

Instructions to paragraph (b) of Item 303: 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to this paragraph (b) and the discussion of the full fiscal year's information shall be prepared pursuant to paragraph (a) of this Item. Such discussions may be combined.

2. In preparing the discussion and analysis required by this paragraph (b), the registrant may presume that users of the interim financial information have read or have access to the discussion and analysis required by paragraph (a) for the preceding fiscal year.

3. The discussion and analysis required by this paragraph (b) is required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes shall be described if they have not already been disclosed: *Provided, however,* That if the causes for a change in one line item also relate to other line items, no repetition is required. Registrants need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the financial statements. The information provided shall include that which is available to the registrant without undue effort or expense and which does not clearly appear in the registrant's condensed interim financial statements.

4. The registrant's discussion of material changes in results of operations shall identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business.

5. The registrant shall discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operation.

6. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Rule 175 under the Securities Act [17 CFR 230.175], Rule 3b-6 under the Exchange Act [17 CFR 249.3b-6] and Securities Act Release No. 6084 (June 25, 1979) (44 FR 38810).

7. The registrant is not required to include the table required by paragraph (a)(5) of this Item for interim periods. Instead, the registrant should disclose material changes outside the ordinary course of the registrant's business in the specified contractual obligations during the interim period.

(c) *Safe harbor.* (1) The safe harbor provided in section 27A of the Securities Act of 1933 (15 U.S.C. 77z-2) and section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u-5) ("statutory

safe harbors") shall apply to forward-looking information provided pursuant to paragraphs (a)(4) and (5) of this Item, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (c) of this Item only:

(i) All information required by paragraphs (a)(4) and (5) of this Item is deemed to be a *forward looking statement* as that term is defined in the statutory safe harbors, except for historical facts.

(ii) With respect to paragraph (a)(4) of this Item, the meaningful cautionary statements element of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same paragraph (a)(4) of this Item.

(d) *Smaller reporting companies.* A smaller reporting company, as defined by §229.10(f)(1), may provide the information required in paragraph (a)(3)(iv) of this Item for the last two most recent fiscal years of the registrant if it provides financial information on net sales and revenues and on income from continuing operations for only two years. A smaller reporting company is not required to provide the information required by paragraph (a)(5) of this Item.

[47 FR 11401, Mar. 16, 1982, as amended at 47 FR 29839, July 9, 1982; 47 FR 54768, Dec. 6, 1982; 52 FR 30919, Aug. 18, 1987; 68 FR 5999, Feb. 5, 2003; 73 FR 958, Jan. 4, 2008]

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a)(1) If during the registrant's two most recent fiscal years or any subsequent interim period, an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant who was previously engaged to audit a significant subsidiary and on whom the

principal accountant expressed reliance in its report, has resigned (or indicated it has declined to stand for reelection after the completion of the current audit) or was dismissed, then the registrant shall:

(i) State whether the former accountant resigned, declined to stand for reelection or was dismissed and the date thereof.

(ii) State whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles; and also describe the nature of each such adverse opinion, disclaimer of opinion, modification, or qualification.

(iii) State whether the decision to change accountants was recommended or approved by:

(A) Any audit or similar committee of the board of directors, if the issuer has such a committee; or

(B) The board of directors, if the issuer has no such committee.

(iv) State whether during the registrant's two most recent fiscal years and any subsequent interim period preceding such resignation, declination or dismissal there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of the former accountant, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report. Also, (A) describe each such disagreement; (B) state whether any audit or similar committee of the board of directors, or the board of directors, discussed the subject matter of each of such disagreements with the former accountant; and (C) state whether the registrant has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each of such disagreements and, if not, describe the nature of any limitation thereon and the reason therefore. The disagreements required to be reported in response to this Item include both those resolved to the former

accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Item are those that occur at the decision-making level, *i.e.*, between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(v) Provide the information required by paragraph (a)(1)(iv) of this Item for each of the kinds of events (even though the registrant and the former accountant did not express a difference of opinion regarding the event) listed in paragraphs (a)(1)(v) (A) through (D) of this section, that occurred within the registrant's two most recent fiscal years and any subsequent interim period preceding the former accountant's resignation, declination to stand for reelection, or dismissal ("reportable events"). If the event led to a disagreement or difference of opinion, then the event should be reported as a disagreement under paragraph (a)(1)(iv) and need not be repeated under this paragraph.

