

Securities and Exchange Commission

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or in the prospectus used in connection with the reoffering:

(i) The amount of securities bought in stabilization activities during the offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the offered securities subscribed for during the offering period;

(iii) The amount of the offered securities subscribed for by the underwriter during the offering period;

(iv) The amount of the offered securities sold during the offering period by the underwriter and the price or price ranges at which the securities were sold; and

(v) The amount of the offered securities that will be reoffered to the public and the public offering price.

[47 FR 11401, Mar. 16, 1982, as amended at 58 FR 19606, Apr. 15, 1993; 62 FR 543, Jan. 3, 1997; 62 FR 11323, Mar. 12, 1997; 63 FR 6384, Feb. 6, 1998]

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

If (a) any expert named in the registration statement as having prepared or certified any part thereof (or is named as having prepared or certified a report or valuation for use in connection with the registration statement), or (b) counsel for the registrant, underwriters or selling security holders named in the prospectus as having given an opinion upon the validity of the securities being registered or upon other legal matters in connection with the registration or offering of such securities, was employed for such purpose on a contingent basis, or at the time of such preparation, certification or opinion or at any time thereafter, through the date of effectiveness of the registration statement or that part of the registration statement to which such preparation, certification or opinion relates, had, or is to receive in connection with the offering, a substantial interest, direct or indirect, in the registrant or any of its parents or subsidiaries or was connected with the registrant or any of its parents or subsidiaries as a promoter, managing underwriter (or any principal underwriter, if there are no managing underwriters) voting trustee, director, officer, or em-

ployee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

Instructions to Item 509: 1. The interest of an expert (other than an accountant) or counsel will not be deemed substantial and need not be disclosed if the interest, including the fair market value of all securities of the registrant owned, received and to be received, or subject to options, warrants or rights received or to be received by the expert or counsel does not exceed \$50,000. For the purpose of this Instruction, the term *expert* or counsel includes the firm, corporation, partnership or other entity, if any, by which such expert or counsel is employed or of which he is a member or of counsel to and all attorneys in the case of counsel, and all nonclerical personnel in the case of named experts, participating in such matter on behalf of such firm, corporation, partnership or entity.

2. Accountants, providing a report on the financial statements, presented or incorporated by reference in the registration statement, should note §210.2-01 of Regulation S-X (17 CFR 210) for the Commission's requirements regarding "Qualification of Accountants" which discusses disqualifying interests.

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

In addition to the disclosure prescribed by Item 702 of Regulation S-K (§229.702), if the undertaking required by paragraph (h) of Item 512 of Regulation S-K (§229.512) is not required to be included in the registration statement because acceleration of the effective date of the registration statement is not being requested, and if waivers have not been obtained comparable to those specified in paragraph (h), a brief description of the indemnification provisions relating to directors, officers and controlling persons of the registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the registrant against such liabilities where a director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter) shall be included in the prospectus, together with a statement in substantially the following form:

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Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

[47 FR 11401, Mar. 16, 1982, as amended at 56 FR 48103, Sept. 24, 1991]

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

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities to be registered, other than underwriting discounts and commissions. If any of the securities to be registered are to be offered for the account of security holders, indicate the portion of such expenses to be borne by such security holder.

Instruction to Item 511: Insofar as practicable, registration fees, Federal taxes, States taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, and legal, accounting, and engineering fees shall be itemized separately. Include as a separate item any premium paid by the registrant or any selling security holder on any policy obtained in connection with the offering and sale of the securities being registered which insures or indemnifies directors or officers against any liabilities they may incur in connection with the registration, offering, or sale of such securities. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, identified as such, shall be given.

§ 229.512 (Item 512) Undertakings.

Include each of the following undertakings that is applicable to the offering being registered.

(a) *Rule 415 Offering.*¹ Include the following if the securities are registered pursuant to Rule 415 under the Securities Act (§230.415 of this chapter):

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

¹Paragraph (a) reflects proposals made in Securities Act Release No. 6334 (Aug. 6, 1981).

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(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, That paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-3 (§239.13 of this chapter), Form S-8 (§239.16b of this chapter) or Form F-3 (§239.33 of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.