

§ 240.13e-100

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

iv. If, after reasonable inquiry, you are unable to obtain information about the amount of securities represented by accounts of customers resident in the United States, you may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business; and

v. Count securities as beneficially owned by residents of the United States as reported on reports of beneficial ownership that are provided to you or publicly filed and based on information otherwise provided to you.

3. United States. United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

4. The exemptions provided by paragraphs (h)(8) and (i) of this section are not available for any securities transaction or series of transactions that technically complies with paragraph (h)(8) or (i) of this section but are part of a plan or scheme to evade the provisions of this section.

(j)(1) It shall be a fraudulent, deceptive or manipulative act or practice, in connection with an issuer tender offer, for an issuer or an affiliate of such issuer, in connection with an issuer tender offer:

(i) To employ any device, scheme or artifice to defraud any person;

(ii) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(iii) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(2) As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with any issuer tender offer, it shall be unlawful for an issuer or an affiliate of such issuer to make an issuer tender offer unless:

(i) Such issuer or affiliate complies with the requirements of paragraphs (b), (c), (d), (e) and (f) of this section; and

(ii) The issuer tender offer is not in violation of paragraph (j)(1) of this section.

[44 FR 49410, Aug. 22, 1979, as amended at 47 FR 11467, Mar. 16, 1982; 47 FR 54780, Dec. 6, 1982; 48 FR 34253, July 28, 1983; 51 FR 3034, Jan. 23, 1986; 51 FR 25882, July 17, 1986; 51 FR 32630, Sept. 15, 1986; 56 FR 30069, July 1, 1991; 58 FR 14683, Mar. 18, 1993; 58 FR 19343, Apr. 14, 1993; 61 FR 24656, May 15, 1996; 61 FR 68589, Dec. 30, 1996; 62 FR 544, Jan. 3, 1997; 62 FR 11323, Mar. 12, 1997; 62 FR 36459, July 8, 1997; 64 FR 61403, 61453 Nov. 10, 1999]

§ 240.13e-100 Schedule 13E-3, Transaction statement under section 13(e) of the Securities Exchange Act of 1934 and Rule 13e-3 (§ 240.13e-3) thereunder.

Securities and Exchange Commission, Washington, D.C. 20549

Rule 13e-3 Transaction Statement under Section 13(e) of the Securities Exchange Act of 1934 (Amendment No. \_\_)

(Name of the Issuer)

(Names of Persons Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of the Persons Filing Statement)

This statement is filed in connection with (check the appropriate box):

a. [ ] The filing of solicitation materials or an information statement subject to Regulation 14A (§§ 240.14a-1 through 240.14b-2), Regulation 14C (§§ 240.14c-1 through 240.14c-101) or Rule 13e-3(c) (§240.13e-3(c)) under the Securities Exchange Act of 1934 ("the Act").

b. [ ] The filing of a registration statement under the Securities Act of 1933.

c. [ ] A tender offer.

d. [ ] None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies: [ ]

Check the following box if the filing is a final amendment reporting the results of the transaction [ ]

**Securities and Exchange Commission**

**§ 240.13e-100**

**CALCULATION OF FILING FEE>**

Transaction valuation *	Amount of filing fee

\*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check the box if any part of the fee is offset as provided by §240.0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \_\_\_\_\_  
 Form or Registration No.: \_\_\_\_\_  
 Filing Party: \_\_\_\_\_  
 Date Filed: \_\_\_\_\_

*General Instructions:*

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. This filing must be accompanied by a fee payable to the Commission as required by §240.0-11(b).

C. If the statement is filed by a general or limited partnership, syndicate or other group, the information called for by Items 3, 5, 6, 10 and 11 must be given with respect to: (i) Each partner of the general partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the items specified above must be given with respect to: (a) Each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.

D. Depending on the type of Rule 13e-3 transaction (§240.13e-3(a)(3)), this statement must be filed with the Commission:

1. At the same time as filing preliminary or definitive soliciting materials or an information statement under Regulations 14A or 14C of the Act;

2. At the same time as filing a registration statement under the Securities Act of 1933;

3. As soon as practicable on the date a tender offer is first published, sent or given to security holders; or

4. At least 30 days before any purchase of securities of the class of securities subject to the Rule 13e-3 transaction, if the transaction does not involve a solicitation, an information statement, the registration of securities or a tender offer, as described in paragraphs 1, 2 or 3 of this Instruction; and

5. If the Rule 13e-3 transaction involves a series of transactions, the issuer or affiliate

must file this statement at the time indicated in paragraphs 1 through 4 of this Instruction for the first transaction and must amend the schedule promptly with respect to each subsequent transaction.

E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses, except that responses to Items 7, 8 and 9 of this schedule must be provided in full. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Act.

G. If the Rule 13e-3 transaction also involves a transaction subject to Regulation 14A (§§240.14a-1 through 240.14b-2) or 14C (§§240.14c-1 through 240.14c-101) of the Act, the registration of securities under the Securities Act of 1933 and the General Rules and Regulations of that Act, or a tender offer subject to Regulation 14D (§§240.14d-1 through 240.14d-101) or §240.13e-4, this statement must incorporate by reference the information contained in the proxy, information, registration or tender offer statement in answer to the items of this statement.

H. The information required by the items of this statement is intended to be in addition to any disclosure requirements of any other form or schedule that may be filed with the Commission in connection with the Rule 13e-3 transaction. If those forms or schedules require less information on any topic than this statement, the requirements of this statement control.

