

(e) *Approval of directors.* State whether or not the Rule 13e-3 transaction was approved by a majority of the directors of the subject company who are not employees of the subject company.

(f) *Other offers.* If any offer of the type described in paragraph (viii) of Instruction 2 to this section has been received, describe the offer and state the reasons for its rejection.

Instructions to Item 1014:

1. A statement that the issuer or affiliate has no reasonable belief as to the fairness of the Rule 13e-3 transaction to unaffiliated security holders will not be considered sufficient disclosure in response to paragraph (a) of this section.

2. The factors that are important in determining the fairness of a transaction to unaffiliated security holders and the weight, if any, that should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraphs (c), (d) and (e) of this section and whether the consideration offered to unaffiliated security holders constitutes fair value in relation to:

- (i) Current market prices;
- (ii) Historical market prices;
- (iii) Net book value;
- (iv) Going concern value;
- (v) Liquidation value;
- (vi) Purchase prices paid in previous purchases disclosed in response to Item 1002(f) of Regulation M-A (§ 229.1002(f));
- (vii) Any report, opinion, or appraisal described in Item 1015 of Regulation M-A (§ 229.1015); and
- (viii) Firm offers of which the subject company or affiliate is aware made by any unaffiliated person, other than the filing persons, during the past two years for:
 - (A) The merger or consolidation of the subject company with or into another company, or *vice versa*;
 - (B) The sale or other transfer of all or any substantial part of the assets of the subject company; or
 - (C) A purchase of the subject company's securities that would enable the holder to exercise control of the subject company.

3. Conclusory statements, such as "The Rule 13e-3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer" will not be considered sufficient disclosure in response to paragraph (b) of this section.

3. Conclusory statements, such as "The Rule 13e-3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer" will not be considered sufficient disclosure in response to paragraph (b) of this section.

3. Conclusory statements, such as "The Rule 13e-3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer" will not be considered sufficient disclosure in response to paragraph (b) of this section.

§ 229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.

(a) *Report, opinion or appraisal.* State whether or not the subject company or affiliate has received any report, opin-

ion (other than an opinion of counsel) or appraisal from an outside party that is materially related to the Rule 13e-3 transaction, including, but not limited to: Any report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the transaction to the issuer or affiliate or to security holders who are not affiliates.

(b) *Preparer and summary of the report, opinion or appraisal.* For each report, opinion or appraisal described in response to paragraph (a) of this section or any negotiation or report described in response to Item 1014(d) of Regulation M-A (§ 229.1014) or Item 14(b)(6) of Schedule 14A (§ 240.14a-101 of this chapter) concerning the terms of the transaction:

(1) Identify the outside party and/or unaffiliated representative;

(2) Briefly describe the qualifications of the outside party and/or unaffiliated representative;

(3) Describe the method of selection of the outside party and/or unaffiliated representative;

(4) Describe any material relationship that existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of the relationship between:

(i) The outside party, its affiliates, and/or unaffiliated representative; and

(ii) The subject company or its affiliates;

(5) If the report, opinion or appraisal relates to the fairness of the consideration, state whether the subject company or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid; and

(6) Furnish a summary concerning the negotiation, report, opinion or appraisal. The summary must include, but need not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the subject company or affiliate; and any limitation imposed by the subject company or affiliate on the scope of the investigation.

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Instruction to Item 1015(b):

The information called for by paragraphs (b)(1), (2) and (3) of this section must be given with respect to the firm that provides the report, opinion or appraisal rather than the employees of the firm that prepared the report.

(c) *Availability of documents.* Furnish a statement to the effect that the report, opinion or appraisal will be made available for inspection and copying at the principal executive offices of the subject company or affiliate during its regular business hours by any interested equity security holder of the subject company or representative who has been so designated in writing. This statement also may provide that a copy of the report, opinion or appraisal will be transmitted by the subject company or affiliate to any interested equity security holder of the subject company or representative who has been so designated in writing upon written request and at the expense of the requesting security holder.

§ 229.1016 (Item 1016) Exhibits.

File as an exhibit to the schedule:

(a) Any disclosure materials furnished to security holders by or on behalf of the filing person, including:

(1) Tender offer materials (including transmittal letter);

(2) Solicitation or recommendation (including those referred to in Item 1012 of Regulation M-A (§ 229.1012));

(3) Going-private disclosure document;

(4) Prospectus used in connection with an exchange offer where securities are registered under the Securities Act of 1933; and

(5) Any other disclosure materials;

(b) Any loan agreement referred to in response to Item 1007(d) of Regulation M-A (§ 229.1007(d));

Instruction to Item 1016(b):

If the filing relates to a third-party tender offer and a request is made under Item 1007(d) of Regulation M-A (§ 229.1007(d)), the identity of the bank providing financing may be omitted from the loan agreement filed as an exhibit.

