

procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(c) Any information contained in any other proxy soliciting material which has been furnished to each person solicited in connection with the same meeting or subject matter may be omitted from the proxy statement, if a clear reference is made to the particular document containing such information.

(d)(1) All printed proxy statements shall be in roman type at least as large and as legible as 10-point modern type, except that to the extent necessary for convenient presentation financial statements and other tabular data, but not the notes thereto, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(2) Where a proxy statement is delivered through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by presenting all required information in a format readily communicated to investors.

(e) All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the registrant for inclusion in the registrant's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of rule 14a-8(a)(3)(i). If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform security holders of such change, and the date by which proposals of security holders must be received, by any

means reasonably calculated to so inform them.

(Secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78, Stat. 565-568, 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455, secs. 28(c), 1, 2, 3-5, 84 Stat. 1435, 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; sec. 204, 91 Stat. 1500; 15 U.S.C. 78l, 78m, 78n, 78o(d), 78w(a))

[17 FR 11432, Dec. 18, 1952, as amended at 36 FR 8935, May 15, 1971; 37 FR 23179, Oct. 31, 1972; 44 FR 68770, Nov. 29, 1979; 51 FR 42061, Nov. 20, 1986; 61 FR 24656, May 15, 1996]

§ 240.14a-6 Filing requirements.

(a) *Preliminary proxy statement.* Five preliminary copies of the proxy statement and form of proxy shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause thereunder. A registrant, however, shall not file with the Commission a preliminary proxy statement, form of proxy or other soliciting material to be furnished to security holders concurrently therewith if the solicitation relates to an annual (or special meeting in lieu of the annual) meeting, or for an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) or a business development company, if the solicitation relates to any meeting of security holders at which the only matters to be acted upon are:

- (1) The election of directors;
- (2) The election, approval or ratification of accountant(s);
- (3) A security holder proposal included pursuant to Rule 14a-8 (§ 240.14a-8 of this chapter);
- (4) The approval or ratification of a plan as defined in paragraph (a)(7)(ii) of Item 402 of Regulation S-K (§ 229.402(a)(7)(ii) of this chapter) or amendments to such a plan;

(5) With respect to an investment company registered under the Investment Company Act of 1940 or a business development company, a proposal to continue, without change, any advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission pursuant to this section; and/or

(6) With respect to an open-end investment company registered under the Investment Company Act of 1940, a proposal to increase the number of shares authorized to be issued.

This exclusion from filing preliminary proxy material does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its proxy material.

NOTE 1: The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

NOTE 2: The official responsible for the preparation of the proxy material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the Commission at the earliest practicable date.

NOTE 3: Solicitation in Opposition. For purposes of the exclusion from filing preliminary proxy material, a "solicitation in opposition" includes: (a) Any solicitation opposing a proposal supported by the registrant; and (b) any solicitation supporting a proposal that the registrant does not expressly support, other than a security holder proposal included in the registrant's proxy material pursuant to Rule 14a-8 (§240.14a-8 of this chapter). The inclusion of a security holder proposal in the registrant's proxy material pursuant to Rule 14a-8 does not constitute a "solicitation in opposition," even if the registrant opposes the proposal and/or includes a statement in opposition to the proposal.

NOTE 4: A registrant that is filing proxy material in preliminary form only because the registrant has commented on or referred to a solicitation in opposition should indicate that fact in a transmittal letter when filing the preliminary material with the Commission.

(b) *Definitive proxy statement and other soliciting materials.* Eight definitive copies of the proxy statement, form of

proxy and all other soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

NOTE: A registrant that is filing definitive proxy material without payment of a fee should state in the first paragraph of the transmittal letter that no fee is being paid because a fee was paid upon filing of preliminary proxy material.

(c) *Personal solicitation materials.* If the solicitation is to be made in whole or in part by personal solicitation, eight copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the persons making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with, or mailed for filing to, the Commission by the person on whose behalf the solicitation is made not later than the date any such material is first sent or given to such individuals.

(d) *Release dates.* All preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material were released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies thereof were released to the individual who will make the actual solicitation or if not released, the date on which copies thereof are intended to be released.

(e)(1) *Public availability of information.* All copies of preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary Copies," and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (e)(2) of this section.

(2) *Confidential treatment.* If action is to be taken with respect to any matter specified in Item 14 of Schedule 14A (§240.14a-101), all copies of the preliminary proxy statement and form of proxy filed pursuant to paragraph (a) of this section shall be for the information of the Commission only and shall not be deemed available for public inspection until filed with the Commission in definitive form, provided that:

(i) The proxy statement does not relate to a matter or proposal subject to §240.13e-3 or a roll-up transaction as defined in Item 901(c) of Regulation S-K (§229.901(c) of this chapter); and

(ii) The filed material is marked "Confidential, For Use of the Commission Only." In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

(f) *Communications not required to be filed.* Copies of replies to inquiries from security holders requesting further information and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this section.

