

(C) *Earnings.* The term “earnings” is the amount resulting from adding and subtracting the following items. Add the following: (a) Pre-tax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, (b) fixed charges, (c) amortization of capitalized interest, (d) distributed income of equity investees, and (e) your share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. From the total of the added items, subtract the following: (a) interest capitalized, (b) preference security dividend requirements of consolidated subsidiaries, and (c) the minority interest in pre-tax income of subsidiaries that have not incurred fixed charges. Equity investees are investments that you account for using the equity method of accounting. Public utilities following SFAS 71 should not add amortization of capitalized interest in determining earnings, nor reduce fixed charges by any allowance for funds used during construction.

2. *Disclosure.* Disclose the following information when showing the ratio of earnings to fixed charges:

(A) *Deficiency.* If a ratio indicates less than one-to-one coverage, disclose the dollar amount of the deficiency.

(B) *Pro forma ratio.* You may show the pro forma ratio only for the most recent fiscal year and the latest interim period. Use the net change in interest or dividends from the refinancing to calculate the pro forma ratio.

(C) *Foreign private issuers.* A foreign private issuer must show the ratio based on the figures in the primary financial statement. A foreign private issuer must show the ratio based on the figures resulting from the reconciliation to U.S. generally accepted accounting principles if this ratio is materially different.

(D) *Summary Section.* If you provide a summary or similar section in the prospectus, show the ratios in that section.

3. *Exhibit.* File an exhibit to the registration statement to show the figures used to calculate the ratios. See paragraph (b)(12) of Item 601 of Regulation S-K (17 CFR 229.601(b)(12)).

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§ 229.504 (Item 504) Use of proceeds.

State the principal purposes for which the net proceeds to the registrant from the securities to be offered are intended to be used and the approximate amount intended to be used for each such purpose. Where registrant has no current specific plan for the proceeds, or a significant portion thereof, the registrant shall so state and dis-

cuss the principal reasons for the offering.

Instructions to Item 504: 1. Where less than all the securities to be offered may be sold and more than one use is listed for the proceeds, indicate the order of priority of such purposes and discuss the registrant’s plans if substantially less than the maximum proceeds are obtained. Such discussion need not be included if underwriting arrangements with respect to such securities are such that, if any securities are sold to the public, it reasonably can be expected that the actual proceeds will not be substantially less than the aggregate proceeds to the registrant shown pursuant to Item 501 of Regulation S-K (§229.501).

2. Details of proposed expenditures need not be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment. Consideration should be given as to the need to include a discussion of certain matters addressed in the discussion and analysis of registrant’s financial condition and results of operations, such as liquidity and capital expenditures.

3. If any material amounts of other funds are necessary to accomplish the specified purposes for which the proceeds are to be obtained, state the amounts and sources of such other funds needed for each such specified purpose and the sources thereof.

4. If any material part of the proceeds is to be used to discharge indebtedness, set forth the interest rate and maturity of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness other than short-term borrowings used for working capital.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, describe briefly and state the cost of the assets and, where such assets are to be acquired from affiliates of the registrant or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the registrant.

6. Where the registrant indicates that the proceeds may, or will, be used to finance acquisitions of other businesses, the identity of such businesses, if known, or, if not known, the nature of the businesses to be sought, the status of any negotiations with respect to the acquisition, and a brief description of such business shall be included. Where, however, pro forma financial statements reflecting such acquisition are not required by Regulation S-X to be included, in the registration statement, the possible terms of any transaction, the identification of the parties thereto or the nature of the business sought need not be disclosed, to the extent that the

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registrant reasonably determines that public disclosure of such information would jeopardize the acquisition. Where Regulation S-X (17 CFR 210) would require financial statements of the business to be acquired to be included, the description of the business to be acquired shall be more detailed.

7. The registrant may reserve the right to change the use of proceeds, provided that such reservation is due to certain contingencies that are discussed specifically and the alternatives to such use in that event are indicated.

§ 229.505 (Item 505) Determination of offering price.

(a) *Common equity.* Where common equity is being registered for which there is no established public trading market for purposes of paragraph (a) of Item 201 of Regulation S-K (§229.201(a)) or where there is a material disparity between the offering price of the common equity being registered and the market price of outstanding shares of the same class, describe the various factors considered in determining such offering price.

(b) *Warrants, rights and convertible securities.* Where warrants, rights or convertible securities exercisable for common equity for which there is no established public trading market for purposes of paragraph (a) of Item 201 of Regulation S-K (§229.201(a)) are being registered, describe the various factors considered in determining their exercise or conversion price.

§ 229.506 (Item 506) Dilution.

Where common equity securities are being registered and there is substantial disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons of common equity acquired by them in transactions during the past five years, or which they have the right to acquire, and the registrant is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to filing of the registration statement, there shall be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where common equity securities are being registered by a registrant that has had losses in each of its last three fiscal

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years and there is a material dilution of the purchasers' equity interest, the following shall be disclosed:

(a) The net tangible book value per share before and after the distribution;

(b) The amount of the increase in such net tangible book value per share attributable to the cash payments made by purchasers of the shares being offered; and

(c) The amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

§ 229.507 (Item 507) Selling security holders.

If any of the securities to be registered are to be offered for the account of security holders, name each such security holder, indicate the nature of any position, office, or other material relationship which the selling security holder has had within the past three years with the registrant or any of its predecessors or affiliates, and state the amount of securities of the class owned by such security holder prior to the offering, the amount to be offered for the security holder's account, the amount and (if one percent or more) the percentage of the class to be owned by such security holder after completion of the offering.

§ 229.508 (Item 508) Plan of distribution.

(a) *Underwriters and underwriting obligation.* If the securities are to be offered through underwriters, name the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship with the registrant and state the nature of the relationship. State briefly the nature of the obligation of the underwriter(s) to take the securities.

Instruction to Paragraph 508(a): All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or the type of *best efforts* arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the