has been employed by the issuer for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of this prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

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

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses).

Item 4. Remuneration of Directors and Officers

(a) Furnish, in substantially the tabular form indicated, the aggregate annual remuneration of each of the three highest paid persons who are officers or directors as a group during the issuer's last fiscal year. State the number of persons in the group referred to above without naming them. Name of individual or identity of group
Capacities in which remuneration was received
Aggregate remuneration

Instructions

1. In case of remuneration paid or to be paid otherwise than in cash, if it is impracticable to determine the cash value

thereof, state in a note to the table the nature and amount thereof.

2. This item is to be answered on an accrual basis if practicable; if not so answered, state the basis used.

(b) Briefly describe all remuneration payments proposed to be made in the future pursuant to any ongoing plan or arrangement to the individuals and group specified in Item 9(a). The description should include a summary of how each plan operates, any performance formula or measure in effect (or the criteria used to determine payment amounts), the time periods over which the measurements of benefits will be determined, payment schedules, and any recent material amendments to the plan. Information need not be furnished with respect to any group life, health, hospitalization, or medical reimbursement plans which do not discriminate in scope, terms or operation in favor of officers or directors of the registrant and which are available generally to all salaried employees.

Item 5. Security Ownership of Management and Certain Securityholders

(a) Voting securities and principal holders thereof. Furnish the following information, in substantially the tabular form indicated, with respect to voting securities held of record by:

- (1) each of the three highest paid persons who are officers and directors of the issuer; Note—In the event none of the issuer's officers or directors have received a salary in the past twelve months, this item should be responded to for every officer and director;
- (2) all officers and directors as a group;
- (3) each shareholder who owns more than 10% of any class of the issuer's securities, including those shares subject to outstanding options.

- (1) Title of Class
- (2) Name and address of owner
- (3) Amount owned before the offering
- (4) Amount owned after the offering
- (5) Percent of Class

Instruction

Column (4) need not be responded to if the information would be the same as that appearing under column (3).

(b) If, to the knowledge of the issuer, any other person holds or shares the power to vote or direct the voting of securities described pursuant to subsection (a) above, appropriate disclosure should be made. In addition, if any person other than those named pursuant to subsection (a) holds or shares the power to vote 10% or more of the issuer's voting securities, the information required by the table should be provided with respect to such person.

(c) Non-voting securities and principal holders thereof. Furnish the same information as required in subsection (a) above with respect to securities that are not entitled to vote.

(d) Options, warrants, and rights. Furnish the information required by the table as to options, warrants or rights to purchase securities from the issuer or any of its subsidiaries held by each of the individuals and referred to in subsection (a) above:

Name of holder

Title and amount securities called for by
options, warrants or rights
Exercise price
Date of Exercise

Instruction

Where the total market value of securities called for by all outstanding options, warrants or rights does not exceed \$10,000 for any officer, director, or principal shareholder named in answer to this item, or \$50,000 for all officers and directors as a group, this item need not be answered with respect to options, warrants or rights held by such person or group. If the issuer cannot ascertain the market value of its securities, the offering price may be used for purposes of this subsection.

(e) List all parents of the issuer, showing the basis of control and as to each parent the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Item 6. Interest of Management and Others in Certain Transactions

Describe briefly any transactions during the previous two years or any presently proposed transactions, to which the issuer or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the issuer, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the issuer;
(2) Any nominee for election as a director;
(3) Any principal securityholder named in answer to Item 10(a);

(4) If the issuer was incorporated or organized within the past three years, any promoter of the issuer;

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

Instructions

1. No information need be given in answer to this item as to any transaction where:

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

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

(c) The amount involved in the transaction or a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments does not exceed \$50,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the issuer and the specified person receives no extra or special benefit not shared on a pro-rata basis by

all of the holders of securities of the class.

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

(a) the interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (5) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) the interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (5) above had an interest of less than 10 percent; or

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

3. Include the name of each person whose interest in any transaction is described and the nature of the relationships by reason of which such interest is required to be described. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be disclosed.

4. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the issuer where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing

underwriter pursuant to an agreement among underwriters the parties to which do not include the issuer or its subsidiaries.

5. As to any transaction involving the purchase or sale of assets by or to any issuer or any subsidiary, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller.

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

Part II

Item 1. Market Price of and Dividends on the Registrant's Common Equity and Other Shareholder Matters

Provide the information required by Item 201 of Regulation S-B.

Item 2. Legal Proceedings

Provide the information required by Item 103 of Regulation S-B.

Item 3. Changes in and Disagreements with Accountants

Provide the information required by Item 304 of Regulation S-B.

Item 4. Submission of Matters to a Vote of Security Holders

If any matter was submitted during the fourth quarter of the fiscal year covered by this report to a vote of security holders, through the solicitation of proxies or otherwise, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(c) A brief description of each other matter voted upon at the meeting and the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) A description of the terms of any settlement between the registrant and any other participant (as defined in Rule 14a-11 of Regulation A under the Act)

terminating any solicitation subject to Rule 14a-11, including the cost or anticipated cost to the registrant.

