

§ 229.915

of all partnerships proposed to be included in a roll-up transaction results in such lowest combined net cash provided by operating activities, this shall be noted and no separate pro forma financial statements are required.

(c) The pro forma financial statements required by paragraph (b) of this Item (§ 229.914) shall disclose the effect of the roll-up transaction on the successor's:

(1) Balance sheet as of the later of the end of the most recent fiscal year or the latest interim period;

(2) Statement of income (with separate line items to reflect income (loss) excluding and including the roll-up expenses and payments), earnings per share amounts, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period;

(3) Statement of cash flows for the most recent fiscal year and the latest interim period; and

(4) Book value per share as of the later of the end of the most recent fiscal year or the latest interim period.

Instructions to Item 914. (1) Notwithstanding the provisions of this Item (§ 229.914), any or all of the information required by paragraphs (b) and (c) of this Item (§ 229.914) that is not material for the exercise of prudent judgment in regard to the matter to be acted upon, may be omitted.

(2) If the roll-up transaction is structured to permit participation by portions of partnerships, consideration should be given to the effect of such participation in preparing the pro forma financial statements reflecting a partial roll-up.

§ 229.915 (Item 915) Federal income tax consequences.

(a) Provide a brief, clear and understandable summary of the material Federal income tax consequences of the roll-up transaction and an investment in the successor. Where a tax opinion has been provided, briefly summarize the substance of such opinion, including identification of the material consequences upon which counsel has not been asked, or is unable, to opine. If any of the material Federal income tax consequences are not expected to be the same for investors in all partnerships, the differences shall be described.

(b) State whether or not the opinion of counsel is included as an appendix to

17 CFR Ch. II (4-1-11 Edition)

the prospectus. If filed as an exhibit to the registration statement and not included as an appendix to the prospectus, include a statement to the effect that, upon receipt of a written request by an investor or his representative who has been so designated in writing, a copy of the opinion of counsel will be transmitted promptly, without charge, by the general partner or sponsor. The statement should include the name and address of the person to whom investors should make their request.

Subpart 229.1000—Mergers and Acquisitions (Regulation M-A)

SOURCE: 64 FR 61443, Nov. 10, 1999, unless otherwise noted.

§ 229.1000 (Item 1000) Definitions.

The following definitions apply to the terms used in Regulation M-A (§§ 229.1000 through 229.1016), unless specified otherwise:

(a) *Associate* has the same meaning as in § 240.12b-2 of this chapter;

(b) *Instruction C* means General Instruction C to Schedule 13E-3 (§ 240.13e-100 of this chapter) and General Instruction C to Schedule TO (§ 240.14d-100 of this chapter);

(c) *Issuer tender offer* has the same meaning as in § 240.13e-4(a)(2) of this chapter;

(d) *Offeror* means any person who makes a tender offer or on whose behalf a tender offer is made;

(e) *Rule 13e-3 transaction* has the same meaning as in § 240.13e-3(a)(3) of this chapter;

(f) *Subject company* means the company or entity whose securities are sought to be acquired in the transaction (e.g., the target), or that is otherwise the subject of the transaction;

(g) *Subject securities* means the securities or class of securities that are sought to be acquired in the transaction or that are otherwise the subject of the transaction; and

(h) *Third-party tender offer* means a tender offer that is not an issuer tender offer.

Securities and Exchange Commission

§ 229.1003

§ 229.1001 (Item 1001) Summary term sheet.

Summary term sheet. Provide security holders with a summary term sheet that is written in plain English. The summary term sheet must briefly describe in bullet point format the most material terms of the proposed transaction. The summary term sheet must provide security holders with sufficient information to understand the essential features and significance of the proposed transaction. The bullet points must cross-reference a more detailed discussion contained in the disclosure document that is disseminated to security holders.

Instructions to Item 1001: 1. The summary term sheet must not recite all information contained in the disclosure document that will be provided to security holders. The summary term sheet is intended to serve as an overview of all material matters that are presented in the accompanying documents provided to security holders.

2. The summary term sheet must begin on the first or second page of the disclosure document provided to security holders.

3. Refer to Rule 421(b) and (d) of Regulation C of the Securities Act (§230.421 of this chapter) for a description of plain English disclosure.

§ 229.1002 (Item 1002) Subject company information.

(a) *Name and address.* State the name of the subject company (or the issuer in the case of an issuer tender offer), and the address and telephone number of its principal executive offices.

(b) *Securities.* State the exact title and number of shares outstanding of the subject class of equity securities as of the most recent practicable date. This may be based upon information in the most recently available filing with the Commission by the subject company unless the filing person has more current information.

(c) *Trading market and price.* Identify the principal market in which the subject securities are traded and state the high and low sales prices for the subject securities in the principal market (or, if there is no principal market, the range of high and low bid quotations and the source of the quotations) for each quarter during the past two years. If there is no established trading mar-

ket for the securities (except for limited or sporadic quotations), so state.

(d) *Dividends.* State the frequency and amount of any dividends paid during the past two years with respect to the subject securities. Briefly describe any restriction on the subject company's current or future ability to pay dividends. If the filing person is not the subject company, furnish this information to the extent known after making reasonable inquiry.

(e) *Prior public offerings.* If the filing person has made an underwritten public offering of the subject securities for cash during the past three years that was registered under the Securities Act of 1933 or exempt from registration under Regulation A (§230.251 through §230.263 of this chapter), state the date of the offering, the amount of securities offered, the offering price per share (adjusted for stock splits, stock dividends, etc. as appropriate) and the aggregate proceeds received by the filing person.

(f) *Prior stock purchases.* If the filing person purchased any subject securities during the past two years, state the amount of the securities purchased, the range of prices paid and the average purchase price for each quarter during that period. Affiliates need not give information for purchases made before becoming an affiliate.

§ 229.1003 (Item 1003) Identity and background of filing person.

(a) *Name and address.* State the name, business address and business telephone number of each filing person. Also state the name and address of each person specified in Instruction C to the schedule (except for Schedule 14D-9 (§240.14d-101 of this chapter)). If the filing person is an affiliate of the subject company, state the nature of the affiliation. If the filing person is the subject company, so state.

(b) *Business and background of entities.* If any filing person (other than the subject company) or any person specified in Instruction C to the schedule is not a natural person, state the person's principal business, state or other place of organization, and the information required by paragraphs (c)(3) and (c)(4) of this section for each person.

§ 229.1004

17 CFR Ch. II (4-1-11 Edition)

(c) *Business and background of natural persons.* If any filing person or any person specified in Instruction C to the schedule is a natural person, provide the following information for each person:

(1) Current principal occupation or employment and the name, principal business and address of any corporation or other organization in which the employment or occupation is conducted;

(2) Material occupations, positions, offices or employment during the past five years, giving the starting and ending dates of each and the name, principal business and address of any corporation or other organization in which the occupation, position, office or employment was carried on;

(3) A statement whether or not the person was convicted in a criminal proceeding during the past five years (excluding traffic violations or similar misdemeanors). If the person was convicted, describe the criminal proceeding, including the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

(4) A statement whether or not the person was a party to any judicial or administrative proceeding during the past five years (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws. Describe the proceeding, including a summary of the terms of the judgment, decree or final order; and

(5) Country of citizenship.

(d) *Tender offer.* Identify the tender offer and the class of securities to which the offer relates, the name of the offeror and its address (which may be based on the offeror's Schedule TO (§240.14d-100 of this chapter) filed with the Commission).

Instruction to Item 1003. If the filing person is making information relating to the transaction available on the Internet, state the address where the information can be found.

§ 229.1004 (Item 1004) Terms of the transaction.

(a) *Material terms.* State the material terms of the transaction.

(1) *Tender offers.* In the case of a tender offer, the information must include:

(i) The total number and class of securities sought in the offer;

(ii) The type and amount of consideration offered to security holders;

(iii) The scheduled expiration date;

(iv) Whether a subsequent offering period will be available, if the transaction is a third-party tender offer;

(v) Whether the offer may be extended, and if so, how it could be extended;

(vi) The dates before and after which security holders may withdraw securities tendered in the offer;

(vii) The procedures for tendering and withdrawing securities;

(viii) The manner in which securities will be accepted for payment;

(ix) If the offer is for less than all securities of a class, the periods for accepting securities on a pro rata basis and the offeror's present intentions in the event that the offer is oversubscribed;

(x) An explanation of any material differences in the rights of security holders as a result of the transaction, if material;

(xi) A brief statement as to the accounting treatment of the transaction, if material; and

(xii) The federal income tax consequences of the transaction, if material.

(2) *Mergers or similar transactions.* In the case of a merger or similar transaction, the information must include:

(i) A brief description of the transaction;

(ii) The consideration offered to security holders;

(iii) The reasons for engaging in the transaction;

(iv) The vote required for approval of the transaction;

(v) An explanation of any material differences in the rights of security holders as a result of the transaction, if material;

(vi) A brief statement as to the accounting treatment of the transaction, if material; and

Securities and Exchange Commission

§ 229.1005

(vii) The federal income tax consequences of the transaction, if material.

Instruction to Item 1004(a): If the consideration offered includes securities exempt from registration under the Securities Act of 1933, provide a description of the securities that complies with Item 202 of Regulation S-K (§229.202). This description is not required if the issuer of the securities meets the requirements of General Instructions I.A, I.B.1 or I.B.2, as applicable, or I.C. of Form S-3 (§239.13 of this chapter) and elects to furnish information by incorporation by reference; only capital stock is to be issued; and securities of the same class are registered under section 12 of the Exchange Act and either are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association.

(b) *Purchases.* State whether any securities are to be purchased from any officer, director or affiliate of the subject company and provide the details of each transaction.

(c) *Different terms.* Describe any term or arrangement in the Rule 13e-3 transaction that treats any subject security holders differently from other subject security holders.

(d) *Appraisal rights.* State whether or not dissenting security holders are entitled to any appraisal rights. If so, summarize the appraisal rights. If there are no appraisal rights available under state law for security holders who object to the transaction, briefly outline any other rights that may be available to security holders under the law.

(e) *Provisions for unaffiliated security holders.* Describe any provision made by the filing person in connection with the transaction to grant unaffiliated security holders access to the corporate files of the filing person or to obtain counsel or appraisal services at the expense of the filing person. If none, so state.

(f) *Eligibility for listing or trading.* If the transaction involves the offer of securities of the filing person in exchange for equity securities held by unaffiliated security holders of the subject company, describe whether or not the filing person will take steps to assure that the securities offered are or

will be eligible for trading on an automated quotations system operated by a national securities association.

§ 229.1005 (Item 1005) Past contacts, transactions, negotiations and agreements.

(a) *Transactions.* Briefly state the nature and approximate dollar amount of any transaction, other than those described in paragraphs (b) or (c) of this section, that occurred during the past two years, between the filing person (including any person specified in Instruction C of the schedule) and:

(1) The subject company or any of its affiliates that are not natural persons if the aggregate value of the transactions is more than one percent of the subject company's consolidated revenues for:

(i) The fiscal year when the transaction occurred; or

(ii) The past portion of the current fiscal year, if the transaction occurred in the current year; and

Instruction to Item 1005(a)(1): The information required by this Item may be based on information in the subject company's most recent filing with the Commission, unless the filing person has reason to believe the information is not accurate.

(2) Any executive officer, director or affiliate of the subject company that is a natural person if the aggregate value of the transaction or series of similar transactions with that person exceeds \$60,000.

(b) *Significant corporate events.* Describe any negotiations, transactions or material contacts during the past two years between the filing person (including subsidiaries of the filing person and any person specified in Instruction C of the schedule) and the subject company or its affiliates concerning any:

(1) Merger;

(2) Consolidation;

(3) Acquisition;

(4) Tender offer for or other acquisition of any class of the subject company's securities;

(5) Election of the subject company's directors; or

(6) Sale or other transfer of a material amount of assets of the subject company.

(c) *Negotiations or contacts.* Describe any negotiations or material contacts

§ 229.1006

concerning the matters referred to in paragraph (b) of this section during the past two years between:

(1) Any affiliates of the subject company; or

(2) The subject company or any of its affiliates and any person not affiliated with the subject company who would have a direct interest in such matters.

Instruction to paragraphs (b) and (c) of Item 1005: Identify the person who initiated the contacts or negotiations.

(d) *Conflicts of interest.* If material, describe any agreement, arrangement or understanding and any actual or potential conflict of interest between the filing person or its affiliates and:

(1) The subject company, its executive officers, directors or affiliates; or

(2) The offeror, its executive officers, directors or affiliates.

Instruction to Item 1005(d): If the filing person is the subject company, no disclosure called for by this paragraph is required in the document disseminated to security holders, so long as substantially the same information was filed with the Commission previously and disclosed in a proxy statement, report or other communication sent to security holders by the subject company in the past year. The document disseminated to security holders, however, must refer specifically to the discussion in the proxy statement, report or other communication that was sent to security holders previously. The information also must be filed as an exhibit to the schedule.

(e) *Agreements involving the subject company's securities.* Describe any agreement, arrangement, or understanding, whether or not legally enforceable, between the filing person (including any person specified in Instruction C of the schedule) and any other person with respect to any securities of the subject company. Name all persons that are a party to the agreements, arrangements, or understandings and describe all material provisions.

Instructions to Item 1005(e) 1. The information required by this Item includes: the transfer or voting of securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withholding of proxies, consents or authorizations.

2. Include information for any securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the

17 CFR Ch. II (4-1-11 Edition)

voting or disposition of the subject securities. No disclosure, however, is required about standard default and similar provisions contained in loan agreements.

§ 229.1006 (Item 1006) Purposes of the transaction and plans or proposals.

(a) *Purposes.* State the purposes of the transaction.

(b) *Use of securities acquired.* Indicate whether the securities acquired in the transaction will be retained, retired, held in treasury, or otherwise disposed of.