(A) The accountant's having advised the registrant that the internal controls necessary for the registrant to develop reliable financial statements do not exist;

(B) The accountant's having advised the registrant that information has come to the accountant's attention that has led it to no longer be able to rely on management's representations, or that has made it unwilling to be associated with the financial statements prepared by management;

(C) (1) The accountant's having advised the registrant of the need to expand significantly the scope of its audit, or that information has come to the accountant's attention during the time period covered by Item 304(a)(1)(iv), that if further investigated may:

(i) Materially impact the fairness or reliability of either: a previously issued audit report or the underlying financial statements; or the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report

(including information that may prevent it from rendering an unqualified audit report on those financial statements), or

(ii) Cause it to be unwilling to rely on management's representations or be associated with the registrant's financial statements, and

(2) Due to the accountant's resignation (due to audit scope limitations or otherwise) or dismissal, or for any other reason, the accountant did not so expand the scope of its audit or conduct such further investigation; or

(D)(1) The accountant's having advised the registrant that information has come to the accountant's attention that it has concluded materially impacts the fairness or reliability of either (i) a previously issued audit report or the underlying financial statements, or (ii) the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that, unless resolved to the accountant's satisfaction, would prevent it from rendering an unqualified audit report on those financial statements), and

(2) Due to the accountant's resignation, dismissal or declination to stand for re-election, or for any other reason, the issue has not been resolved to the accountant's satisfaction prior to its resignation, dismissal or declination to stand for re-election.

(2) If during the registrant's two most recent fiscal years or any subsequent interim period, a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements, or as an independent accountant to audit a significant subsidiary and on whom the principal accountant is expected to express reliance in its report, then the registrant shall identify the newly engaged accountant and indicate the date of such accountant's engagement. In addition, if during the registrant's two most recent fiscal years, and any subsequent interim period prior to engaging that accountant, the registrant (or someone on its behalf) consulted the newly engaged accountant regarding:

(i) Either: The application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the registrant's financial statements, and either a written report was provided to the registrant or oral advice was provided that the new accountant concluded was an important factor considered by the registrant in reaching a decision as to the accounting, auditing or financial reporting issue; or

(ii) Any matter that was either the subject of a disagreement (as defined in paragraph 304(a)(1)(iv) and the related instructions to this item) or a reportable event (as described in paragraph 304(a)(1)(v)), then the registrant shall:

(A) So state and identify the issues that were the subjects of those consultations;

(B) Briefly describe the views of the newly engaged accountant as expressed orally or in writing to the registrant on each such issue and, if written views were received by the registrant, file them as an exhibit to the report or registration statement requiring compliance with this Item 304(a);

(C) State whether the former accountant was consulted by the registrant regarding any such issues, and if so, provide a summary of the former accountant's views; and

(D) Request the newly engaged accountant to review the disclosure required by this Item 304(a) before it is filed with the Commission and provide the new accountant the opportunity to furnish the registrant with a letter addressed to the Commission containing any new information, clarification of the registrant's expression of its views, or the respects in which it does not agree with the statements made by the registrant in response to Item 304(a). The registrant shall file any such letter as an exhibit to the report or registration statement containing the disclosure required by this Item.

(3) The registrant shall provide the former accountant with a copy of the disclosures it is making in response to this Item 304(a) that the former accountant shall receive no later than the day that the disclosures are filed with the Commission. The registrant shall request the former accountant to

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furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the report on registration statement containing this disclosure. If the former accountant's letter is unavailable at the time of filing such report or registration statement, then the registrant shall request the former accountant to provide the letter as promptly as possible so that the registrant can file the letter with the Commission within ten business days after the filing of the report or registration statement. Notwithstanding the ten business day period, the registrant shall file the letter by amendment within two business days of receipt; if the letter is received on a Saturday, Sunday or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and shall include the first business day thereafter. The former accountant may provide the registrant with an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming within the ten business day period noted above. If not filed with the report or registration statement containing the registrant's disclosure under this Item 304(a), then the interim letter, if any, shall be filed by the registrant by amendment within two business days of receipt.