Instructions to Item 4

1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission should be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. Paragraph (a) need be answered only if paragraph (b) or (c) is required to be answered.

3. Paragraph (b) need not be answered if (i) proxies for the meeting were solicited pursuant to Regulation 14A under the Act, (ii) there was no solicitation in opposition to the management's nominees as listed in the proxy statement, and (iii) all of such nominees were elected. If the registrant did not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect in answer to paragraph (b) will suffice as an answer thereto.

4. Paragraph (c) need not be answered as to procedural matters or as to the selection or approval of auditors.

5. If the registrant has furnished to its security holders proxy soliciting material containing the information called for by paragraph (d), the paragraph may be answered by reference to the information contained in such material.

6. If the registrant published a report containing all of the information called for by this item, the item may be answered by reference to the information in that report.

Item 5. Compliance with Section 16(a) of the Exchange Act

Provide the information required by Item 405 of Regulation S-B.

Item 6. Reports on Form 8-K

State whether any reports on Form 8-K were filed during the last quarter of the period covered by this report, listing the items reported, any financial statements filed and the dates of such reports.

Part F/S

The following financial statements of the issuer, or the issuer and its predecessors or any businesses to which the issuer is a successor shall be filed as part of this form. Such financial

statements and the financial statements required to be provided for any significant business acquired or to be acquired shall be audited.

Issuers which are limited partnerships are required to also file the balance sheets of general partners: (1) if such general partner is a corporation, the balance sheet shall be as of the end of its most recently completed fiscal year; receivables from a parent or affiliate of such general partner (including notes receivable, but excluding trade receivables) should be deductions from shareholders equity of the general partner; where a parent or affiliate has committed to increase or maintain the general partner's capital, there shall also be filed the balance sheet of such parent or affiliate as of the end of its most recently completed fiscal year; (2) if such general partner is a partnership, its balance sheet as of the end of its most recently completed fiscal year; (3) if such general partner is a natural person, the net worth of such general partner(s) based on the estimated fair market value of their assets and liabilities, singly or in the aggregate shall be disclosed in the offering circular, and balance sheets of each of the individual general partners supporting such net worth shall be provided as supplemental information.

(1) Balance Sheet—as of a date within 90 days prior to filing the registration statement or such longer time, not exceeding 6 months, as the Commission may permit at the written request of the issuer upon a showing of good cause; for filings made after 90 days subsequent to the issuer's most recent fiscal year, the balance sheet shall be dated as of the end of the most recent fiscal year.

(2) Statements of income, cash flows, and other stockholders equity—for each of the 2 fiscal years preceding the date of the most recent balance sheet being filed, and for any interim period between the end of the most recent of such fiscal years and the date of the most recent balance sheet being filed, or for the period of the issuer's existence if less than the period above.

Income statements shall be accompanied by a statement that in the opinion of management all adjustments necessary for a fair statement of results for the interim period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made. If otherwise, there shall be furnished as supplemental information and not as part of the registration statement, a letter describing in detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of results shown.

(3) Financial Statements of Businesses Acquired or to be Acquired.

(a) Financial statements for the periods specified in (c) below should be furnished if any of the following conditions exist:

(i) Consummation of a significant business combination accounted for as a purchase has occurred or is probable (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method); or

(ii) Consummation of a significant business combination to be accounted for as a pooling is probable.

(b) A business combination shall be considered significant if a comparison of the most recent annual financial statements of the business acquired or to be acquired and the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition indicates that the business would be a significant subsidiary pursuant to the conditions specified in Item 310(c)(2) of Regulation S-B.

(c)(i) The financial statements shall be furnished for the periods up to the date of acquisition, for those periods for which the registrant is required to furnish financial statements.

(ii) The separate balance sheet of the acquired business is not required when the registrant's most recent balance sheet filed is for a date after the acquisition was consummated.

(iii) If none of the conditions in the definitions of significant subsidiary in Item 310(c)(2) of Regulation S-B exceeds 20% and the required audited financial statements of the acquired business are not readily available, an automatic waiver of the required audited financial statements is granted. If none of the conditions in the definitions of significant subsidiary exceeds 40% and the required audited financial statements are not readily available, an automatic waiver is granted with respect to the required audited financial statements for the fiscal year preceding the latest fiscal year. If unaudited financial statements or other financial information is available for any fiscal period for which an automatic waiver is granted, then such unaudited financial statements or other information shall be furnished.

(d) If consummation of more than one transaction has occurred or is probable, the tests of significance shall be made using the aggregate impact of the businesses and the required financial statements may be presented on a combined basis, if appropriate.

(e) This paragraph (3) shall not apply to a business which is totally held by

the registrant prior to consummation of the transaction.

(4) Pro Forma Financial Information.

(a) Pro forma information shall be furnished if any of the following conditions exist (for purposes of this rule, the term "purchase" encompasses the purchase of an interest in a business accounted for by the equity method):

(i) During the most recent fiscal year or subsequent interim period for which a balance sheet of the registrant is required, a significant business combination accounted for as a purchase has occurred;

(ii) After the date of the registrant's most recent balance sheet, consummation of a significant business combination to be accounted for by either the purchase method or pooling of interests method of accounting has occurred or is probable.