(c) *Plans.* Describe any plans, proposals or negotiations that relate to or would result in:

(1) Any extraordinary transaction, such as a merger, reorganization or liquidation, involving the subject company or any of its subsidiaries;

(2) Any purchase, sale or transfer of a material amount of assets of the subject company or any of its subsidiaries;

(3) Any material change in the present dividend rate or policy, or indebtedness or capitalization of the subject company;

(4) Any change in the present board of directors or management of the subject company, including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board or to change any material term of the employment contract of any executive officer;

(5) Any other material change in the subject company's corporate structure or business, including, if the subject company is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by Section 13 of the Investment Company Act of 1940 (15 U.S.C. 80a-13);

(6) Any class of equity securities of the subject company to be delisted from a national securities exchange or cease to be authorized to be quoted in an automated quotations system operated by a national securities association;

(7) Any class of equity securities of the subject company becoming eligible for termination of registration under section 12(g)(4) of the Act (15 U.S.C. 78l);

(8) The suspension of the subject company's obligation to file reports under Section 15(d) of the Act (15 U.S.C. 78o);

(9) The acquisition by any person of additional securities of the subject company, or the disposition of securities of the subject company; or (10) Any changes in the subject company's charter, bylaws or other governing instruments or other actions that could impede the acquisition of control of the subject company.

(d) *Subject company negotiations.* If the filing person is the subject company:

(1) State whether or not that person is undertaking or engaged in any negotiations in response to the tender offer that relate to:

(i) A tender offer or other acquisition of the subject company's securities by the filing person, any of its subsidiaries, or any other person; or

(ii) Any of the matters referred to in paragraphs (c)(1) through (c)(3) of this section; and

(2) Describe any transaction, board resolution, agreement in principle, or signed contract that is entered into in response to the tender offer that relates to one or more of the matters referred to in paragraph (d)(1) of this section.

Instruction to Item 1006(d)(1): If an agreement in principle has not been reached at the time of filing, no disclosure under paragraph (d)(1) of this section is required of the possible terms of or the parties to the transaction if in the opinion of the board of directors of the subject company disclosure would jeopardize continuation of the negotiations. In that case, disclosure indicating that negotiations are being undertaken or are underway and are in the preliminary stages is sufficient.

§ 229.1007 (Item 1007) Source and amount of funds or other consideration.

(a) *Source of funds.* State the specific sources and total amount of funds or other consideration to be used in the transaction. If the transaction involves a tender offer, disclose the amount of funds or other consideration required to purchase the maximum amount of securities sought in the offer.

(b) *Conditions.* State any material conditions to the financing discussed in response to paragraph (a) of this section. Disclose any alternative financ-

ing arrangements or alternative financing plans in the event the primary financing plans fall through. If none, so state.

(c) *Expenses.* Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the transaction including, but not limited to, filing, legal, accounting and appraisal fees, solicitation expenses and printing costs and state whether or not the subject company has paid or will be responsible for paying any or all expenses.

(d) *Borrowed funds.* If all or any part of the funds or other consideration required is, or is expected, to be borrowed, directly or indirectly, for the purpose of the transaction:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and any other material terms or conditions of the loan; and

(2) Briefly describe any plans or arrangements to finance or repay the loan, or, if no plans or arrangements have been made, so state.

Instruction to Item 1007(d): If the transaction is a third-party tender offer and the source of all or any part of the funds used in the transaction is to come from a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act (15 U.S.C. 78c), the name of the bank will not be made available to the public if the filing person so requests in writing and files the request, naming the bank, with the Secretary of the Commission.

§ 229.1008 (Item 1008) Interest in securities of the subject company.

(a) *Securities ownership.* State the aggregate number and percentage of subject securities that are beneficially owned by each person named in response to Item 1003 of Regulation M-A (§229.1003) and by each associate and majority-owned subsidiary of those persons. Give the name and address of any associate or subsidiary.

Instructions to Item 1008(a). 1. For purposes of this section, beneficial ownership is determined in accordance with Rule 13d-3 (§240.13d-3 of this chapter) under the Exchange Act. Identify the shares that the person has a right to acquire.

2. The information required by this section may be based on the number of outstanding

§ 229.1009

securities disclosed in the subject company's most recently available filing with the Commission, unless the filing person has more current information.

3. The information required by this section with respect to officers, directors and associates of the subject company must be given to the extent known after making reasonable inquiry.

(b) *Securities transactions.* Describe any transaction in the subject securities during the past 60 days. The description of transactions required must include, but not necessarily be limited to:

- (1) The identity of the persons specified in the Instruction to this section who effected the transaction;
- (2) The date of the transaction;
- (3) The amount of securities involved;
- (4) The price per share; and
- (5) Where and how the transaction was effected.