(g) *Solicitations subject to §240.14a-2(b)(1).* (1) Any person who:

(i) Engages in a solicitation pursuant to §240.14a-2(b)(1), and

(ii) At the commencement of that solicitation owns beneficially securities of the class which is the subject of the solicitation with a market value of over \$5 million,

shall furnish or mail to the Commission, not later than three days after the date the written solicitation is first sent or given to any security holder, five copies of a statement contain-

ing the information specified in the Notice of Exempt Solicitation (§240.14a-103) which statement shall attach as an exhibit all written soliciting materials. Five copies of an amendment to such statement shall be furnished or mailed to the Commission, in connection with dissemination of any additional communications, not later than three days after the date the additional material is first sent or given to any security holder. Three copies of the Notice of Exempt Solicitation and amendments thereto shall, at the same time the materials are furnished or mailed to the Commission, be furnished or mailed to each national securities exchange upon which any class of securities of the registrant is listed and registered.

(2) Notwithstanding paragraph (g)(1) of this section, no such submission need be made with respect to oral solicitations (other than with respect to scripts used in connection with such oral solicitations), speeches delivered in a public forum, press releases, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, or a newspaper, magazine or other bona fide publication disseminated on a regular basis.

(h) *Revised material.* Where any proxy statement, form of proxy or other material filed pursuant to this section is amended or revised, two of the copies of such amended or revised material filed pursuant to this section (or in the case of investment companies registered under the Investment Company Act of 1940, three of such copies) shall be marked to indicate clearly and precisely the changes effected therein. If the amendment or revision alters the text of the material the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(i) *Fees.* At the time of filing the proxy solicitation material, the persons upon whose behalf the solicitation is made, other than investment companies registered under the Investment Company Act of 1940, shall pay to the Commission the following applicable fee:

(1) For preliminary proxy material involving acquisitions, mergers, spin-offs, consolidations or proposed sales or

other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0-11 (§240.0-11 of this chapter) shall be paid. No refund shall be given.

(2) For all other proxy submissions and submissions made pursuant to §240.14a-6(g), no fee shall be required.

(j) *Merger proxies.* Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form N-14, S-4 or F-4 (§239.23, §239.25 or §239.34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form N-14, S-4 or F-4 shall be filed in accordance with this section unless separate copies of such material are required to be filed as an amendment of such registration statement.

(k) *Computing time periods.* In computing time periods beginning with the filing date specified in Regulation 14A (§§240.14a-1 to 240.14b-1 of this chapter), the filing date shall be counted as the first day of the time period and midnight of the last day shall constitute the end of the specified time period.

(l) *Roll-up transactions.* 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 proxy statement of the sponsor or the general partner as defined in Item 901(d) and Item 901(a), respectively, of Regulation S-K (17 CFR 229.901) 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.

(m) *Cover page.* Proxy materials filed with the Commission shall include a cover page in the form set forth in Schedule 14A (§240.14a-101 of this chap-

ter). The cover page required by this paragraph need not be distributed to security holders.

(n) *Solicitations subject to §240.14a-2(b)(4).* Any person who:

(1) Engages in a solicitation pursuant to §240.14a-2(b)(4); and

(2) At the commencement of that solicitation both owns five percent (5%) or more of the outstanding securities of a class that is the subject of the proposed roll-up transaction, and engages in the business of buying and selling limited partnership interests in the secondary market, shall furnish or mail to the Commission, not later than three days after the date an oral or written solicitation by that person is first made, sent or provided to any security holder, five copies of a statement containing the information specified in the Notice of Exempt Preliminary Roll-up Communication (§240.14a-104). Five copies of any amendment to such statement shall be furnished or mailed to the Commission not later than three days after a communication containing revised material is first made, sent or provided to any security holder.

[17 FR 11432, Dec. 18, 1952]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §240.14a-6, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§240.14a-7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders.

(a) If the registrant has made or intends to make a proxy solicitation in connection with a security holder meeting or action by consent or authorization, upon the written request by any record or beneficial holder of securities of the class entitled to vote at the meeting or to execute a consent or authorization to provide a list of security holders or to mail the requesting security holder's materials, regardless of whether the request references this section, the registrant shall:

(1) Deliver to the requesting security holder within five business days after receipt of the request:

(i) Notification as to whether the registrant has elected to mail the security holder's soliciting materials or provide a security holder list if the election