

**Securities and Exchange Commission****§ 228.502**

or accuracy of the prospectus. Any representation to the contrary is a criminal offense.

*Example B:* Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(8) If you are not a reporting company and the preliminary prospectus will be circulated, as applicable:

(i) A bona fide estimate of the range of the maximum offering price and maximum number of shares or units offered; or

(ii) A bona fide estimate of the principal amount of debt securities offered;

(9)(i) Name(s) of the lead or managing underwriter(s) and an identification of the nature of the underwriting arrangements;

(ii) If the offering is not made on a firm commitment basis, a brief description of the underwriting arrangements;

(iii) If you offer the securities on a best efforts or best efforts minimum/maximum basis, the date the offering will end, any minimum purchase requirements, and whether or not there are any arrangements to place the funds in an escrow, trust, or similar account; and

(iv) If you offer the securities for cash, the price to the public for the securities, the underwriting discounts and commissions, and proceeds to the registrant or other persons. Show the information on both a per share or unit basis and for the total amount of the offering. If you make the offering on a minimum/maximum basis, show this information based on the total minimum and total maximum amount of the offering. You may present the information in a table, term sheet format, or other clear presentation. You may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading;

(10) If the prospectus will be used before the effective date of the registration statement, a prominent statement that:

(i) The information in the prospectus will be amended or completed;

(ii) A registration statement relating to these securities has been filed with

the Securities and Exchange Commission;

(iii) The securities may not be sold until the registration statement becomes effective; and

(iv) The prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted. You may use the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(11) If you use § 230.430A of this chapter to omit pricing information and the prospectus is used before you determine the public offering price, the information in paragraph (a)(10) of this section; and

(12) The date of the prospectus.

(b) [Reserved]

[63 FR 6379, Feb. 6, 1998]

**§ 228.502 (Item 502) Inside front and outside back cover pages of prospectus.**

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Table of contents.* On either the inside front or outside back cover page of the prospectus, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include a specific listing of the risk factors section required by Item 503 of this Regulation D-B (17 CFR 228.503). You must include the table of contents immediately following the cover page in any prospectus you deliver electronically;

(b) *Dealer prospectus delivery obligation.* If applicable to your offering, on the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. You

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may use the following or other clear, plain language:

### DEALER PROSPECTUS DELIVERY OBLIGATION

Until (insert date), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

[63 FR 6380, Feb. 6, 1998]

### § 228.503 (Item 503) Summary information and risk factors.

The small business issuer must furnish the following information in plain English. See §230.421(d) of Regulation C of this chapter.

(a) *Summary.* Provide a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful. The summary should be brief. The summary should not contain, and is not required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a summary, you still must provide that information in plain English.

*Instruction to paragraph 503(a):* The summary should not merely repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Carefully consider and identify those aspects of the offering that are the most significant and determine how best to highlight those points in clear, plain language.

(b) *Address and phone number.* Include, either on the cover page or in the summary section of the prospectus, the complete mailing address and telephone number of your principal executive offices.

(c) *Risk factors.* (1) Discuss in a section captioned "Risk Factors" any factors that make the offering speculative or risky. The factors may include, among other things, the following:

- (i) Your lack of an operating history;
- (ii) Your lack of recent profits from operations;
- (iii) Your poor financial position;
- (iv) Your business or proposed business; or
- (v) The lack of a market for your common equity securities.

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(2) The risk factor discussion must immediately follow the summary section. If you do not include a summary section, the risk factor discussion must immediately follow the cover page or the pricing information that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on §230.430A(a) of this chapter.

[63 FR 6380, Feb. 6, 1998]

### § 228.504 (Item 504) Use of Proceeds.

State how the net proceeds of the offering will be used, indicating the amount to be used for each purpose and the priority of each purpose, if all of the securities are not sold. If all or a substantial part of the proceeds are not allocated for a specific purpose, so state and discuss the principal reasons for the offering.

*Instructions to Item 504:* 1. If a material amount of proceeds will discharge debt, state the interest rate and maturity. If that debt was incurred within one year, describe the use of the proceeds of that debt other than short-term borrowings used for working capital.

2. If any material amount of the proceeds is to be used to acquire assets or finance the acquisitions of other businesses, describe the assets or businesses and identify the persons from whom they will be bought. State the cost of the assets and, where such assets are to be acquired from affiliates of the small business issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the small business issuer.

### § 228.505 (Item 505) Determination of Offering Price.

(a) If there is no established public market for the common equity being registered or if there is a significant difference between the offering price and the market price of the stock, give the factors that were considered in determining the offering price.

(b) If warrants, rights and convertible securities are being registered and there is no public market for the underlying securities, describe the factors considered in determining the exercise or conversion price.