Instructions to Item 1008(b). 1. Provide the required transaction information for the following persons:

- (a) The filing person (for all schedules);
- (b) Any person named in Instruction C of the schedule and any associate or majority-owned subsidiary of the issuer or filing person (for all schedules except Schedule 14D-9 (§240.14d-101 of this chapter));
- (c) Any executive officer, director, affiliate or subsidiary of the filing person (for Schedule 14D-9 (§240.14d-101 of this chapter));
- (d) The issuer and any executive officer or director of any subsidiary of the issuer or filing person (for an issuer tender offer on Schedule TO (§240.14d-100 of this chapter)); and
- (e) The issuer and any pension, profit-sharing or similar plan of the issuer or affiliate filing the schedule (for a going-private transaction on Schedule 13E-3 (§240.13e-100 of this chapter)).

2. Provide the information required by this Item if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not initially available, it must be obtained and filed with the Commission promptly, but in no event later than three business days after the date of the initial filing, and if material, disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided to maintain the confidentiality of information in order to avoid possible misuse of inside information.

17 CFR Ch. II (4-1-11 Edition)

§ 229.1009 (Item 1009) Persons/assets, retained, employed, compensated or used.

(a) *Solicitations or recommendations.* Identify all persons and classes of persons that are directly or indirectly employed, retained, or to be compensated to make solicitations or recommendations in connection with the transaction. Provide a summary of all material terms of employment, retainer or other arrangement for compensation.

(b) *Employees and corporate assets.* Identify any officer, class of employees or corporate assets of the subject company that has been or will be employed or used by the filing person in connection with the transaction. Describe the purpose for their employment or use.

Instruction to Item 1009(b): Provide all information required by this Item except for the information required by paragraph (a) of this section and Item 1007 of Regulation M-A (§229.1007).

§ 229.1010 (Item 1010) Financial statements.

(a) *Financial information.* Furnish the following financial information:

(1) Audited financial statements for the two fiscal years required to be filed with the company's most recent annual report under sections 13 and 15(d) of the Exchange Act (15 U.S.C. 78m; 15 U.S.C. 78o);

(2) Unaudited balance sheets, comparative year-to-date income statements and related earnings per share data, statements of cash flows, and comprehensive income required to be included in the company's most recent quarterly report filed under the Exchange Act;

(3) Ratio of earnings to fixed charges, computed in a manner consistent with Item 503(d) of Regulation S-K (§229.503(d)), for the two most recent fiscal years and the interim periods provided under paragraph (a)(2) of this section; and

(4) Book value per share as of the date of the most recent balance sheet presented.

(b) *Pro forma information.* If material, furnish pro forma information disclosing the effect of the transaction on:

(1) The company's balance sheet as of the date of the most recent balance

Securities and Exchange Commission

§ 229.1011, Nt.

sheet presented under paragraph (a) of this section;

(2) The company's statement of income, earnings per share, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period provided under paragraph (a)(2) of this section; and

(3) The company's book value per share as of the date of the most recent balance sheet presented under paragraph (a) of this section.

(c) *Summary information.* Furnish a fair and adequate summary of the information specified in paragraphs (a) and (b) of this section for the same periods specified. A fair and adequate summary includes:

(1) The summarized financial information specified in §210.1-02(bb)(1) of this chapter;

(2) Income per common share from continuing operations (basic and diluted, if applicable);

(3) Net income per common share (basic and diluted, if applicable);

(4) Ratio of earnings to fixed charges, computed in a manner consistent with Item 503(d) of Regulation S-K (§229.503(d));

(5) Book value per share as of the date of the most recent balance sheet; and

(6) If material, pro forma data for the summarized financial information specified in paragraphs (c)(1) through (c)(5) of this section disclosing the effect of the transaction.

§ 229.1011 (Item 1011) Additional information.

(a) *Agreements, regulatory requirements and legal proceedings.* If material to a security holder's decision whether to sell, tender or hold the securities sought in the tender offer, furnish the following information:

(1) Any present or proposed material agreement, arrangement, understanding or relationship between the offeror or any of its executive officers, directors, controlling persons or subsidiaries and the subject company or any of its executive officers, directors, controlling persons or subsidiaries (other than any agreement, arrangement or understanding disclosed under any other sections of Regulation M-A (§§ 229.1000 through 229.1016));

Instruction to paragraph (a)(1): In an issuer tender offer disclose any material agreement, arrangement, understanding or relationship between the offeror and any of its executive officers, directors, controlling persons or subsidiaries.

(2) To the extent known by the offeror after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(3) The applicability of any anti-trust laws;

(4) The applicability of margin requirements under section 7 of the Act (15 U.S.C. 78g) and the applicable regulations; and

(5) Any material pending legal proceedings relating to the tender offer, including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties, and a brief summary of the proceedings and the relief sought.

