

(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

of another entity that are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1), if:

(A) Such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

(B) The securities of that entity issued to investors in the transaction do not exceed 20% of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity; and

(C) For purposes of paragraph (c)(2)(v) of this Item (§229.901(c)(2)(v)), a *regularly traded security* means any security with a minimum closing price of \$2.00 or more for a majority of the business days during the preceding three-month period and a six-month minimum average daily trading volume of 1,000 shares;

(vi) A transaction in which all of the investors' partnership securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1) and such investors receive new securities or securities in another entity that are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1), except that, for purposes of this paragraph, securities that are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 shall not include securities listed on the American Stock Exchange's Emerging Company Marketplace;

(vii) A transaction in which the investors in any of the partnerships involved in the transaction are not subject to a significant adverse change with respect to voting rights, the terms of existence of the entity, management compensation or investment objectives; or

(viii) A transaction in which all investors are provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

(3) The Commission, upon written request or upon its own motion, may exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the definition of roll-up transaction or the requirements imposed on roll-up transactions by Items 902-915 of Regulation S-K (§§ 229.902-229.915), if it finds such action to be consistent with the public interest and the protection of investors.

(d) *Sponsor* means the person proposing the roll-up transaction.

(e) *Successor* means the surviving entity after completion of the roll-up transaction or the entity whose securities are being offered or sold to, or acquired by, limited partners of the partnerships or the limited partnerships to be combined or reorganized.

Instruction to Item 901. If a transaction is a roll-up transaction as defined in Item 901(c) of this subpart (§229.901(c)), the requirements of this subpart apply to each entity proposed to be included in the roll-up transaction, whether or not the entity is a "partnership" as defined in Item 901(b) of this subpart (§229.901(b)).

[56 FR 57247, Nov. 8, 1991, as amended at 59 FR 63682, Dec. 8, 1994]

§ 229.902 (Item 902) Individual partnership supplements.

(a) If two or more entities are proposed to be included in the roll-up transaction, provide the information specified in this Item (§229.902) in a separate supplement to the disclosure document for each entity.

(b) The separate supplement required by paragraph (a) of this Item (§229.902) shall be filed as part of the registration statement, shall be delivered with the prospectus to investors in the partnership covered thereby, and shall include:

(1) A statement in the forepart of the supplement to the effect that:

(i) Supplements have been prepared for each partnership;