I. If the Rule 13e-3 transaction involves a tender offer, then a combined statement on Schedules 13E-3 and TO may be filed with the Commission under cover of Schedule TO

## § 240.13e-100

(§240.14d-100). See Instruction J of Schedule TO (§240.14d-100).

J. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

### *Item 1. Summary Term Sheet*

Furnish the information required by Item 1001 of Regulation M-A (§229.1001 of this chapter) unless information is disclosed to security holders in a prospectus that meets the requirements of §230.421(d) of this chapter.

### *Item 2. Subject Company Information*

Furnish the information required by Item 1002 of Regulation M-A (§229.1002 of this chapter).

### *Item 3. Identity and Background of Filing Person*

Furnish the information required by Item 1003(a) through (c) of Regulation M-A (§229.1003 of this chapter).

### *Item 4. Terms of the Transaction*

Furnish the information required by Item 1004(a) and (c) through (f) of Regulation M-A (§229.1004 of this chapter).

### *Item 5. Past Contacts, Transactions, Negotiations and Agreements*

Furnish the information required by Item 1005(a) through (c) and (e) of Regulation M-A (§229.1005 of this chapter).

### *Item 6. Purposes of the Transaction and Plans or Proposals*

Furnish the information required by Item 1006(b) and (c)(1) through (8) of Regulation M-A (§229.1006 of this chapter).

*Instruction to Item 6:* In providing the information specified in Item 1006(c) for this item, discuss any activities or transactions that would occur after the Rule 13e-3 transaction.

### *Item 7. Purposes, Alternatives, Reasons and Effects*

Furnish the information required by Item 1013 of Regulation M-A (§229.1013 of this chapter).

### *Item 8. Fairness of the Transaction*

Furnish the information required by Item 1014 of Regulation M-A (§229.1014 of this chapter).

### *Item 9. Reports, Opinions, Appraisals and Negotiations*

Furnish the information required by Item 1015 of Regulation M-A (§229.1015 of this chapter).

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

### *Item 10. Source and Amounts of Funds or Other Consideration*

Furnish the information required by Item 1007 of Regulation M-A (§229.1007 of this chapter).

### *Item 11. Interest in Securities of the Subject Company*

Furnish the information required by Item 1008 of Regulation M-A (§229.1008 of this chapter).

### *Item 12. The Solicitation or Recommendation*

Furnish the information required by Item 1012(d) and (e) of Regulation M-A (§229.1012 of this chapter).

### *Item 13. Financial Statements*

Furnish the information required by Item 1010(a) through (b) of Regulation M-A (§229.1010 of this chapter) for the issuer of the subject class of securities.

#### *Instructions to Item 13:*

1. The disclosure materials disseminated to security holders may contain the summarized financial information required by Item 1010(c) of Regulation M-A (§229.1010 of this chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M-A must be disclosed directly or incorporated by reference in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 2.

2. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§249.220f of this chapter).

3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) The financial statements substantially meet the requirements of this Item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the matter incorporated by reference is not filed with this Schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may

**Securities and Exchange Commission**

**§ 240.13e-102**

not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given. See General Instruction F to this Schedule.

*Item 14. Persons/Assets, Retained, Employed, Compensated or Used*

Furnish the information required by Item 1009 of Regulation M-A (§229.1009 of this chapter).

*Item 15. Additional Information*

Furnish the information required by Item 1011(b) of Regulation M-A (§229.1011 of this chapter).

*Item 16. Exhibits*

File as an exhibit to the Schedule all documents specified in Item 1016(a) through (d), (f) and (g) of Regulation M-A (§229.1016 of this chapter).

*Signature.* After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name and title)

\_\_\_\_\_  
(Date)

*Instruction to Signature:* The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See §240.12b-11 with respect to signature requirements.

[64 FR 61454, Nov. 10, 1999]

**§ 240.13e-101 [Reserved]**

**§ 240.13e-102 Schedule 13E-4F. Tender offer statement pursuant to section 13(e) (1) of the Securities Exchange Act of 1934 and § 240.13e-4 thereunder.**

Securities and Exchange Commission  
Washington, DC 20549  
Schedule 13E-4F  
Issuer Tender Offer Statement Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934  
[Amendment No. \_\_\_\_]

\_\_\_\_\_  
(Exact name of Issuer as specified in its charter)

\_\_\_\_\_  
(Translation of Issuer's Name into English (if applicable) )

\_\_\_\_\_  
(Jurisdiction of Issuer's Incorporation or Organization)

\_\_\_\_\_  
(Name(s) of Person(s) Filing Statement)

\_\_\_\_\_  
(Title of Class of Securities)

\_\_\_\_\_  
(CUSIP Number of Class of Securities) (if applicable)

\_\_\_\_\_  
(Name, address (including zip code) and telephone number (including area code) of person authorized to receive notices and communications on behalf of the person(s) filing statement)

\_\_\_\_\_  
(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fee \*

Transaction Valuation  
Amount of Filing Fee

\*Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II. C. for rules governing the calculation of the filing fee.

[  ] Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \_\_\_\_\_  
Registration No.: \_\_\_\_\_  
Filing Party: \_\_\_\_\_

Form: \_\_\_\_\_ Date Filed: \_\_\_\_\_

GENERAL INSTRUCTIONS

I. ELIGIBILITY REQUIREMENTS FOR USE OF SCHEDULE 13E-4F

A. Schedule 13E-4F may be used by any foreign private issuer if: (1) The issuer is incorporated or organized under the laws of Canada or any Canadian province or territory; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 40 percent of the class of such issuer's securities outstanding that is the subject of the tender offer is held by U.S. holders. The calculation of securities held by U.S. holders shall be made as of the end of the issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the issuer's preceding quarter.