

(2) The term *bidder* means any person who makes a tender offer or on whose behalf a tender offer is made: *Provided, however,* That the term does not include an issuer which makes a tender offer for securities of any class of which it is the issuer;

(3) The term *business day* means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under Regulation 14D or Regulation 14E, the date of the event which begins the running of such time period shall be included *except that* if such event occurs on other than a business day such period shall begin to run on and shall include the first business day thereafter; and

(4) The term *initial offering period* means the period from the time the offer commences until all minimum time periods, including extensions, required by Regulations 14D (§§ 240.14d-1 through 240.14d-103) and 14E (§§ 240.14e-1 through 240.14e-8) have been satisfied and all conditions to the offer have been satisfied or waived within these time periods.

(5) The term *security holders* means holders of record and beneficial owners of securities which are the subject of a tender offer;

(6) The term *security position listing* means, with respect to securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(7) The term *subject company* means any issuer of securities which are sought by a bidder pursuant to a tender offer;

(8) The term *subsequent offering period* means the period immediately following the initial offering period meeting the conditions specified in § 240.14d-11.

(9) The term *tender offer material* means:

(i) The bidder's formal offer, including all the material terms and condi-

tions of the tender offer and all amendments thereto;

(ii) The related transmittal letter (whereby securities of the subject company which are sought in the tender offer may be transmitted to the bidder or its depositary) and all amendments thereto; and

(iii) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer;

(h) *Signatures.* Where the Act or the rules, forms, reports or schedules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

[44 FR 70340, Dec. 6, 1979, as amended at 47 FR 11470, Mar. 16, 1982; 56 FR 30071, July 1, 1991; 60 FR 26622, May 17, 1995; 61 FR 30403, June 14, 1996; 62 FR 53955, Oct. 17, 1997; 64 FR 61404, 61459, Nov. 10, 1999]

#### § 240.14d-2 Commencement of a tender offer.

(a) *Date of commencement.* A bidder will have commenced its tender offer for purposes of section 14(d) of the Act (15 U.S.C. 78n) and the rules under that section at 12:01 a.m. on the date when the bidder has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

(b) *Pre-commencement communications.* A communication by the bidder will

## § 240.14d-3

not be deemed to constitute commencement of a tender offer if:

(1) It does not include the means for security holders to tender their shares into the offer; and

(2) All written communications relating to the tender offer, from and including the first public announcement, are filed under cover of Schedule TO (§240.14d-100) with the Commission no later than the date of the communication. The bidder also must deliver to the subject company and any other bidder for the same class of securities the first communication relating to the transaction that is filed, or required to be filed, with the Commission.

### *Instructions to paragraph (b)(2):*

1. The box on the front of Schedule TO indicating that the filing contains pre-commencement communications must be checked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under §230.425 of this chapter and will be deemed filed under this section.

3. Each pre-commencement written communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the Commission's web site and explain which documents are free from the offeror.

4. See §§230.135, 230.165 and 230.166 of this chapter for pre-commencement communications made in connection with registered exchange offers.

5. "Public announcement" is any oral or written communication by the bidder, or any person authorized to act on the bidder's behalf, that is reasonably designed to, or has the effect of, informing the public or security holders in general about the tender offer.

(c) *Filing and other obligations triggered by commencement.* As soon as practicable on the date of commencement, a bidder must comply with the filing requirements of §240.14d-3(a), the dissemination requirements of §240.14d-4(a) or (b), and the disclosure requirements of §240.14d-6(a).

[64 FR 61459, Nov. 10, 1999]

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

### § 240.14d-3 Filing and transmission of tender offer statement.

(a) *Filing and transmittal.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject company's securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer such bidder:

(1) Files with the Commission a Tender Offer Statement on Schedule TO (§240.14d-100), including all exhibits thereto;

(2) Delivers a copy of such Schedule TO, including all exhibits thereto:

(i) To the subject company at its principal executive office; and

(ii) To any other bidder, which has filed a Schedule TO with the Commission relating to a tender offer which has not yet terminated for the same class of securities of the subject company, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Schedule TO);

(3) Gives telephonic notice of the information required by Rule 14d-6(e)(2) (i) and (ii) (§240.14d-6(e)(2) (i) and (ii)) and mails by means of first class mail a copy of such Schedule TO, including all exhibits thereto:

(i) To each national securities exchange where such class of the subject company's securities is registered and listed for trading (which may be based upon information contained in the subject company's most recent Annual Report on Form 10-K and Form 10-KSB (§249.310) filed with the Commission unless the bidder has reason to believe that such information is not current) which telephonic notice shall be made when practicable prior to the opening of each such exchange; and

(ii) To the National Association of Securities Dealers, Inc. ("NASD") if such class of the subject company's securities is authorized for quotation in the NASDAQ interdealer quotation system.

(b) *Post-commencement amendments and additional materials.* The bidder making the tender offer must file with the Commission: