

§ 240.14a-14

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of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A registrant, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to § 240.14b-1(b)(3) or § 240.14b-2(b)(4)(ii) and (iii), provided that such registrant notifies the record holders and respondent banks, at the time it makes the inquiry required by paragraph (a) of this section, that the registrant will mail the annual report to security holders to the beneficial owners so identified.

(d) If a registrant solicits proxies, consents or authorizations from record holders and respondent banks who hold securities on behalf of beneficial owners, the registrant shall cause proxies (or in lieu thereof requests or voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

[51 FR 44276, Dec. 9, 1986; 52 FR 2220, Jan. 21, 1987, as amended at 52 FR 23648, June 24, 1987; 53 FR 16405, May 9, 1988; 57 FR 1099, Jan. 10, 1992]

§ 240.14a-14 Modified or superseded documents.

(a) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded, for purposes of the proxy statement, to the extent that a statement contained in the proxy statement or in any other subsequently filed document that also is or is deemed to be incorporated by reference modifies or replaces such statement.

(b) The modifying or superseding statement may, but need not, state it has modified or superseded a prior statement or include any other information set forth in the document that is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, con-

stituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Securities Act of 1933, the Securities Exchange Act of 1934 ("the Act"), the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

(c) Any statement so modified shall not be deemed in its unmodified form to constitute part of the proxy statement for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the proxy statement for purposes of the Act.

[52 FR 21936, June 10, 1987]

§ 240.14a-15 Differential and contingent compensation in connection with roll-up transactions.

(a) It shall be unlawful for any person to receive compensation for soliciting proxies, consents, or authorizations directly from security holders in connection with a roll-up transaction as provided in paragraph (b) of this section, if the compensation is:

(1) Based on whether the solicited proxy, consent, or authorization either approves or disapproves the proposed roll-up transaction; or

(2) Contingent on the approval, disapproval, or completion of the roll-up transaction.

(b) This section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S-K (§ 229.901(c) of this chapter), except for a transaction involving only:

(1) Finite-life entities that are not limited partnerships;

(2) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k-1); or

(3) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective