

through the chosen medium (including updating of shareholder lists) plus the estimated reasonable cost of distribution through that medium. Direct costs incidental to the distribution of tender offer materials and amendments thereto may include all reasonable charges paid by the subject company to third parties for supplies or services, including costs attendant to preparing shareholder lists, handling the bidder's materials, and contacting participants named on security position listings, but shall not include indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject company.

[44 FR 70342, Dec. 6, 1979, as amended at 61 FR 24657, May 15, 1996; 64 FR 61460, Nov. 10, 1999]

§ 240.14d-6 Disclosure of tender offer information to security holders.

(a) *Information required on date of commencement*—(1) *Long-form publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of long-form publication under § 240.14d-4(a)(1), the long-form publication must include the information required by paragraph (d)(1) of this section.

(2) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication under § 240.14d-4(a)(2):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials furnished by the bidder upon request of any security holder must include the information required by paragraph (d)(1) of this section.

(3) *Use of stockholder lists and security position listings.* If a tender offer is published, sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings under § 240.14d-4(a)(3):

(i) The summary advertisement must contain at least the information required by paragraph (d)(2) of this section; and

(ii) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder must in-

clude the information required by paragraph (d)(1) of this section.

(4) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to § 240.14d-4(a), the tender offer materials that are published or sent or given to security holders on the date of commencement of such offer must include the information required by paragraph (d)(1) of this section.

(b) *Information required in other tender offer materials published after commencement.* Except for tender offer materials described in paragraphs (a)(2)(ii) and (a)(3)(ii) of this section, additional tender offer materials published, sent or given to security holders after commencement must include:

(1) The identities of the bidder and subject company;

(2) The amount and class of securities being sought;

(3) The type and amount of consideration being offered; and

(4) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer.

Instruction to paragraph (b): If the additional tender offer materials are summary advertisements, they also must include the information required by paragraphs (d)(2)(v) of this section.

(c) *Material changes.* A material change in the information published or sent or given to security holders must be promptly disclosed to security holders in additional tender offer materials.

(d) *Information to be included*—(1) *Tender offer materials other than summary publication.* The following information is required by paragraphs (a)(1), (a)(2)(ii), (a)(3)(ii) and (a)(4) of this section:

(i) The information required by Item 1 of Schedule TO (§ 240.14d-100) (Summary Term Sheet); and

(ii) The information required by the remaining items of Schedule TO (§ 240.14d-100) for third-party tender offers, except for Item 12 (exhibits) of Schedule TO (§ 240.14d-100), or a fair and adequate summary of the information.

(2) *Summary Publication.* The following information is required in a

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summary advertisement under paragraphs (a)(2)(i) and (a)(3)(i) of this section:

(i) The identity of the bidder and the subject company;

(ii) The information required by Item 1004(a)(1) of Regulation M-A (§ 229.1004(a)(1) of this chapter);

(iii) If the tender offer is for less than all of the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject company;

(iv) A statement that the information required by paragraph (d)(1) of this section is incorporated by reference into the summary advertisement;

(v) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(vi) In a tender offer published or sent or given to security holders by use of stockholder lists and security position listings under § 240.14d-4(a)(3), a statement that a request is being made for such lists and listings. The summary publication also must state that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of security holders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities. If the list furnished to the bidder also included beneficial owners pursuant to § 240.14d-5(c)(1) and tender offer materials will be mailed directly to beneficial holders, include a statement to that effect.

(3) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement may include a transmittal letter (the letter furnished to security holders for transmission of securities sought in the tender offer) or any amendment to the transmittal letter.

[64 FR 61460, Nov. 10, 1999]

§ 240.14d-7 Additional withdrawal rights.

(a) *Rights.* (1) In addition to the provisions of section 14(d)(5) of the Act,

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any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the period such offer request or invitation remains open.

(2) *Exemption during subsequent offering period.* Notwithstanding the provisions of section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)) and paragraph (a) of this section, the bidder need not offer withdrawal rights during a subsequent offering period.

(b) *Notice of withdrawal.* Notice of withdrawal pursuant to this section shall be deemed to be timely upon the receipt by the bidder's depository of a written notice of withdrawal specifying the name(s) of the tendering stockholder(s), the number or amount of the securities to be withdrawn and the name(s) in which the certificate(s) is (are) registered, if different from that of the tendering security holder(s). A bidder may impose other reasonable requirements, including certificate numbers and a signed request for withdrawal accompanied by a signature guarantee, as conditions precedent to the physical release of withdrawn securities.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a-37(a))

[44 FR 70345, Dec. 6, 1979, as amended at 51 FR 25882, July 17, 1986; 51 FR 32630, Sept. 15, 1986; 64 FR 61461, Nov. 10, 1999]

§ 240.14d-8 Exemption from statutory pro rata requirements.

Notwithstanding the pro rata provisions of section 14(d)(6) of the Act, if any person makes a tender offer or request or invitation for tenders, for less than all of the outstanding equity securities of a class, and if a greater number of securities are deposited pursuant thereto than such person is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as