

## Securities and Exchange Commission

## § 240.14c-7

(f) *Merger material.* Notwithstanding the foregoing provisions of this section, any information statement or other 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 (a) of this section. However, any additional 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.

(g) *Fees.* At the time of filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee, no part of which shall be refunded, established in accordance with § 240.0-11.

(h) *Cover page.* Each information statement filed with the Commission shall include a cover page in the form set forth in Schedule 14C (§ 240.14c-101). The cover page required by this paragraph need not be distributed to security holders.

[51 FR 42071, Nov. 20, 1986, as amended at 52 FR 48984, Dec. 29, 1987; 57 FR 48295, Oct. 22, 1992; 58 FR 14684, Mar. 18, 1993; 58 FR 69226, Dec. 30, 1993; 59 FR 67765, Dec. 30, 1994; 61 FR 49960, Sept. 24, 1996; 64 FR 61459, Nov. 10, 1999; 71 FR 53263, Sept. 8, 2006; 72 FR 4172, Jan. 29, 2007]

### § 240.14c-6 False or misleading statements.

(a) No information statement shall contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the same

meeting or subject matter which has become false or misleading.

(b) The fact that an information statement has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

[31 FR 262, Jan. 8, 1966]

### § 240.14c-7 Providing copies of material for certain beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting, or by written authorizations or consents if no meeting is held, are held of record by a broker, dealer, voting trustee, or bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the registrant shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such report to such beneficial owners for whom proxy material has not been and is not to be made available and to whom such reports are to be distributed by such record holder or its nominee and not by the registrant;

(C) If the record holder or respondent bank has an obligation under § 240.14b-1(b)(3) or § 240.14b-2(b)(4) (ii) and (iii), whether an agent has been designated to act on its behalf in fulfilling such obligation, and, if so, the name and address of such agent; and

(D) Whether it holds the registrant's securities on behalf of any respondent

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bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the registrant pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to §240.14b-1(b)(3) and §240.14b-2(b)(4) (ii) and (iii);

(B) The record date; and

(C) At the option of the registrant, any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to §240.14b-2(a)(1), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however*, the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3) Make the inquiry required by paragraph (a)(1) of this section on the earlier of:

(i) At least 20 business days prior to the record date of the meeting of security holders or the record date of written consents in lieu of a meeting; or

(ii) At least 20 business days prior to the date the information statement is required to be sent or given pursuant to §240.14c-2(b);

*Provided, however*, That, if a record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s);

(4) Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the information statement and/or the annual report to security holders, in such quantities, assembled in such form and at

such place(s), as the record holder or respondent bank may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with Notices of Internet Availability of Proxy Materials, information statements and/or annual reports to security holders pursuant to paragraph (a)(3) of this section, pay its reasonable expenses for completing the sending of such material to beneficial owners.

NOTE 1: If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (e.g., "Cede & Co.," nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* §240.14c-1 (h)).

NOTE 2: The attention of registrants is called to the fact that each broker, dealer, bank, association, and other entity that exercises fiduciary powers has an obligation pursuant to §240.14b-1 and §240.14b-2 (except as provided therein with respect to exempt employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) information statements to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the registrant has notified the record holder or respondent bank that it has assumed responsibility to send such material to beneficial owners whose names, addresses, and securities positions are disclosed pursuant to §240.14b-1(b)(3) and §240.14b-2(b)(4) (ii) and (iii).

NOTE 3: The attention of registrants is called to the fact that registrants have an obligation, pursuant to paragraph (d) of this section, to cause information statements and annual reports to security holders to be furnished, in accordance with §240.14c-2, to beneficial owners of exempt employee benefit plan securities.

(b) Any registrant requesting pursuant to §240.14b-1(b)(3) and §240.14b-

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2(b)(4) (ii) and (iii) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the registrant pursuant to §240.14b-2(e)(1) whether such record holder or respondent bank holds the registrant's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list be compiled as of a date no earlier than five business days after the date the registrant's request is received by the record holder or respondent bank; Provided, however, That if the record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers; Provided, however, such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in §240.14a-1(d)(1); and, at the option of the registrant, such request may give notice of any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

NOTE: A registrant will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the

record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A registrant, at its option, may send by mail or other equally prompt means, its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to §240.14b-1(b)(3) and §240.14b-2(b)(4) (ii) and (iii), provided that such registrant notifies the record holders and respondent banks at the time it makes the inquiry required by paragraph (a) of this section that the registrant will send the annual report to security holders to the beneficial owners so identified.

(d) If a registrant furnishes information statements to record holders and respondent banks who hold securities on behalf of beneficial owners, the registrant shall cause information statements and annual reports to security holders to be furnished, in accordance with §240.14c-2, to beneficial owners of exempt employee benefit plan securities.

[51 FR 44280, Dec. 9, 1986, as amended at 52 FR 23649, June 24, 1987; 53 FR 16406, May 9, 1988; 57 FR 1102, Jan. 10, 1992; 61 FR 24657, May 15, 1996; 64 FR 62547, Nov. 16, 1999; 72 FR 4172, Jan. 29, 2007]

§ 240.14c-101 Schedule 14C. Information required in information statement.

SCHEDULE 14C INFORMATION

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934

(Amendment No. )

Check the appropriate box:

- [ ] Preliminary Information Statement
[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
[ ] Definitive Information Statement

(Name of Registrant As Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

- [ ] No fee required
[ ] Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies: