

subject company's position with respect thereto pursuant to paragraph (f)(3) of this section.

(g) *Statement of management's position.* A statement by the subject company's of its position with respect to a tender offer which is required to be published or sent or given to security holders pursuant to Rule 14e-2 shall be deemed to constitute a solicitation or recommendation within the meaning of this section and section 14(d)(4) of the Act.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a-37(a))

[44 FR 70345, Dec. 6, 1979, as amended at 64 FR 61406, 61461-61462, Nov. 10, 1999]

#### § 240.14d-10 Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; and

(2) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer.

(b) Paragraph (a)(1) of this section shall not:

(1) Affect dissemination under Rule 14d-4 (§ 240.14d-4); or

(2) Prohibit a bidder from making a tender offer excluding all security holders in a state where the bidder is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the bidder to comply with such statute.

(c) Paragraph (a)(2) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, *Provided*, That:

(1) Security holders are afforded equal right to elect among each of the types of consideration offered; and

(2) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(d) If the offer and sale of securities constituting consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state:

(1) The bidder may offer security holders in such state an alternative form of consideration; and

(2) Paragraph (c) of this section shall not operate to require the bidder to offer or pay the alternative form of consideration to security holders in any other state.

(e) This section shall not apply to any tender offer with respect to which the Commission, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with this section is not necessary or appropriate in the public interest or for the protection of investors.

[51 FR 25882, July 17, 1986]

#### § 240.14d-11 Subsequent offering period.

A bidder may elect to provide a subsequent offering period of three business days to 20 business days during which tenders will be accepted if:

(a) The initial offering period of at least 20 business days has expired;

(b) The offer is for all outstanding securities of the class that is the subject of the tender offer, and if the bidder is offering security holders a choice of different forms of consideration, there is no ceiling on any form of consideration offered;

(c) The bidder immediately accepts and promptly pays for all securities tendered during the initial offering period;

(d) The bidder announces the results of the tender offer, including the approximate number and percentage of securities deposited to date, no later than 9:00 a.m. Eastern time on the next business day after the expiration date of the initial offering period and immediately begins the subsequent offering period;

**§ 240.14d-100**

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

(e) The bidder immediately accepts and promptly pays for all securities as they are tendered during the subsequent offering period; and

(f) The bidder offers the same form and amount of consideration to security holders in both the initial and the subsequent offering period.

NOTE §240.14d-11: No withdrawal rights apply during the subsequent offering period in accordance with §240.14d-7(a)(2).

[64 FR 61462, Nov. 10, 1999]

**§ 240.14d-100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.**

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

Schedule TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No. \_\_\_\_\_)\*

\_\_\_\_\_  
(Name of Subject Company (issuer))

\_\_\_\_\_  
(Names of Filing Persons (identifying status as offeror, issuer or other person))

\_\_\_\_\_  
(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 filing persons)

**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 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: \_\_\_\_\_

Form or Registration No.: \_\_\_\_\_

Filing Party: \_\_\_\_\_

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

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

*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.

C. If the statement is filed by a general or limited partnership, syndicate or other group, the information called for by Items 3 and 5-8 for a third-party tender offer and Items 5-8 for an issuer tender offer 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. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature or filing fee is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.

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. 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