§ 240.14d-2  Commencement of a tender offer.

(a) **Date of commencement.** A bidder will have commenced its tender offer for purposes of section 14(d) of the Act (15 U.S.C. 78n) and the rules under that section at 12:01 a.m. on the date when the bidder has first published, sent or given the means to tender to security holders. For purposes of this section, the means to tender includes the transmittal form or a statement regarding how the transmittal form may be obtained.

(b) **Pre-commencement communications.** A communication by the bidder will not be deemed to constitute commencement of a tender offer if:

1. It does not include the means for security holders to tender their shares into the offer; and

2. All written communications relating to the tender offer, from and including the first public announcement, are filed under cover of Schedule TO (§ 240.14d–100) with the Commission no later than the date of the communication. The bidder also must deliver to the subject company and any other bidder for the same class of securities the first communication relating to the transaction that is filed, or required to be filed, with the Commission.

Instructions to paragraph (b)(2):

1. The box on the front of Schedule TO indicating that the filing contains pre-commencement communications must be checked.

2. Any communications made in connection with an exchange offer registered under the Securities Act of 1933 need only be filed under §230.425 of this chapter and will be deemed filed under this section.

3. Each pre-commencement written communication must include a prominent legend in clear, plain language advising security holders to read the tender offer statement when it is available because it contains important information. The legend also must advise investors that they can get the tender offer statement and other filed documents for free at the Commission’s web site and explain which documents are free from the offeror.

4. See §§230.135, 230.165 and 230.166 of this chapter for pre-commencement communications made in connection with registered exchange offers.

5. “Public announcement” is any oral or written communication by the bidder, or any person authorized to act on the bidder’s behalf, that is reasonably designed to, or has the effect of, informing the public or security holders in general about the tender offer.

(c) **Filing and other obligations triggered by commencement.** As soon as practicable on the date of commencement, a bidder must comply with the filing requirements of §240.14d–3(a), the dissemination requirements of §240.14d–4(a) or (b), and the disclosure requirements of §240.14d–6(a).

[64 FR 61459, Nov. 10, 1999]