

## § 240.14c-2

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]

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

### § 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

security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

[51 FR 42070, Nov. 20, 1986, as amended at 56 FR 57254, Nov. 8, 1991; 57 FR 1102, Jan. 10, 1992; 57 FR 48295, Oct. 22, 1992]

**§ 240.14c-3 Annual report to be furnished security holders.**

(a) If the information statement relates to an annual (or special meeting in lieu of the annual) meeting, or written consent in lieu of such meeting, of security holders at which directors of the registrant, other than an investment company registered under the Investment Company Act of 1940, are to be elected, it shall be accompanied or preceded by an annual report to security holders:

(1) The annual report shall contain the information specified in paragraphs (b)(1) through (b)(11) of Rule 14a-3 (§ 240.14a-3 of this chapter.)

(2) [Reserved]

NOTE TO SMALL BUSINESS ISSUERS —In responding to the disclosure items under paragraph (b) of Rule 14a-3, (§ 240.14a-3 of this chapter) a “small business issuer,” defined under Rule 12b-2 of the Exchange Act (§ 240.12b-2), shall refer to the disclosure items in Regulation S-B (§ 228.10—702 of this chapter) rather than Regulation S-K (§ 229.10—702 of this chapter). If there is no comparable disclosure item in Regulation S-B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S-B in lieu of the financial information required by Rule 14a-3(b)(1) (§ 240.14a-3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10-KSB (§ 249.310b of this chapter) need not provide the information required by paragraph (b) of Rule 14a-3. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10-KSB. The inclusion of additional information, including information required of non-transitional small business issuers, in the annual report to security holders will not cause the issuer to be ineligible for the transitional disclosure forms.

(b) Seven copies of the report sent to security holders pursuant to this rule

shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies, or definitive copies, if preliminary filing was not required, of the information statement are filed with the Commission pursuant to Rule 14c-5, whichever date is later. The report is not deemed to be “filed” with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the information statement or incorporates it in the information statement or other filed report by reference.

(c) A registrant will be considered to have delivered an annual report or information statement to security holders of record who share an address if the requirements set forth in § 240.14a-3(e)(1) are satisfied with respect to the annual report or information statement, as applicable.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 121, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78l(d), 78w(a))

[39 FR 40770, Nov. 20, 1974, as amended at 45 FR 63647, Sept. 25, 1980; 51 FR 42071, Nov. 20, 1986; 52 FR 48984, Dec. 29, 1987; 58 FR 26519, May 4, 1993; 59 FR 52700, Oct. 19, 1994; 59 FR 67765, Dec. 30, 1994; 64 FR 62547, Nov. 16, 1999; 65 FR 65751, Nov. 2, 2000]

**§ 240.14c-4 Presentation of information in information statement.**

(a) The information included in the information statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items and sub-items in the schedule need not be followed. Where practicable and appropriate, the information shall be presented in tabular form.