

(ii) The requirement to bind separately the statement of eligibility and qualification does not apply to statements submitted in electronic format. Rather, such statements must be submitted as exhibits in the same electronic submission as the registration statement to which they relate, or in an amendment thereto, except that electronic filers that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file such statements separately in the manner prescribed by § 260.5b-1 through § 260.5b-3 of this chapter and by the EDGAR Filer Manual.

(26) *Invitations for competitive bids.* If the registration statement covers securities that the small business issuer is offering at competitive bidding, any invitation for competitive bid that the small business issuer will send or give to any person shall be filed.

(27) through (98) [Reserved]

(99) *Additional exhibits.* (i) Any additional exhibits if listed and described in the exhibit index.

(ii) If pursuant to Section 11(a) of the Securities Act (15 U.S.C. 77k(a)) an issuer makes generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is made available by "other methods" than those specified in paragraphs (a) or (b) of § 230.158 of this chapter, it must be filed as an exhibit to the Form 10-QSB or the Form 10-KSB, as appropriate, covering the period in which the earnings statement was released.

[57 FR 36449, Aug. 13, 1992, as amended at 57 FR 48150, Oct. 21, 1992; 58 FR 14660, Mar. 18, 1993; 58 FR 21349, Apr. 21, 1993; 58 FR 26383, May 3, 1993; 58 FR 27469, May 10, 1993; 59 FR 36260, July 15, 1994; 59 FR 67759, Dec. 30, 1994; 60 FR 26614, May 17, 1995; 61 FR 24654, May 15, 1996; 61 FR 30401, June 14, 1996; 62 FR 36455, July 8, 1997; 65 FR 24799, Apr. 27, 2000; 67 FR 246, Jan. 2, 2002]

EDITORIAL NOTES: 1. At 65 FR 24799, Apr. 27, 2000, in § 228.601, paragraph (a), the table was amended by removing the entries for exhibits (27) and (28) and footnote *****. However, this is a photographed table; thus the entries could not be removed.

2. At 68 FR 5126, Jan. 31, 2003, § 268.601 was amended by removing the "reserved" designation for exhibit (14) and adding "Code of ethics" in its place in the Exhibit Table, by removing "N/A" corresponding to exhibit (14) under all captions in the Exhibit Table, and by adding an "X" corresponding to exhibit (14) under the caption "Exchange Act Forms", "8-K" and "10-KSB" in the Exhibit Table. However, this is a photographed table; thus these amendments could not be incorporated.

§ 228.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

Give the following information for all securities that the small business issuer sold within the past three years without registering the securities under the Securities Act.

(a) The date, title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. If the small business issuer did not publicly offer any securities, identify the persons or class of persons to whom the small business issuer sold the securities.

(c) For securities sold for cash, the total offering price and the total underwriting discounts or commissions. For securities sold other than for cash, describe the transaction and the type and amount of consideration received by the small business issuer.

(d) The section of the Securities Act or the rule of the Commission under which the small business issuer claimed exemption from registration and the facts relied upon to make the exemption available.

(e) If the information called for by this paragraph (e) is being presented on Form 8-K, Form 10-QSB, Form 10-Q, Form 10-KSB or Form 10-K (§§ 249.308, 249.308b, 249.308a, 249.310b or 249.310) under the Exchange Act, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

(f) As required by § 230.463 of this chapter, following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first

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periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)) after effectiveness of its Securities Act registration statement, and thereafter on each of its subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act through the later of disclosure of the application of all the offering proceeds, or disclosure of the termination of the offering. If a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (f)(2) through (f)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act after effectiveness of the registration statement filed under the Securities Act. Subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act need only provide the information required in paragraphs (f)(2) through (f)(4) of this Item if any of such required information has changed since the last periodic report filed. In disclosing the use of proceeds in the first periodic report filed pursuant to the Exchange Act, the issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the use of proceeds information is being disclosed and the Commission file number assigned to the registration statement;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering has terminated and, if so, whether it terminated before the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of

convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate if a reasonable estimate for the amount of expenses incurred is provided instead of the actual amount of expenses. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (f)(4)(v) of this Item;

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments (which should be specified); and any other purposes for which at least five (5) percent of the issuer's total offering proceeds or \$100,000 (whichever is less) has been

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used (which should be specified). Indicate if a reasonable estimate for the amount of net offering proceeds applied is provided instead of the actual amount of net offering proceeds used. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others; and

(viii) If the use of proceeds in paragraph (f)(4)(vii) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

[57 FR 36449, Aug. 13, 1992, as amended at 61 FR 54508, Oct. 18, 1996; 62 FR 39761, July 24, 1997]

§ 228.702 (Item 702) Indemnification of Directors and Officers.

State whether any statute, charter provisions, by-laws, contract or other arrangements that insures or indemnifies a controlling person, director or officer of the small business issuer affects his or her liability in that capacity.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

Subpart 229.1—General

Sec.

229.10 (Item 10) General.

Subpart 229.100—Business

229.101 (Item 101) Description of business.

229.102 (Item 102) Description of property.

229.103 (Item 103) Legal proceedings.

Subpart 229.200—Securities of the Registrant

229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

229.202 (Item 202) Description of registrant's securities.

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Subpart 229.300—Financial Information

229.301 (Item 301) Selected financial data.

229.302 (Item 302) Supplementary financial information.

229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

229.305 (Item 305) Quantitative and qualitative disclosures about market risk.

229.306 (Item 306) Audit committee report.

229.307 (Item 307) Controls and procedures.

Subpart 229.400—Management and Certain Security Holders

229.401 (Item 401) Directors, executive officers, promoters and control persons.

229.402 (Item 402) Executive compensation.

229.403 (Item 403) Security ownership of certain beneficial owners and management.

229.404 (Item 404) Certain relationships and related transactions.

229.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

229.406 (Item 406) Code of ethics.

Subpart 229.500—Registration Statement and Prospectus Provisions

229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.

229.502 (Item 502) Inside front and outside back cover pages of prospectus.

229.503 (Item 503) Prospectus summary, risk factors, and ratio of earnings to fixed charges.

229.504 (Item 504) Use of proceeds.

229.505 (Item 505) Determination of offering price.

229.506 (Item 506) Dilution.

229.507 (Item 507) Selling security holders.

229.508 (Item 508) Plan of distribution.

229.509 (Item 509) Interests of named experts and counsel.

229.510 (Item 510) Disclosure of Commission position on indemnification for Securities Act liabilities.

229.511 (Item 511) Other expenses of issuance and distribution.

229.512 (Item 512) Undertakings.

Subpart 229.600—Exhibits

229.601 (Item 601) Exhibits.

Subpart 229.700—Miscellaneous

229.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

229.702 (Item 702) Indemnification of directors and officers.