Instruction to Item 1011(a)(5): A copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding must be furnished promptly to the Commission staff on a supplemental basis.

(b) *Other material information.* Furnish such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

EFFECTIVE DATE NOTE: At 76 FR 6044, Feb. 2, 2011, §229.1011 was amended by redesignating paragraph (b) as paragraph (c) and adding new paragraph (b), effective Apr. 4, 2011. For the convenience of the user, the added text is set forth as follows:

§ 229.1011 (Item 1011) Additional information.

* * * * *

(b) Furnish the information required by Item 402(t)(2) and (3) of this part (§229.402(t)(2) and (3)) and in the tabular format set forth in Item 402(t)(1) of this part (§229.402(t)(1)) with respect to each named executive officer

(1) Of the subject company in a Rule 13e-3 transaction; or

(2) Of the issuer whose securities are the subject of a third-party tender offer, regarding any agreement or understanding, whether written or unwritten, between such named executive officer and the subject company, issuer, bidder, or the acquiring company, as applicable, concerning any type of compensation, whether present, deferred or contingent, that is based upon or otherwise relates to the Rule 13e-3 transaction or third-party tender offer.

Instructions to Item 1011(b).

1. The obligation to provide the information in paragraph (b) of this section shall not apply where the issuer whose securities are the subject of the Rule 13e-3 transaction or tender offer is a foreign private issuer, as defined in § 240.3b-4 of this chapter.

2. For purposes of Instruction 1 to Item 402(t)(2) of this part: If the disclosure is included in a Schedule 13E-3 (§ 240.13e-100 of this chapter) or Schedule 14D-9 (§ 240.14d-101 of this chapter), the disclosure provided by this table shall be quantified assuming that the triggering event took place on the latest practicable date and that the price per share of the securities of the subject company in a Rule 13e-3 transaction, or of the issuer whose securities are the subject of the third-party tender offer, shall be determined as follows: If the shareholders are to receive a fixed dollar amount, the price per share shall be that fixed dollar amount, and if such value is not a fixed dollar amount, the price per share shall be the average closing market price of such securities over the first five business days following the first public announcement of the transaction. Compute the dollar value of in-the-money option awards for which vesting would be accelerated by determining the difference between this price and the exercise or base price of the options. Include only compensation that is based on or otherwise relates to the subject transaction. Apply Instruction 1 to Item 402(t) with respect to those executive officers for whom disclosure was required in the most recent filing by the subject company in a Rule 13e-3 transaction or by the issuer whose securities are the subject of a third-party tender offer, with the Commission under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*) that required disclosure pursuant to Item 402(c).

* * * * *

§ 229.1012 (Item 1012) The solicitation or recommendation.

(a) *Solicitation or recommendation.* State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the filing person is advising holders of the subject securities to ac-

cept or reject the tender offer or to take other action with respect to the tender offer and, if so, describe the other action recommended. If the filing person is the subject company and is not making a recommendation, state whether the subject company is expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) *Reasons.* State the reasons for the position (including the inability to take a position) stated in paragraph (a) of this section. Conclusory statements such as “The tender offer is in the best interests of shareholders” are not considered sufficient disclosure.

(c) *Intent to tender.* To the extent known by the filing person after making reasonable inquiry, state whether the filing person or any executive officer, director, affiliate or subsidiary of the filing person currently intends to tender, sell or hold the subject securities that are held of record or beneficially owned by that person.

(d) *Intent to tender or vote in a going-private transaction.* To the extent known by the filing person after making reasonable inquiry, state whether or not any executive officer, director or affiliate of the issuer (or any person specified in Instruction C to the schedule) currently intends to tender or sell subject securities owned or held by that person and/or how each person currently intends to vote subject securities, including any securities the person has proxy authority for. State the reasons for the intended action.

Instruction to Item 1012(d): Provide the information required by this section if it is available to the filing person at the time the statement is initially filed with the Commission. If the information is not available, it must be filed with the Commission promptly, but in no event later than three business days after the date of the initial filing, and if material, disclosed in a manner reasonably designed to inform security holders.

(e) *Recommendations of others.* To the extent known by the filing person after making reasonable inquiry, state whether or not any person specified in paragraph (d) of this section has made a recommendation either in support of or opposed to the transaction and the reasons for the recommendation.

§ 229.1013 (Item 1013) Purposes, alternatives, reasons and effects in a going-private transaction.

(a) *Purposes.* State the purposes for the Rule 13e-3 transaction.

(b) *Alternatives.* If the subject company or affiliate considered alternative means to accomplish the stated purposes, briefly describe the alternatives and state the reasons for their rejection.

