

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) *Holder.* 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.

(2) [Reserved]

(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