

accounts, to such other person that carries such accounts on a fully disclosed basis.

(j) For purposes of paragraphs (d) through (h) of this section, a person is affiliated with another person if that person controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person.

(k) For purposes of paragraph (g) of this section, "interrogation device" shall refer to any device that may be used to read or receive securities information, including quotations, indications of interest, last sale data and transaction reports, and shall include proprietary terminals or personal computers that receive securities information via computer-to-computer interfaces or gateway access.

[47 FR 5222, Feb. 4, 1982, as amended at 51 FR 25362, July 14, 1986; 63 FR 35514, June 30, 1998]

**§ 240.0-11 Filing fees for certain acquisitions, dispositions and similar transactions.**

(a) *General.* (1) At the time of filing a disclosure document described in paragraphs (b) through (d) of this section relating to certain acquisitions, dispositions, business combinations, consolidations or similar transactions, the person filing the specified document shall pay a fee payable to the Commission to be calculated as set forth in paragraphs (b) through (d) of this section.

(2) Only one fee per transaction is required to be paid. A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to either section 6(b) of the Securities Act of 1933 or any applicable provision of this rule; the fee requirements under section 6(b) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this regulation. No part of a filing fee is refundable.

(3) If at any time after the initial payment the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

(4) When the fee is based upon the market value of securities, such market value shall be established by either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of the filing. If there is no market for the securities, the value shall be based upon the book value of the securities computed as of the latest practicable date prior to the date of the filing, unless the issuer of the securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of the securities shall be used.

(5) The cover page of the filing shall set forth the calculation of the fee in tabular format, as well as the amount offset by a previous filing and the identification of such filing, if applicable.

(b) *Section 13(e)(1) filings.* At the time of filing such statement as the Commission may require pursuant to section 13(e)(1) of the Exchange Act, a fee of one-fiftieth of one percent of the value of the securities proposed to be acquired by the acquiring person. The value of the securities proposed to be acquired shall be determined as follows:

(1) The value of the securities to be acquired solely for cash shall be the amount of cash to be paid for them:

(2) The value of the securities to be acquired with securities or other non-cash consideration, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(c) *Proxy and information statement filings.* At the time of filing a preliminary proxy statement pursuant to Rule 14a-

## § 240.0-12

## 17 CFR Ch. II (4-1-03 Edition)

6(a) or preliminary information statement pursuant to Rule 14c-5(a) that concerns a merger, consolidation, acquisition of a company, or proposed sale or other disposition of substantially all the assets of the registrant (including a liquidation), the following fee:

(1) For preliminary material involving a vote upon a merger, consolidation or acquisition of a company, a fee of one-fiftieth of one percent of the proposed cash payment or of the value of the securities and other property to be transferred to security holders in the transaction. The fee is payable whether the registrant is acquiring another company or being acquired.

(i) The value of securities or other property to be transferred to security holders, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(ii) Notwithstanding the above, where the acquisition, merger or consolidation is for the sole purpose of changing the registrant's domicile, no filing fee is required to be paid.

(2) For preliminary material involving a vote upon a proposed sale or other disposition of substantially all the assets of the registrant, a fee of one-fiftieth of one percent of the aggregate of the cash and the value of the securities (other than its own) and other property to be received by the registrant. In the case of a disposition in which the registrant will not receive any property, such as at liquidation or spin-off, the fee shall be one-fiftieth of one percent of the aggregate of the cash and the value of the securities and other property to be distributed to security holders.

(i) The value of the securities to be received (or distributed in the case of a spin-off or liquidation) shall be based upon the market value of such securities as established in accordance with paragraph (a)(4) of this section.

(ii) The value of other property shall be a bona fide estimate of the fair market value of such property.

(3) Where two or more companies are involved in the transaction, each shall

pay a proportionate share of such fee, determined by the persons involved.

(4) Notwithstanding the above, the fee required by this paragraph (c) shall not be payable for a proxy statement filed by a company registered under the Investment Company Act of 1940.

(d) *Schedule 14D-1 filings.* At the time of filing a Schedule 14D-1, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other property offered by the bidder. Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration to be offered for such securities shall be based upon the market value of the securities to be received by the bidder as established in accordance with paragraph (a)(4) of this section.

[51 FR 2476, Jan. 17, 1986, as amended at 58 FR 14682, Mar. 18, 1993; 61 FR 49959, Sept. 24, 1996]

### **§ 240.0-12 Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act.**

(a) The application shall be in writing in the form of a letter, must include any supporting documents necessary to make the application complete, and otherwise must comply with § 240.0-3. All applications must be submitted to the Office of the Secretary of the Commission. Requestors may seek confidential treatment of their applications to the extent provided under § 200.81 of this chapter. If an application is incomplete, the Commission, through the Division handling the application, may request that the application be withdrawn unless the applicant can justify, based on all the facts and circumstances, why supporting materials have not been submitted and undertakes to submit the omitted materials promptly.

(b) An applicant may submit a request electronically in standard electronic mail text or ASCII format. The electronic mailbox to use for these applications is described on the Commission's website at [www.sec.gov](http://www.sec.gov) in the