(c) *Reasons.* State the reasons for the structure of the Rule 13e-3 transaction and for undertaking the transaction at this time.

(d) *Effects.* Describe the effects of the Rule 13e-3 transaction on the subject company, its affiliates and unaffiliated security holders, including the federal tax consequences of the transaction.

Instructions to Item 1013: 1. Conclusory statements will not be considered sufficient disclosure in response to this section.

2. The description required by paragraph (d) of this section must include a reasonably detailed discussion of both the benefits and detriments of the Rule 13e-3 transaction to the subject company, its affiliates and unaffiliated security holders. The benefits and detriments of the Rule 13e-3 transaction must be quantified to the extent practicable.

3. If this statement is filed by an affiliate of the subject company, the description required by paragraph (d) of this section must include, but not be limited to, the effect of the Rule 13e-3 transaction on the affiliate's interest in the net book value and net earnings of the subject company in terms of both dollar amounts and percentages.

§ 229.1014 (Item 1014) Fairness of the going-private transaction.

(a) *Fairness.* State whether the subject company or affiliate filing the statement reasonably believes that the Rule 13e-3 transaction is fair or unfair to unaffiliated security holders. If any director dissented to or abstained from voting on the Rule 13e-3 transaction, identify the director, and indicate, if known, after making reasonable inquiry, the reasons for the dissent or abstention.

(b) *Factors considered in determining fairness.* Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this section is based and, to the extent practicable, the weight assigned to each factor. The discussion must include an analysis of the extent, if any, to which

the filing person's beliefs are based on the factors described in Instruction 2 of this section, paragraphs (c), (d) and (e) of this section and Item 1015 of Regulation M-A (§ 229.1015).

(c) *Approval of security holders.* State whether or not the transaction is structured so that approval of at least a majority of unaffiliated security holders is required.

(d) *Unaffiliated representative.* State whether or not a majority of directors who are not employees of the subject company has retained an unaffiliated representative to act solely on behalf of unaffiliated security holders for purposes of negotiating the terms of the Rule 13e-3 transaction and/or preparing a report concerning the fairness of the transaction.

(e) *Approval of directors.* State whether or not the Rule 13e-3 transaction was approved by a majority of the directors of the subject company who are not employees of the subject company.

(f) *Other offers.* If any offer of the type described in paragraph (viii) of Instruction 2 to this section has been received, describe the offer and state the reasons for its rejection.

Instructions to Item 1014: 1. A statement that the issuer or affiliate has no reasonable belief as to the fairness of the Rule 13e-3 transaction to unaffiliated security holders will not be considered sufficient disclosure in response to paragraph (a) of this section.

2. The factors that are important in determining the fairness of a transaction to unaffiliated security holders and the weight, if any, that should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraphs (c), (d) and (e) of this section and whether the consideration offered to unaffiliated security holders constitutes fair value in relation to:

- (i) Current market prices;
- (ii) Historical market prices;
- (iii) Net book value;
- (iv) Going concern value;
- (v) Liquidation value;
- (vi) Purchase prices paid in previous purchases disclosed in response to Item 1002(f) of Regulation M-A (§ 229.1002(f));
- (vii) Any report, opinion, or appraisal described in Item 1015 of Regulation M-A (§ 229.1015); and
- (viii) Firm offers of which the subject company or affiliate is aware made by any unaffiliated person, other than the filing persons, during the past two years for:

§ 229.1015

(A) The merger or consolidation of the subject company with or into another company, or *vice versa*;

(B) The sale or other transfer of all or any substantial part of the assets of the subject company; or

(C) A purchase of the subject company's securities that would enable the holder to exercise control of the subject company.

3. Conclusory statements, such as "The Rule 13e-3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer" will not be considered sufficient disclosure in response to paragraph (b) of this section.

§ 229.1015 (Item 1015) Reports, opinions, appraisals and negotiations.

(a) *Report, opinion or appraisal.* State whether or not the subject company or affiliate has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party that is materially related to the Rule 13e-3 transaction, including, but not limited to: Any report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to security holders or the fairness of the transaction to the issuer or affiliate or to security holders who are not affiliates.

(b) *Preparer and summary of the report, opinion or appraisal.* For each report, opinion or appraisal described in response to paragraph (a) of this section or any negotiation or report described in response to Item 1014(d) of Regulation M-A (§ 229.1014) or Item 14(b)(6) of Schedule 14A (§ 240.14a-101 of this chapter) concerning the terms of the transaction:

(1) Identify the outside party and/or unaffiliated representative;

(2) Briefly describe the qualifications of the outside party and/or unaffiliated representative;

(3) Describe the method of selection of the outside party and/or unaffiliated representative;

(4) Describe any material relationship that existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of the relationship between:

(i) The outside party, its affiliates, and/or unaffiliated representative; and

(ii) The subject company or its affiliates;

17 CFR Ch. II (4-1-11 Edition)

(5) If the report, opinion or appraisal relates to the fairness of the consideration, state whether the subject company or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid; and

(6) Furnish a summary concerning the negotiation, report, opinion or appraisal. The summary must include, but need not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the subject company or affiliate; and any limitation imposed by the subject company or affiliate on the scope of the investigation.

