

§ 228.202

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

b. Any employee benefit plan that is intended to meet the qualification requirements of Section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)).

2. For purposes of this paragraph, an "individual compensation arrangement" includes, but is not limited to, the following: a written compensation contract within the meaning of "employee benefit plan" under § 230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(7)(ii) of Regulation S-B (§ 228.402(a)(7)(ii)).

3. If more than one class of equity security is issued under its equity compensation plans, a small business issuer should aggregate plan information for each class of security.

4. A small business issuer may aggregate information regarding individual compensation arrangements with the plan information required under paragraph (d)(1)(i) and (ii) of this item, as applicable.

5. A small business issuer may aggregate information regarding a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction pursuant to which the small business issuer may make subsequent grants or awards of its equity securities with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable. A small business issuer shall disclose on an aggregated basis in a footnote to the table the information required under paragraph (d)(2)(i) and (ii) of this Item with respect to any individual options, warrants or rights assumed in connection with a merger, consolidation or other acquisition transaction.

6. To the extent that the number of securities remaining available for future issuance disclosed in column (c) includes securities available for future issuance under any compensation plan or individual compensation arrangement other than upon the exercise of an option, warrant or right, disclose the number of securities and type of plan separately for each such plan in a footnote to the table.

7. If the description of an equity compensation plan set forth in a small business issuer's financial statements contains the disclosure required by paragraph (d)(3) of this Item, a cross-reference to such description will satisfy the requirements of paragraph (d)(3) of this Item.

8. If an equity compensation plan contains a formula for calculating the number of securities available for issuance under the plan, including, without limitation, a formula that automatically increases the number of securities available for issuance by a percentage of the number of outstanding securities of the small business issuer, a description of this formula shall be disclosed in a footnote to the table.

9. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

Instruction: Canadian issuers should, in addition to the information called for by this Item, provide the information in Item 201(a)(1)(iv) of Regulation S-K and Instruction 4 thereto.

[57 FR 36449, Aug. 13, 1992, as amended at 67 FR 245]

§ 228.202 (Item 202) Description of Securities.

(a) *Common or Preferred Stock.* (1) If the small business issuer is offering common equity, describe any dividend, voting and preemption rights.

(2) If the small business issuer is offering preferred stock, describe the dividend, voting, conversion and liquidation rights as well as redemption or sinking fund provisions.

(3) Describe any other material rights of common or preferred stockholders.

(4) Describe any provision in the charter or by-laws that would delay, defer or prevent a change in control of the small business issuer.

(b) *Debt Securities.* (1) If the small business issuer is offering debt securities, describe the maturity date, interest rate, conversion or redemption features and sinking fund requirements.

(2) Describe all other material provisions giving or limiting the rights of debtholders. For example, describe subordination provisions, limitations on the declaration of dividends, restrictions on the issuance of additional debt, maintenance of asset ratios, etc.

(3) Give the name of any trustee(s) designated by the indenture and describe the circumstances under which the trustee must act on behalf of the debtholders.

(4) Discuss the tax effects of any securities offered at an "original issue discount."

(c) *Other Securities To Be Registered.* If the small business issuer is registering other securities, provide similar information concerning the material provisions of those securities.