(b) The provisions of paragraph (3)(b), (d) and (e) apply to this paragraph (4).

(c) Pro forma statements shall ordinarily be in columnar form showing condensed historical statements, pro forma adjustments, and the pro forma results and should include the following:

(i) If the transaction was consummated during the most recent fiscal year or in the subsequent interim period, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, or

(ii) If consummation of the transaction has occurred or is probable after the date of the most recent balance sheet, a pro forma balance sheet giving effect to the combination as of the date of the most recent balance sheet required by paragraph (b). For a purchase, pro forma statements of income reflecting the combined operations of the entities for the latest fiscal year and interim period, if any, and for a pooling of interests, pro forma statements of income for all periods for which income statements of the registrant are required.

Part III

Item 1. Index to Exhibits

(a) An index to the exhibits should be presented.

(b) Each exhibit should be listed in the exhibit index according to the number assigned to it under Item 2 below.

(c) The index to exhibits should identify the location of the exhibit under the sequential page numbering system for this Form 10-KSB.

(d) Where exhibits are incorporated by reference, the reference shall be made in the index of exhibits.

Instructions:

1. Any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of Rule 24 of the Commission's Rules of Practice, be incorporated by reference as an exhibit to any registration statement.

2. If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the issuer shall file with the reference a statement containing the text of such modification and the date thereof.

3. Procedurally, the techniques specified in Rule 12b-23 shall be followed.

Item 2. Description of Exhibits

As appropriate, the following documents should be filed as exhibits to the registration statement.

(1) *Charter and by-laws*—The charter and by-laws of the issuer or instruments corresponding thereto as presently in effect and any amendments thereto.

(2) *Instruments defining the rights of security holders*—(a) All instruments defining the rights of any holder of the issuer's securities, including but not limited to (i) holders of equity or debt securities being issued; (ii) holders of long-term debt of the issuer, and of all subsidiaries for which consolidated or unconsolidated financial statements are required to be filed.

(b) The following instruments need not be filed if the issuer agrees to provide them to the Commission upon request: (i) instruments defining the rights of holders of long-term debt of the issuer and all of its subsidiaries for which consolidated financial statements are required to be filed if the total amount of such authorized issuance does not exceed 5% of the total assets of the issuer and its subsidiaries on a consolidated basis; and (ii) copies of instruments evidencing scrip certificates or fractions of shares.

(3) *Voting trust agreement*—Any voting trust agreements and amendments thereto.

(4) *Material contracts*—(a) Every contract not made in the ordinary course of business which is material to the issuer and is to be performed in whole or in part at or after the filing of the registration statement or was entered into not more than 2 years before such filing. Only contracts need be filed as to which the issuer or subsidiary of the issuer is a party or has succeeded to a party by assumption or assignment or in which the issuer or such subsidiary has a beneficial interest.

(b) If the contract is such as ordinarily accompanies the kind of business

conducted by the issuer and its subsidiaries, it is made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it should be filed except where immaterial in amount or significance: (i) any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement, or underwriters are parties except where the contract merely involves the purchase or sale of current assets having a determinable market price, at such market price; (ii) any contract upon which the issuer's business is substantially dependent, as in the case of continuing contracts to sell the major part of the issuer's products or services or to purchase the major part of the issuer's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which the issuer's business depends to a material extent; (iii) any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15% of such fixed assets of the issuer on a consolidated basis; or (iv) any material lease under which a part of the property described in the registration statement is held by the issuer.

(c) Any management contract or any compensatory plan, contract or arrangement including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) shall be deemed material and shall be filed except for the following: (i) ordinary purchase and sales agency agreements; (ii) agreements with managers of stores in a chain organization or similar organization; (iii) contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such; (iv) any compensatory plan, contract or arrangement which pursuant to its terms is available to employees generally and which in operation provides for the same method of allocation of benefits between management and non-management participants.

(5) *Material foreign patents*—Each material foreign patent for an invention not covered by a United States patent. If a substantial part of the securities to be offered or if the proceeds therefrom have been or are to be used for the particular purposes of acquiring, developing or exploiting one or more material foreign patents or patent rights,

furnish a list showing the number and a brief identification of each such patent or patent right.

(6) *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which shall be so marked as to indicate clearly the subject matters to which they refer.

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**PART 260—GENERAL RULES AND
REGULATIONS, TRUST INDENTURE
ACT OF 1939**

25. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78l(d), 80b-3, 80b-4 and 80b-11.

26. Amend § 260.0-7 by replacing "whose total assets on the last day of its most recent fiscal year were \$5 million or less" with "whose annual revenues for its most recent fiscal year were less than \$25,000,000 and who has a public float (the aggregate market value of the issuer's outstanding securities held by non-affiliates) of less than \$25,000,000".

By the Commission.

Dated: July 30, 1992.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-18544 Filed 8-12-92; 8:45 am]

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