(b) If: (1) In connection with a change in accountants subject to paragraph (a) of this Item 304, there was any disagreement of the type described in paragraph (a)(1)(iv) or any reportable event as described in paragraph (a)(1)(v) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the subsequent fiscal year, there have been any transactions or events similar to those which involved such disagreement or reportable event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants appar-

ently would have concluded was required, the registrant shall state the existence and nature of the disagreement or reportable event and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required.

These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

Instructions to Item 304: 1. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported as that term is defined in Rule 12b-2 under the Exchange Act (§240.12b-2 of this chapter); the disclosure called for by paragraph (a) must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A (§240.14a-101 of this chapter). The disclosure called for by paragraph (b) of this section must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this section in an annual report to security holders pursuant to Rule 14a-3 (§240.14a-3 of this chapter) or Rule 14c-3 (§240.14c-3 of this chapter), or in a proxy or information statement filed pursuant to the requirements of Schedule 14A or 14C (§240.14a-101 or §240.14c-101 of this chapter), in lieu of a letter pursuant to paragraph (a)(2)(D) or (a)(3), prior to filing such materials with or furnishing such materials to the Commission, the registrant shall furnish the disclosure required by paragraph (a) of this section to any former accountant engaged by the registrant during the period set forth in paragraph (a) of this section and to the newly engaged accountant. If any such accountant believes that the statements made in response to paragraph (a) of this section are incorrect or incomplete, it may present its views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the registrant within ten business days of the date the accountant receives the registrant's disclosure. Further, unless the written views of the newly engaged accountant required to be filed as an exhibit by paragraph (a)(2)(B) of this Item 304 have been previously filed with the Commission the registrant shall file a Form 8-K concurrently with the annual report or proxy or information statement for the purpose of filing the written views as exhibits thereto.

3. The information required by Item 304(a) need not be provided for a company being acquired by the registrant that is not subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 for its latest fiscal year.

4. The term "disagreements" as used in this Item shall be interpreted broadly, to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion. For purposes of this Item, however, the term disagreements does not include initial differences of opinion based on incomplete facts or preliminary information that were later resolved to the former accountant's satisfaction by, and providing the registrant and the accountant do not continue to have a difference of opinion upon, obtaining additional relevant facts or information.

5. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or their designee) will generally suffice as the accountant advising the registrant of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

[53 FR 12929, Apr. 20, 1988, as amended at 54 FR 9774, Mar. 8, 1989]

§ 229.305 (Item 305) Quantitative and qualitative disclosures about market risk.

(a) *Quantitative information about market risk.* (1) Registrants shall provide, in their reporting currency, quantitative information about market risk as of the end of the latest fiscal year, in accordance with one of the following three disclosure alternatives. In preparing this quantitative information, registrants shall categorize market risk sensitive instruments into instruments entered into for trading purposes and instruments entered into for purposes other than trading purposes. Within both the trading and other than trading portfolios, separate quantitative information shall be presented,

to the extent material, for each market risk exposure category (*i.e.*, interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk). A registrant may use one of the three alternatives set forth in this section for all of the required quantitative disclosures about market risk. A registrant also may choose, from among the three alternatives, one disclosure alternative for market risk sensitive instruments entered into for trading purposes and another disclosure alternative for market risk sensitive instruments entered into for other than trading purposes. Alternatively, a registrant may choose any disclosure alternative, from among the three alternatives, for each risk exposure category within the trading and other than trading portfolios. The three disclosure alternatives are:

(i)(A)(I) Tabular presentation of information related to market risk sensitive instruments; such information shall include fair values of the market risk sensitive instruments and contract terms sufficient to determine future cash flows from those instruments, categorized by expected maturity dates.

(2) Tabular information relating to contract terms shall allow readers of the table to determine expected cash flows from the market risk sensitive instruments for each of the next five years. Comparable tabular information for any remaining years shall be displayed as an aggregate amount.

(3) Within each risk exposure category, the market risk sensitive instruments shall be grouped based on common characteristics. Within the foreign currency exchange rate risk category, the market risk sensitive instruments shall be grouped by functional currency and within the commodity price risk category, the market risk sensitive instruments shall be grouped by type of commodity.

(4) See the Appendix to this Item for a suggested format for presentation of this information; and

(B) Registrants shall provide a description of the contents of the table and any related assumptions necessary to understand the disclosures required