

§ 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. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§230.424(b) of this chapter) if, in the aggregate, the changes in volume and

price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective 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,