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filing of documents with the Commission are as set forth in paragraphs (b) and (c) of this section.

(b) *Submissions made in paper or on magnetic cartridge.* Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic cartridge under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

(c) *Electronic filings.* Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

[58 FR 14687, Mar. 18, 1993, as amended at 65 FR 24802, Apr. 27, 2000]

§ 260.0-6 Nondisclosure of information obtained in the course of examinations and investigations.

Information or documents obtained by officers or employees of the Commission in the course of any examination or investigation under section 8(e) of the Securities Act of 1933 (48 Stat. 79; 15 U.S.C. 77h), pursuant to section 307(c) of the Trust Indenture Act of 1939 (53 Stat. 1156; 15 U.S.C. 77ggg), or any examination or investigation under section 20(a) of the Securities Act of 1933 (48 Stat. 86; 15 U.S.C. 77t), pursuant to section 321(a) of the Trust Indenture Act of 1939 (53 Stat. 1174; 15 U.S.C. 77uuu), shall, unless made a matter of public record, be deemed confidential. Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or

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employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this section. Any officer or employee who is served with such a subpoena shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

(Sec. 19, 48 Stat. 85; sec. 20, 48 Stat. 86; sec. 21, 48 Stat. 899; sec. 23, 48 Stat. 901; sec. 18, 49 Stat. 831; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 321, 53 Stat. 1174; sec. 38, 54 Stat. 841; sec. 42, 54 Stat. 842; sec. 209, 54 Stat. 853; sec. 211, 54 Stat. 855; sec. 1, 76 Stat. 394. (15 U.S.C. 77s, 77t, 78u, 78w, 79r, 79t, 77sss, 77uuu, 80a-37, 80a-41, 80b-9, 89b-11, 78d-1))

[44 FR 50836, Aug. 30, 1979, as amended at 53 FR 17459, May 17, 1988; 54 FR 33501, Aug. 15, 1989]

§ 260.0-7 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term "small business" or "small organization," for purposes of the Trust Indenture Act of 1939 shall mean an issuer whose total assets on the last day of its most recent fiscal year were \$5 million or less that is engaged or proposing to engage in small business financing. An issuer is considered to be engaged or proposing to be engaged in small business financing under this section if it is conducting or proposing to conduct an offering of securities which does not exceed the dollar limitation prescribed by § 260.4a-2.

[47 FR 5223, Feb. 4, 1982, as amended at 51 FR 25362, July 14, 1986]

§ 260.0-11 Liability for certain statements by issuers.

(a) A statement within the coverage of paragraph (b) below which is made

by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This rule applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q and Form 10-QSB, § 249.308a of this chapter, or in an annual report to shareholders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) under the Securities Exchange Act of 1934, a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10-Q and Form 10-QSB, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement; *Provided*, That:

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K and Form 10-KSB or Form 20-F or Form 40-F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940; and

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter) or Item 5 of Form 20-F (§ 249.220f of this chapter), "Operating and Financial Review and Prospects", or Item 302 of Regulation S-K (§ 229.302 of this chapter), supplementary financial information, or Rule 3-20(c) of Regulation S-X (§ 210.3-20(c) of this chapter), and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q and Form 10-QSB, or in an annual report to shareholders meeting the requirements of Rules 14a-3 (b) and (c) or 14c-3 (a) and (b) under the Securities Exchange Act of 1934.

(c) For the purpose of this rule, the term *forward-looking statement* shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter) or Item 5 of Form 20-F; or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraphs (c) (1), (2), or (3) of this section.

(d) For the purpose of this rule the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Trust Indenture Act of 1939 and other acts referred to in section

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323(b) thereof or the rules or regulations promulgated thereunder.

[46 FR 19458, Mar. 31, 1981, as amended at 47 FR 54790, Dec. 26, 1982; 56 FR 30077, July 1, 1991; 64 FR 53925, Oct. 5, 1999]

RULES UNDER SECTION 303

§ 260.3(4)-1 Definition of “commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers’ commissions” in section 303(4), for certain transactions.

(a) The term *commission* in section 303(4) shall include such remuneration, commonly known as a spread, as may be received by a distributor or dealer as a consequence of reselling securities bought from an underwriter or dealer at a price below the offering price of such securities, where such resales afford the distributor or dealer a margin of profit not in excess of what is usual and customary in such transactions.

(b) The term *commission from an underwriter or dealer* in section 303(4) shall include commissions paid by an underwriter or dealer affiliated with the issuer.

(c) The term *usual and customary distributors’ or sellers’ commission* in section 303(4) shall mean a commission or remuneration, commonly known as a spread, paid to or received by any person selling securities either for his own account or for the account of others, which is not in excess of the amount usual and customary in the distribution and sale of issues of similar type and size, and not in excess of the amount allowed to other persons, if any, for comparable service in the distribution of the particular issue; but such term shall not include amounts paid to any person whose function is the management of the distribution of all of a substantial part of the particular issue, or who performs the functions normally performed by an underwriter or underwriting syndicate.

§ 260.3(4)-2 Definition of “distribution” in section 303(4) for certain transactions.

A person, the chief part of the business of which consists in the purchase of the securities of any one issuer and/or its affiliate and in the sale of its own securities to furnish the proceeds

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with which to acquire the securities of such issuer and/or affiliate, is to be regarded as engaged in the distribution of the securities of such issuer and/or affiliate within the meaning of section 303(4).

§ 260.3(4)-3 Definitions of “participates” and “participation” as used in section 303(4), in relation to certain transactions.

(a) The terms *participates* and *participation* in section 303(4) shall not include the interest of a person (1) who is neither in privity of contract with the issuer nor affiliated with the issuer, and (2) who has no association with any principal underwriter of the securities being distributed, and (3) whose function in the distribution is confined to an undertaking to purchase all or some specified proportion of the securities remaining unsold after the lapse of some specified period of time, and (4) who purchases such securities for investment and not with a view to distribution.

(b) As used in this section:

(1) The term *association* shall include a relationship between two persons under which one (i) is affiliated with the other, or (ii) has, in common with the other, one or more partners, directors, officers, trustees, branch managers, or other persons occupying a similar status or performing similar functions or (iii) has a participation, direct or indirect, in the profits of the other, or has a financial stake, by debtor-creditor relationship, stock ownership, contract or otherwise, in the income or business of the other.

(2) The term *principal underwriter* means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

RULES UNDER SECTION 304

§ 260.4a-1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been or will be issued otherwise than under an indenture. The