

§ 240.13e-1

filing person, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, *Provided, however*, That a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties for whom copies are to be sent.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (see 18 U.S.C. 1001).

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 13(g)(1), 13(g)(2), 13(g)(5), 23, 48 Stat. 882, 894, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; secs. 202, 203, 91 Stat. 1494, 1498, 1499; (15 U.S.C. 78c(b), 78m(d)(1), 78m(d)(2), 78m(d)(5), 78m(d)(6), 78m(g)(1), 78m(g)(2), 78m(g)(5), 78w))

[43 FR 18499, Apr. 28, 1978, as amended at 43 FR 55756, Nov. 29, 1978; 44 FR 2148, Jan. 9, 1979; 44 FR 11751, Mar. 2, 1979; 61 FR 49959, Sept. 24, 1996; 62 FR 35340, July 1, 1997; 63 FR 2867, Jan. 16, 1998; 63 FR 15287, Mar. 31, 1998]

§ 240.13e-1 Purchase of securities by the issuer during a third-party tender offer.

An issuer that has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Act (15 U.S.C. 78n), that has commenced under § 240.14d-2 must not purchase any of its equity securities during the tender offer unless the issuer first:

(a) Files a statement with the Commission containing the following information:

(1) The title and number of securities to be purchased;

(2) The names of the persons or classes of persons from whom the issuer will purchase the securities;

(3) The name of any exchange, interdealer quotation system or any other market on or through which the securities will be purchased;

(4) The purpose of the purchase;

(5) Whether the issuer will retire the securities, hold the securities in its treasury, or dispose of the securities. If the issuer intends to dispose of the se-

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curities, describe how it intends to do so; and

(6) The source and amount of funds or other consideration to be used to make the purchase. If the issuer borrows any funds or other consideration to make the purchase or enters any agreement for the purpose of acquiring, holding, or trading the securities, describe the transaction and agreement and identify the parties; and

(b) Pays the fee required by § 240.0-11 when it files the initial statement.

(c) This section does not apply to periodic repurchases in connection with an employee benefit plan or other similar plan of the issuer so long as the purchases are made in the ordinary course and not in response to the tender offer.

Instruction to § 240.13e-1:

File eight copies if paper filing is permitted.

[64 FR 61452, Nov. 10, 1999]

§ 240.13e-2 [Reserved]

§ 240.13e-3 Going private transactions by certain issuers or their affiliates.

(a) *Definitions.* Unless indicated otherwise or the context otherwise requires, all terms used in this section and in Schedule 13E-3 [§ 240.13e-100] shall have the same meaning as in the Act or elsewhere in the General Rules and Regulations thereunder. In addition, the following definitions apply:

(1) An *affiliate* of an issuer is a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such issuer. For the purposes of this section only, a person who is not an affiliate of an issuer at the commencement of such person's tender offer for a class of equity securities of such issuer will not be deemed an affiliate of such issuer prior to the stated termination of such tender offer and any extensions thereof;

(2) The term *purchase* means any acquisition for value including, but not limited to, (i) any acquisition pursuant to the dissolution of an issuer subsequent to the sale or other disposition of substantially all the assets of such