

limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(2)(i) of this section, unless the registrant otherwise knows that no Form 5 is required.

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.

[57 FR 36449, Aug. 13, 1992, as amended at 61 FR 30391, June 14, 1996]

**§ 228.501 (Item 501) Front of registration statement and front cover of prospectus.**

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) Limit the outside front cover page of the prospectus to one page and include the following information:

(1) The registrant's name. A foreign registrant also must give the English translation of its name;

(2) The title, amount, and description of securities offered. If the underwriter

has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement;

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

(4) Whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identifying the trading symbol(s) for those securities;

(5) A cross-reference to the risk factors section, including the page number where it appears in the prospectus. Highlight this cross-reference by prominent type or in another manner;

(6) Any legend or statement required by the law of any state in which the securities are offered;

(7) A legend that indicates that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed on the adequacy or accuracy of the disclosures in the prospectus. Also make clear that any representation to the contrary is a criminal offense. You may use one of the following or other clear, plain language:

*Example A:* Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of the prospectus. Any representation to the contrary is a criminal offense.

*Example B:* Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(8) If you are not a reporting company and the preliminary prospectus will be circulated, as applicable:

(i) A bona fide estimate of the range of the maximum offering price and maximum number of shares or units offered; or

(ii) A bona fide estimate of the principal amount of debt securities offered;

**§ 228.502**

**17 CFR Ch. II (4-1-01 Edition)**

(9)(i) Name(s) of the lead or managing underwriter(s) and an identification of the nature of the underwriting arrangements;

(ii) If the offering is not made on a firm commitment basis, a brief description of the underwriting arrangements;

(iii) If you offer the securities on a best efforts or best efforts minimum/maximum basis, the date the offering will end, any minimum purchase requirements, and whether or not there are any arrangements to place the funds in an escrow, trust, or similar account; and

(iv) If you offer the securities for cash, the price to the public for the securities, the underwriting discounts and commissions, and proceeds to the registrant or other persons. Show the information on both a per share or unit basis and for the total amount of the offering. If you make the offering on a minimum/maximum basis, show this information based on the total minimum and total maximum amount of the offering. You may present the information in a table, term sheet format, or other clear presentation. You may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading;

(10) If the prospectus will be used before the effective date of the registration statement, a prominent statement that:

(i) The information in the prospectus will be amended or completed;

(ii) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(iii) The securities may not be sold until the registration statement becomes effective; and

(iv) The prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted. You may use the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is

not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(11) If you use § 230.430A of this chapter to omit pricing information and the prospectus is used before you determine the public offering price, the information in paragraph (a)(10) of this section; and

(12) The date of the prospectus.

(b) [Reserved]

[63 FR 6379, Feb. 6, 1998]

**§ 228.502 (Item 502) Inside front and outside back cover pages of prospectus.**

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Table of contents.* On either the inside front or outside back cover page of the prospectus, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include a specific listing of the risk factors section required by Item 503 of this Regulation S-B (17 CFR 228.503). You must include the table of contents immediately following the cover page in any prospectus you deliver electronically;

(b) *Dealer prospectus delivery obligation.* If applicable to your offering, on the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. You may use the following or other clear, plain language:

**DEALER PROSPECTUS DELIVERY OBLIGATION**

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

[63 FR 6380, Feb. 6, 1998]

**§ 228.503 (Item 503) Summary information and risk factors.**

The small business issuer must furnish the following information in plain