

## Securities and Exchange Commission

## § 228.512

### § 228.510 (Item 510) Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Describe the indemnification provisions for directors, officers and controlling persons of the small business issuer against liability under the Securities Act. This includes any provision in the underwriting agreement which indemnifies the underwriter or its controlling persons against such liabilities where a director, officer or controlling person of the small business issuer is such an underwriter or controlling person or a member of any firm which is such an underwriter. In addition, provide the undertaking in the first sentence of Item 512(e).

### § 228.511 (Item 511) Other Expenses of Issuance and Distribution.

(a) Give an itemized statement of all expenses of the offering, other than underwriting discounts and commissions. If any of the securities are registered for sale by security holders, state how much of the expenses the security holders will pay.

(1) The itemized list should generally include registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, legal, accounting, and engineering fees and any listing fees.

(2) Include as a separate item any premium paid by the small business issuer or any selling security holder on any policy to insure or indemnify directors or officers against any liabilities they may incur in the registration, offering, or sale of these securities.

(b) [Reserved]

*Instruction to Item 511:* 1. If the amounts of any items are not known, give estimates but identify them as such.

### § 228.512 (Item 512) Undertakings.

Include each of the following undertakings that apply to the offering.

(a) *Rule 415 Offering.* If the small business issuer is registering securities under Rule 415 of the Securities Act (§230.415 of this chapter), that the small business issuer will:

(1) File, during any period in which it offers or sells securities, a post-effective amendment to this registration statement to:

(i) Include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) Reflect in the prospectus any facts or events which, individually or together, represent a fundamental change in the information in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) Include any additional or changed material information on the plan of distribution.

NOTES TO PARAGRAPH (a)(1): 1. Small business issuers do not need to give the statements in paragraphs (a)(1)(i) and (a)(1)(ii) of this Item if the registration statement is on Form S-8 (§239.16b of this chapter), and the information required in a post-effective amendment is incorporated by reference from periodic reports filed by the small business issuer under the Exchange Act; and

2. Small business issuers do not need to give the statements in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this Item if the registration statement is on Form S-3 (§239.13 of this chapter) and the information required in a post-effective amendment is incorporated by reference from periodic reports filed by the small business issuer under the Exchange Act, or is contained in a form of prospectus filed pursuant to Rule 424(b) (§230.424(b) of this chapter) that is deemed part of and included in the registration statement.

(2) For determining liability under the Securities Act, treat each post-effective amendment as a new registration statement of the securities offered, and the offering of the securities at that time to be the initial bona fide offering.

(3) File a post-effective amendment to remove from registration any of the securities that remain unsold at the end of the offering.