Instruction to Item 1015(b): The information called for by paragraphs (b)(1), (2) and (3) of this section must be given with respect to the firm that provides the report, opinion or appraisal rather than the employees of the firm that prepared the report.

(c) *Availability of documents.* Furnish a statement to the effect that the report, opinion or appraisal will be made available for inspection and copying at the principal executive offices of the subject company or affiliate during its regular business hours by any interested equity security holder of the subject company or representative who has been so designated in writing. This statement also may provide that a copy of the report, opinion or appraisal will be transmitted by the subject company or affiliate to any interested equity security holder of the subject company or representative who has been so designated in writing upon written request and at the expense of the requesting security holder.

§ 229.1016 (Item 1016) Exhibits.

File as an exhibit to the schedule:

(a) Any disclosure materials furnished to security holders by or on behalf of the filing person, including:

(1) Tender offer materials (including transmittal letter);

(2) Solicitation or recommendation (including those referred to in Item 1012 of Regulation M-A (§ 229.1012));

(3) Going-private disclosure document;

Securities and Exchange Commission

§ 229.1100

(4) Prospectus used in connection with an exchange offer where securities are registered under the Securities Act of 1933; and

(5) Any other disclosure materials;

(b) Any loan agreement referred to in response to Item 1007(d) of Regulation M-A (§ 229.1007(d));

Instruction to Item 1016(b): If the filing relates to a third-party tender offer and a request is made under Item 1007(d) of Regulation M-A (§ 229.1007(d)), the identity of the bank providing financing may be omitted from the loan agreement filed as an exhibit.

(c) Any report, opinion or appraisal referred to in response to Item 1014(d) or Item 1015 of Regulation M-A (§ 229.1014(d) or § 229.1015);

(d) Any document setting forth the terms of any agreement, arrangement, understanding or relationship referred to in response to Item 1005(e) or Item 1011(a)(1) of Regulation M-A (§ 229.1005(e) or § 229.1011(a)(1));

(e) Any agreement, arrangement or understanding referred to in response to § 229.1005(d), or the pertinent portions of any proxy statement, report or other communication containing the disclosure required by Item 1005(d) of Regulation M-A (§ 229.1005(d));

(f) A detailed statement describing security holders' appraisal rights and the procedures for exercising those appraisal rights referred to in response to Item 1004(d) of Regulation M-A (§ 229.1004(d));

(g) Any written instruction, form or other material that is furnished to persons making an oral solicitation or recommendation by or on behalf of the filing person for their use directly or indirectly in connection with the transaction; and

(h) Any written opinion prepared by legal counsel at the filing person's request and communicated to the filing person pertaining to the tax consequences of the transaction.

EXHIBIT TABLE TO ITEM 1016 OF REGULATION M-A

	13E-3	TO	14D-9
Disclosure Material	X	X	X
Loan Agreement	X	X
Report, Opinion or Appraisal	X		
Contracts, Arrangements or Understandings	X	X	X
Statement re: Appraisal Rights	X		
Oral Solicitation Materials	X	X	X
Tax Opinion	X

Subpart 229.1100—Asset-Backed Securities (Regulation AB)

SOURCE: 70 FR 1597, Jan. 7, 2005, unless otherwise noted.

§ 229.1100 (Item 1100) General.

(a) *Application of Regulation AB.* Regulation AB (§§ 229.1100 through 229.1123) is the source of various disclosure items and requirements for "asset-backed securities" filings under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq.). Unless otherwise specified, definitions to be used in this Regulation AB, including the definition of "asset-backed security," are set forth in Item 1101.

(b) *Presentation of historical delinquency and loss information.* Several

Items in Regulation AB call for the presentation of historical information and data on delinquencies and loss information. In providing such information:

(1) Present delinquency experience in 30 or 31 day increments, as applicable, beginning at least with assets that are 30 or 31 days delinquent, as applicable, through the point that assets are written off or charged off as uncollectable. At a minimum, present such information by number of accounts and dollar amount. Present statistical information in a tabular or graphical format, if such presentation will aid understanding.

(2) Disclose the total amount of delinquent assets as a percentage of the aggregate asset pool.

(3) Present loss and cumulative loss information, as applicable, regarding