(c) Any report, opinion or appraisal referred to in response to Item 1014(d) or Item 1015 of Regulation M-A (§ 229.1014(d) or § 229.1015);

(d) Any document setting forth the terms of any agreement, arrangement, understanding or relationship referred to in response to Item 1005(e) or Item 1011(a)(1) of Regulation M-A (§ 229.1005(e) or § 229.1011(a)(1));

(e) Any agreement, arrangement or understanding referred to in response to § 229.1005(d), or the pertinent portions of any proxy statement, report or other communication containing the disclosure required by Item 1005(d) of Regulation M-A (§ 229.1005(d));

(f) A detailed statement describing security holders' appraisal rights and the procedures for exercising those appraisal rights referred to in response to Item 1004(d) of Regulation M-A (§ 229.1004(d));

(g) Any written instruction, form or other material that is furnished to persons making an oral solicitation or recommendation by or on behalf of the filing person for their use directly or indirectly in connection with the transaction; and

(h) Any written opinion prepared by legal counsel at the filing person's request and communicated to the filing person pertaining to the tax consequences of the transaction.

EXHIBIT TABLE TO ITEM 1016 OF REGULATION M-A

	13E-3	TO	14D-9
Disclosure Material	X	X	X
Loan Agreement	X	X
Report, Opinion or Appraisal	X
Contracts, Arrangements or Understandings	X	X	X
Statement re: Appraisal Rights	X
Oral Solicitation Materials	X	X	X
Tax Opinion	X

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

GENERAL

- Sec.
- 230.100 Definitions of terms used in the rules and regulations.
- 230.110 Business hours of the Commission.
- 230.111 Payment of fees.
- 230.120 Inspection of registration statements.
- 230.122 Nondisclosure of information obtained in the course of examinations and investigations.
- 230.130 Definition of “rules and regulations” as used in certain sections of the Act.
- 230.131 Definition of security issued under governmental obligations.
- 230.132 Definition of “common trust fund” as used in section 3(a)(2) of the Act.
- 230.133 Definition for purposes of section 5 of the Act, of “sale”, “offer”, “offer to sell”, and “offer for sale”.
- 230.134 Communications not deemed a prospectus.
- 230.134a Options material not deemed a prospectus.
- 230.134b Statements of additional information.
- 230.135 Notice of proposed registered offerings.
- 230.135a Generic advertising.
- 230.135b Materials not deemed an offer to sell or offer to buy.
- 230.135c Notice of certain proposed offerings.
- 230.135d [Reserved]
- 230.135e Offshore press conferences, meetings with issuer representatives conducted offshore, and press-related materials released offshore.
- 230.136 Definition of certain terms in relation to assessable stock.
- 230.137 Definition of “offers”, “participates”, or “participation” in section 2(11) in relation to certain publications by persons independent of participants in a distribution.
- 230.138 Definition of “offer for sale” and “offer to sell” in sections 2(10) and 5(c) in relation to certain publications.
- 230.139 Definition of “offer for sale” and “offer to sell” in sections 2(10) and 5(c) in relation to certain publications.
- 230.140 Definition of “distribution” in section 2(11) for certain transactions.
- 230.141 Definition of “commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers’ commissions” in section 2(11), for certain transactions.
- 230.142 Definition of “participates” and “participation”, as used in section 2(11), in relation to certain transactions.
- 230.143 Definition of “has purchased”, “sells for”, “participates”, and “participation”, as used in section 2(11), in relation to certain transactions of foreign governments for war purposes.
- 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.
- 230.144A Private resales of securities to institutions.
- 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.
- 230.146 Rules under section 18 of the Act.
- 230.147 “Part of an issue”, “person resident”, and “doing business within” for purposes of section 3(a)(11).
- 230.148 [Reserved]
- 230.149 Definition of “exchanged” in section 3(a)(9), for certain transactions.
- 230.150 Definition of “commission or other remuneration” in section 3(a)(9), for certain transactions.
- 230.151 Safe harbor definition of certain “annuity contracts or optional annuity contracts” within the meaning of section 3(a)(8).
- 230.152 Definition of “transactions by an issuer not involving any public offering” in section 4(2), for certain transactions.
- 230.152a Offer or sale of certain fractional interests.
- 230.153 Definition of “preceded by a prospectus”, as used in section 5(b)(2), in relation to certain transactions.
- 230.153a Definition of “preceded by a prospectus” as used in section 5(b)(2) of the Act, in relation to certain transactions requiring approval of security holders.
- 230.153b Definition of “preceded by a prospectus”, as used in section 5(b)(2), in connection with certain transactions in standardized options.
- 230.154 Delivery of prospectuses to investors at the same address.
- 230.155 Integration of abandoned offerings.
- 230.156 Investment company sales literature.
- 230.157 Small entities under the Securities Act for purposes of the Regulatory Flexibility Act.
- 230.158 Definitions of certain terms in the last paragraph of section 11(a).
- 230.160 Registered investment company exemption from Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act.
- 230.161 Amendments to rules and regulations governing exemptions.
- 230.162 Submission of tenders in registered exchange offers.
- 230.165 Offers made in connection with a business combination transaction.
- 230.166 Exemption from section 5(c) for certain communications in connection with business combination transactions.