

## § 229.702

amount of expense. 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 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.

*Instructions.* 1. Information required by this Item 701 need not be set forth as to notes, drafts, bills of exchange, or bankers' acceptances which mature not later than one year from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given

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by such totals and periods as will reasonably convey the information required.

[47 FR 11401, Mar. 16, 1982, as amended at 61 FR 54508, Oct. 18, 1996; 62 FR 39762, July 24, 1997]

### § 229.702 (Item 702) Indemnification of directors and officers.

State the general effect of any statute, charter provisions, by-laws, contract or other arrangements under which any controlling persons, director or officer of the registrant is insured or indemnified in any manner against liability which he may incur in his capacity as such.

## Subpart 229.800—List of Industry Guides

### § 229.801 Securities Act industry guides.

(a) [Reserved]

(b) *Guide 2.* Disclosure of oil and gas operations.

(c) *Guide 3.* Statistical disclosure by bank holding companies.

(d) *Guide 4.* Prospectuses relating to interests in oil and gas programs.

(e) *Guide 5.* Preparation of registration statements relating to interests in real estate limited partnerships.

(f) *Guide 6.* Disclosures concerning unpaid claims and claim adjustment expenses of property-casualty insurance underwriters.

(g) *Guide 7.* Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations.

(Secs. 6, 7, 8, 10, 19(a) and Schedule A (25) and (26) (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77aa (25) and (26), Securities Act of 1933; secs. 12, 13, 14, 15(d) and 23(a) (15 U.S.C. 78(l), 78m, 78n, 78o(d), 78w, Securities Exchange Act of 1934)

[47 FR 11401, Mar. 16, 1982, and 49 FR 47600, Dec. 6, 1984, as amended at 57 FR 36466, Aug. 13, 1992; 61 FR 30401, June 14, 1996]

### § 229.802 Exchange Act industry guides.

(a) [Reserved]

(b) *Guide 2.* Disclosure of oil and gas operations.

(c) *Guide 3.* Statistical disclosure by bank holding companies.

(d) *Guide 4.* Disclosures concerning unpaid claims and claim adjustment expenses of property-casualty underwriters.

(e)-(f) [Reserved]

(g) *Guide 7. Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations.*

(Secs. 6, 7, 8, 10, 19(a) and Schedule A (25) and (26) (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77aa (25) and (26), Securities Act of 1933; secs. 12, 13, 14, 15(d) and 23(a) (15 U.S.C. 78(l), 78m, 78n, 78o(d), 78w, Securities Exchange Act of 1934)

[47 FR 11401, Mar. 16, 1982, as amended at 49 FR 47600, Dec. 6, 1984; 57 FR 36468, Aug. 13, 1992; 61 FR 30401, June 14, 1996]

### Subpart 229.900—Roll-Up Transactions

SOURCE: 56 FR 57247, Nov. 8, 1991, unless otherwise noted.

#### § 229.901 (Item 901) Definitions.

For the purposes of this subpart 229.900:

(a) *General partner* means the person or persons responsible under state law for managing or directing the management of the business and affairs of a partnership that is the subject of a roll-up transaction including, but not limited to, the general partner(s), board of directors, board of trustees, or other person(s) having a fiduciary duty to such partnership.

(b)(1) *Partnership* means any:

(i) Finite-life limited partnership; or

(ii) Other finite-life entity.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this Item (§ 229.901(b)(2)(ii)), a limited partnership or other entity is "finite-life" if:

(A) It operates as a conduit vehicle for investors to participate in the ownership of assets for a limited period of time; and

(B) It has as a policy or purpose distributing to investors proceeds from the sale, financing or refinancing of assets or cash from operations, rather than reinvesting such proceeds or cash in the business (whether for the term of the entity or after an initial period of time following commencement of operations).

(ii) A real estate investment trust as defined in I.R.C. section 856 is not *finite-life* solely because of the distribution to investors of net income as provided by the I.R.C. if its policies or purposes do not include the distribution to investors of proceeds from the sale, fi-

ancing or refinancing of assets, rather than the reinvestment of such proceeds in the business.

(3) *Partnership* does not include any entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or any Business Development Company as defined in section 2(a)(48) of that Act (15 U.S.C. 80a-2(a)(48)).

(c)(1) Except as provided in paragraph (c)(2) or (c)(3) of this Item, (§ 229.901(c)(2) or (c)(3)) *roll-up transaction* means a transaction involving the combination or reorganization of one or more partnerships, directly or indirectly, in which some or all of the investors in any of such partnerships will receive new securities, or securities in another entity.

(2) Notwithstanding paragraph (c)(1) of this Item, (§ 229.901(c)(1)) *roll-up transaction* shall not include:

(i) A transaction wherein the interests of all of the investors in each of the partnerships are repurchased, recalled, or exchanged in accordance with the terms of the preexisting partnership agreement for securities in an operating company specifically identified at the time of the formation of the original partnership;

(ii) A transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.);

(iii) A transaction that involves only issuers that are not required to register or report under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), both before and after the transaction;

(iv) A transaction that involves the combination or reorganization of one or more partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if:

(A) Such action is approved by not less than 66% of the outstanding units of each of the participating partnerships; and

(B) As a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the preexisting partnership agreements;

(v) A transaction in which the securities offered to investors are securities