

deemed to be “filed” with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the information statement or incorporates it in the information statement or other filed report by reference.

(c) A registrant will be considered to have delivered an annual report or information statement to security holders of record who share an address if the requirements set forth in § 240.14a-3(e)(1) are satisfied with respect to the annual report or information statement, as applicable.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 121, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78l(d), 78w(a))

[39 FR 40770, Nov. 20, 1974, as amended at 45 FR 63647, Sept. 25, 1980; 51 FR 42071, Nov. 20, 1986; 52 FR 48984, Dec. 29, 1987; 58 FR 26519, May 4, 1993; 59 FR 52700, Oct. 19, 1994; 59 FR 67765, Dec. 30, 1994; 64 FR 62547, Nov. 16, 1999; 65 FR 65751, Nov. 2, 2000]

§ 240.14c-4 Presentation of information in information statement.

(a) The information included in the information statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items and sub-items in the schedule need not be followed. Where practicable and appropriate, the information shall be presented in tabular form. All amounts shall be stated in figures. Information required by more than one applicable item need not be repeated. No statement need be made in response to any item or sub-item which is inapplicable.

(b) Any information required to be included in the information statement as to terms of securities or other subject matters which from a standpoint

of practical necessity must be determined in the future may be stated in terms of present knowledge and intention. Subject to the foregoing, information which is not known to the registrant and which it is not reasonably within the power of the registrant to ascertain or procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(c) All printed information statements shall be in roman type at least as large and as legible as 10-point modern type except that to the extent necessary for convenient presentation, financial statements and other tabular data, but not the notes thereto, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(d) Where an information statement is delivered through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by presenting all required information in a format readily communicated to investors.

[31 FR 262, Jan. 8, 1966, as amended at 36 FR 8935, May 15, 1971; 51 FR 42071, Nov. 20, 1986; 61 FR 24657, May 15, 1996]

§ 240.14c-5 Filing requirements.

(a) *Preliminary information statement.* Five preliminary copies of the information statement shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such statement are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor. In computing the 10-day period, the filing date of the preliminary copies is to be counted as the first day and the 11th day is the date on which definitive copies of the information statement may be mailed to security holders. A registrant, however, shall not file with the Commission a preliminary information statement if it relates to an annual (or special meeting in lieu of the annual) meeting, of security holders at which the only matters to be acted upon are:

- (1) The election of directors;
- (2) The election, approval or ratification of accountant(s);

(3) A security holder proposal identified in the registrant's information statement pursuant to Item 4 of Schedule 14C (§ 240.14c-101); and/or

(4) The approval or ratification of a plan as defined in paragraph (a)(7)(ii) of Item 402 of Regulation S-K (§ 229.402(a)(7)(ii) of this chapter) or amendments to such a plan.

This exclusion from filing a preliminary information statement does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its information statement.

NOTE 1: The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the information statement.

NOTE 2: The officials responsible for the preparation of the information statement should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary statement should be filed with the Commission at the earliest practicable date.

NOTE 3: Solicitation in Opposition—For purposes of the exclusion from filing a preliminary information statement, a "solicitation in opposition" includes: (a) Any solicitation opposing a proposal supported by the registrant; and (b) any solicitation supporting a proposal that the registrant does not expressly support, other than a security holder proposal identified in the registrant's information statement pursuant to Item 4 of Schedule 14C (§ 240.14c-101 of this chapter). The identification of a security holder proposal in the registrant's information statement does not constitute a "solicitation in opposition," even if the registrant opposes the proposal and/or includes a statement in opposition to the proposal.

NOTE 4: A registrant that is filing an information statement in preliminary form only because the registrant has commented on or referred to an opposing solicitation should indicate that fact in a transmittal letter when filing the preliminary material with the Commission.

(b) *Definitive information statement.* Eight definitive copies of the information statement, in the form in which it is furnished to security holders, must be filed with the Commission no later than the date the information statement is first sent or given to security holders. Three copies of these materials also must be filed with, or mailed for filing to, each national securities

exchange on which the registrant has a class of securities listed and registered.

(c) *Release dates.* All preliminary material filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders or, if not released, the date on which copies thereof are intended to be released.

(d)(1) *Public availability of information.* All copies of material filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies," and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (d)(2) of this section.

(2) *Confidential treatment.* If action will be taken on any matter specified in Item 14 of Schedule 14A (§ 240.14a-101), all copies of the preliminary information statement filed under paragraph (a) of this section will be for the information of the Commission only and will not be deemed available for public inspection until filed with the Commission in definitive form so long as:

(i) The information statement does not relate to a matter or proposal subject to § 240.13e-3 or a roll-up transaction as defined in Item 901(c) of Regulation S-K (§ 229.901(c) of this chapter);

(ii) Neither the parties to the transaction nor any persons authorized to act on their behalf have made any public communications relating to the transaction except for statements where the content is limited to the information specified in § 230.135 of this chapter; and

(iii) The materials are filed in paper and marked "Confidential, For Use of the Commission Only". In all cases, the materials may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make any inquiries or investigation into the

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materials as may be necessary to conduct an adequate review by the Commission.

Instruction to paragraph (d)(2): If communications are made publicly that go beyond the information specified in § 230.135, the materials must be re-filed publicly with the Commission.

(e) *Revised information statements.* Where any information statement filed pursuant to this section is amended or revised, two of the copies of such amended or revised material filed pursuant to this section shall be marked to indicate clearly and precisely the changes effected therein. If the amendment or revision alters the text of the material, the changes in such text shall be indicated by means of underlining or in some other appropriate manner.

(f) *Merger material.* Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form N-14, S-4, or F-4 (§ 239.23, § 239.25 or § 239.34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form N-14, S-4, or F-4 shall be filed in accordance with this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

(g) *Fees.* At the time of filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee, no part of which shall be refunded, established in accordance with § 240.0-11.

(h) *Cover page.* Each information statement filed with the Commission shall include a cover page in the form set forth in Schedule 14C (§ 240.14c-101). The cover page required by this para-

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graph need not be distributed to security holders.

[51 FR 42071, Nov. 20, 1986, as amended at 52 FR 48984, Dec. 29, 1987; 57 FR 48295, Oct. 22, 1992; 58 FR 14684, Mar. 18, 1993; 58 FR 69226, Dec. 30, 1993; 59 FR 67765, Dec. 30, 1994; 61 FR 49960, Sept. 24, 1996; 64 FR 61459, Nov. 10, 1999]

§ 240.14c-6 False or misleading statements.

(a) No information statement shall contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the same meeting or subject matter which has become false or misleading.

(b) The fact that an information statement has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

[31 FR 262, Jan. 8, 1966]

§ 240.14c-7 Providing copies of material for certain beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting, or by written authorizations or consents if no meeting is held, are held of record by a broker, dealer, voting trustee, or bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the registrant shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual)