

Securities and Exchange Commission

§ 240.14c-1

owners whose names addresses and securities positions are disclosed pursuant to paragraphs (b)(4) (ii) and (iii) of this section.

(3) For the purposes of determining the fees which may be charged to registrants pursuant to §240.14a-13(b)(5), §240.14c-7(a)(5), and paragraph (c)(2) of this section for performing obligations under paragraphs (b)(2), (b)(3), and (b)(4) of this section, an amount no greater than that permitted to be charged by brokers or dealers for reimbursement of their reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2) and (b)(3) of §240.14b-1, shall be deemed to be reasonable.

(4) In its response pursuant to paragraph (b)(1)(ii)(A) of this section, a bank shall not include information about annual reports, proxy statements or information statements that will not be delivered to security holders sharing an address because of the bank's reliance on the procedures referred to in the Note to paragraph (b)(3) of this section.

[57 FR 1100, Jan. 10, 1992, as amended at 65 FR 65751, Nov. 2, 2000]

REGULATION 14C: DISTRIBUTION OF INFORMATION PURSUANT TO SECTION 14(C)

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§ 240.14c-1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

(a) *Associate*. The term "associate," used to indicate a relationship with any person, means:

(1) Any corporation or organization (other than the registrant or a majority owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and

(3) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(b) *Employee benefit plan*. For purposes of §240.14c-7, the term "employee benefit plan" means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan primarily for employees, directors, trustees or officers.

(c) *Entity that exercises fiduciary powers*. The term "entity that exercises fiduciary powers" means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act, or a broker or a dealer.

(d) *Exempt employee benefit plan securities*. For purposes of §240.14c-7, the term "exempt employee benefit plan securities" means:

(1) Securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the registrant; or

(2) If notice regarding the current distribution of information statements has been given pursuant to §240.14c-7(a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to §240.14c-7(b)(3), securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the registrant.

(e) *Information statement*. The term "information statement" means the

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statement required by §240.14c-2, whether or not contained in a single document.

(f) *Last fiscal year.* The term “last fiscal year” of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting with respect to which an information statement is required to be distributed, or if the information statement involves consents or authorizations in lieu of a meeting, the earliest date on which they may be used to effect corporate action.

(g) *Proxy.* The term “proxy” includes every proxy, consent or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(h) *Record date.* The term “record date” means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(i) *Record holder.* For purposes of §240.14c-7, the term “record holder” means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(j) *Registrant.* The term “registrant” means:

(1) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(2) An investment company registered under the Investment Company Act of 1940 that has made a public offering of its securities.

(k) *Respondent bank.* For purposes of §240.14c-7, the term “respondent bank” means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

[51 FR 44279, Dec. 9, 1986, as amended at 52 FR 23649, June 24, 1987; 53 FR 16406, May 9, 1988; 57 FR 1101, Jan. 10, 1992]

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§ 240.14c-2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of the class of securities registered pursuant to section 12 of the Act or of a class of securities issued by an investment company registered under the Investment Company Act of 1940 that has made a public offering of securities, including the taking of corporate action by the written authorization or consent of security holders, the registrant shall transmit a written information statement containing the information specified in Schedule 14C (§240.14c-101) or written information statements included in registration statements filed under the Securities Act of 1933 on Form S-4 or F-4 (§239.25 or §239.34 of this chapter) or Form N-14 (§239.23 of this chapter), and containing the information specified in such form, to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom proxy authorization or consent is not solicited on behalf of the registrant pursuant to Section 14(a) of the Act, *Provided however, That:*

(1) In the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the registrant, and

(2) No such statements need to be transmitted to a security holder if a registrant would be excused from delivery of an annual report or a proxy statement under Rule 14a-3(e)(2) (§240.14a-3(e)(2)) if such section were applicable.

(b) The information statement shall be sent or given at least 20 calendar days prior to the meeting date or, in the case of corporate action taken pursuant to the consents or authorizations of security holders, at least 20 calendar days prior to the earliest date on which the corporate action may be taken.

(c) If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34), the information statement must be distributed to