

§ 228.102

(5) Sources and availability of raw materials and the names of principal suppliers;

(6) Dependence on one or a few major customers;

(7) Patents, trademarks, licenses, franchises, concessions, royalty agreements or labor contracts, including duration;

(8) Need for any government approval of principal products or services. If government approval is necessary and the small business issuer has not yet received that approval, discuss the status of the approval within the government approval process;

(9) Effect of existing or probable governmental regulations on the business;

(10) Estimate of the amount spent during each of the last two fiscal years on research and development activities, and if applicable the extent to which the cost of such activities are borne directly by customers;

(11) Costs and effects of compliance with environmental laws (federal, state and local); and

(12) Number of total employees and number of full time employees.

(c) *Reports to security holders.* Disclose the following in any registration statement you file under the Securities Act of 1933:

(1) If you are not required to deliver an annual report to security holders, whether you will voluntarily send an annual report and whether the report will include audited financial statements;

(2) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the SEC; and

(3) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site ([http://](http://www.sec.gov)

17 CFR Ch. II (4-1-03 Edition)

www.sec.gov). You are encouraged to give your Internet address, if available.

(d) *Canadian Issuers.* Provide the information required by Items 101(f)(2) and 101(g) of Regulation S-K (§ 229.101(f)(2) and (g)).

[57 FR 36449, Aug. 13, 1992, as amended at 63 FR 6379, Feb. 6, 1998]

§ 228.102 (Item 102) Description of Property.

(a) Give the location of the principal plants and other property of the small business issuer and describe the condition of the property. If the small business issuer does not have complete ownership of the property, for example, others also own the property or there is a mortgage or lien on the property, describe the limitations on the ownership.

Instructions to Item 102(a): 1. Small business issuers engaged in significant mining operations also should provide the information in Guide 7 (§ 229.801(g) and § 229.802(g) of this chapter).

2. Small business issuers engaged in oil and gas producing activities also should provide the information in Guide 2 (§ 229.801(b) and § 229.802(b) of this chapter).

3. Small business issuers engaged in real estate activities should, in addition to Guide 5 (§ 229.801(e) of this chapter) provide responses to the following Items:

(b) *Investment policies.* Describe the policy of the small business issuer with respect to each of the following types of investments. State whether there are any limitations on the percentage of assets which may be invested in any one investment, or type of investment, and indicate whether such policy may be changed without a vote of security holders. State whether it is the small business issuer's policy to acquire assets primarily for possible capital gain or primarily for income.

(1) *Investments in real estate or interests in real estate.* Indicate the types of real estate in which the small business issuer may invest, for example, office or apartment buildings, shopping centers, industrial or commercial properties, special purpose buildings and undeveloped acreage, and the geographic area(s) of these properties.

Briefly describe the method, or proposed method, of operating and financing these properties. Indicate any limitations on the number or amount of mortgages which may be placed on any one piece of property.

(2) *Investments in real estate mortgages.* Indicate the types of mortgages, for example, first or second mortgages, and the types of properties subject to mortgages in which the small business issuer intends to invest, for example, single family dwellings, apartment buildings, office buildings, unimproved land, and the nature of any guarantees or insurance. Describe each type of mortgage activity in which the small business issuer intends to engage such as originating, servicing and warehousing, and the portfolio turnover policy.

(3) *Securities of or interests in persons primarily engaged in real estate activities.* Indicate the types of securities in which the small business issuer may invest, for example, common stock, interest in real estate investment trusts, partnership interests. Indicate the primary activities of persons in which the small business issuer will invest, such as mortgage sales, investments in developed or undeveloped properties and state the investment policies of such persons.

(c) *Description of real estate and operating data.* This information shall be furnished separately for each property the book value of which amounts to ten percent or more of the total assets of the small business issuer and its consolidated subsidiaries for the last fiscal year. With respect to other properties, the information shall be given by such classes or groups and in such detail as will reasonably convey the information required.

(1) Describe the general character and location of all materially important properties held or intended to be acquired by or leased to the small business issuer and describe the present or proposed use of such properties and their suitability and adequacy for such use. Properties not yet acquired shall be identified as such.

(2) State the nature of the small business issuer's title to, or other interest in such properties and the nature and amount of all material mortgages,

liens or encumbrances against such properties. Disclose the current principal amount of each material encumbrance, interest and amortization provisions, prepayment provisions, maturity date and the balance due at maturity assuming no prepayments.

(3) Outline briefly the principal terms of any lease of any of such properties or any option or contract to purchase or sell any of such properties.

(4) Outline briefly any proposed program for the renovation, improvement or development of such properties, including the estimated cost thereof and the method of financing to be used. If there are no present plans for the improvement or development of any unimproved or undeveloped property, so state and indicate the purpose for which the property is to be held or acquired.

(5) Describe the general competitive conditions to which the properties are or may be subject.

(6) Include a statement as to whether, in the opinion of the management of the small business issuer, the properties are adequately covered by insurance.

(7) With respect to each improved property which is separately described, provide the following in addition to the above:

(i) Occupancy rate;

(ii) Number of tenants occupying ten percent or more of the rentable square footage and principal nature of business of each such tenant and the principal provisions of each of their leases;

(iii) Principal business, occupations and professions carried on in, or from the building;

(iv) The average effective annual rental per square foot or unit;

(v) Schedule of the lease expirations for each of the ten years starting with the year in which the registration statement is filed, stating:

(A) the number of tenants whose leases will expire,

(B) the total area in square feet covered by such leases,

(C) the annual rental represented by such leases, and

(D) the percentage of gross annual rental represented by such leases;

§ 228.103

(vi) Each of the properties and components thereof upon which depreciation is taken, setting forth the:

(A) federal tax basis,

(B) rate,

(C) method, and

(D) life claimed with respect to such property or component thereof for purposes of depreciation;

(vii) The realty tax rate, annual realty taxes and estimated taxes on any proposed improvements.

Instruction: If the small business issuer has a number of properties, the information may be given in tabular form.

§ 228.103 (Item 103) Legal Proceedings.

(a) If a small business issuer is a party to any pending legal proceeding (or its property is the subject of a pending legal proceeding), give the following information (no information is necessary as to routine litigation that is incidental to the business):

(1) Name of court or agency where proceeding is pending;

(2) Date proceeding began;

(3) Principal parties;

(4) Description of facts underlying the proceedings; and

(5) Relief sought.

(b) Include the information called for by paragraphs (a) (1) through (5) of this Item for any proceeding that a governmental authority is contemplating (if the small business issuer is aware of the proceeding).

Instructions to Item 103: 1. A proceeding that primarily involves a claim for damages does not need to be described if the amount involved, exclusive of interest and costs, does not exceed 10% of the current assets of the small business issuer. If any proceeding presents the same legal and factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

2. The following types of proceedings with respect to the registrant are not "routine litigation incidental to the business" and, notwithstanding instruction 1 of this Item, must be described: bankruptcy, receivership, or similar proceeding.

3. Any proceeding that involves federal, state or local environmental laws must be described if it is material; involves a damages claim for more than 10% of the current assets of the issuer; or potentially involves more than \$100,000 in sanctions and a governmental authority is a party.

17 CFR Ch. II (4-1-03 Edition)

4. Disclose any material proceeding to which any director, officer or affiliate of the issuer, any owner of record or beneficially of more than 5% of any class of voting securities of the small business issuer, or security holder is a party adverse to the small business issuer or has a material interest adverse to the small business issuer.

§ 228.201 (Item 201) Market for Common Equity and Related Stockholder Matters.

(a) *Market information.* (1) Identify the principal market or markets where the small business issuer's common equity is traded. If there is no public trading market, so state.

(i) If the principal market for the small business issuer's common equity is an exchange, give the high and low sales prices for each quarter within the last two fiscal years and any subsequent interim period for which financial statements are required by Item 310(b).

(ii) If the principal market is not an exchange, give the range of high and low bid information for the small business issuer's common equity for each quarter within the last two fiscal years and any subsequent interim period for which financial statements are required by Item 310(b). Show the source of the high and low bid information. If over-the-counter market quotations are provided, also state that the quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not represent actual transactions.

(2) If the information called for by paragraph (a) of this Item is being presented in a registration statement relating to a class of common equity for which at the time of filing there is no established public trading market, indicate the amount(s) of common equity:

(i) that is subject to outstanding options or warrants to purchase, or securities convertible into, common equity of the registrant;

(ii) that could be sold pursuant to Rule 144 under the Securities Act or that the registrant has agreed to register under the Securities Act for sale by security holders; or

(iii) that is being or has been proposed to be, publicly offered by the registrant unless such common equity is