Securities and Exchange Commission

§ 229.503

(a) **Table of contents.** On either the inside front or outside back cover page of the prospectus, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include a specific listing of the risk factors section required by Item 503 of this Regulation S-K (17 CFR 229.503). You must include the table of contents immediately following the cover page in any prospectus you deliver electronically.

(b) **Dealer prospectus delivery obligation.** On the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. If you do not know the expiration date on the effective date of the registration statement, include the expiration date in the copy of the prospectus you file under § 230.424(b) of this chapter. You do not have to include this information if dealers are not required to deliver a prospectus under § 230.174 of this chapter or Section 24(d) of the Investment Company Act (15 U.S.C. 80a–24). You may use the following or other clear, plain language:

**DEALER PROSPECTUS DELIVERY OBLIGATION**

Until (insert date), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

[63 FR 6383, Feb. 6, 1998]

§ 229.503 (Item 503) Prospectus summary, risk factors, and ratio of earnings to fixed charges.

The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) **Prospectus summary.** Provide a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful. The summary should be brief. The summary should not contain, and is not required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a summary, you still must provide that information in plain English.

Instruction to paragraph 503(a): The summary should not merely repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Carefully consider and identify those aspects of the offering that are the most significant and determine how best to highlight those points in clear, plain language.

(b) **Address and telephone number.** Include, either on the cover page or in the summary section of the prospectus, the complete mailing address and telephone number of your principal executive offices.

(c) **Risk factors.** Where appropriate, provide under the caption “Risk Factors” a discussion of the most significant factors that make the offering speculative or risky. This discussion must be concise and organized logically. Do not present risks that could apply to any issuer or any offering. Explain how the risk affects the issuer or the securities being offered. Set forth each risk factor under a subcaption that adequately describes the risk. The risk factor discussion must immediately follow the summary section. If you do not include a summary section, the risk factor section must immediately follow the cover page of the prospectus or the pricing information section that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on § 230.430A(a) of this chapter. The risk factors may include, among other things, the following:

1. Your lack of an operating history;
2. Your lack of profitable operations in recent periods;
3. Your financial position;
4. Your business or proposed business; or
5. The lack of a market for your common equity securities or securities convertible into or exercisable for common equity securities.

(d) **Ratio of earnings to fixed charges.** If you register debt securities, show a ratio of earnings to fixed charges. If
§ 229.504  17 CFR Ch. II (4–1–12 Edition)

you register preference equity securi-
ties, show the ratio of combined fixed
charges and preference dividends to
earnings. Present the ratio for each of
the last five fiscal years and the latest
interim period for which financial
statements are presented in the docu-
ment. If you will use the proceeds from
the sale of debt or preference securities
to repay any of your outstanding debt
or to retire other securities and the
change in the ratio would be ten per-
cent or greater, you must include a
ratio showing the application of the
proceeds, commonly referred to as the
pro forma ratio.

Instructions to paragraph 503(d): 1. Definitions.

In calculating the ratio of earnings to fixed
charges, you must use the following defini-
tions:

(A) Fixed charges. The term “fixed charges”
means the sum of the following: (a) interest
expensed and capitalized, (b) amortized pre-
miums, discounts and capitalized expenses
related to indebtedness, (c) an estimate of
the interest within rental expense, and (d)
preference security dividend requirements of
consolidated subsidiaries.

(B) Preference security dividend. The term
“preference security dividend” is the amount
of pre-tax earnings that is required to pay
the dividends on outstanding preference se-
curities. The dividend requirement must be
computed as the amount of the dividend di-
vided by (1 minus the effective income tax
rate applicable to continuing operations).

(C) Earnings. The term “earnings” is the
amount resulting from adding and sub-
tracting the following items. Add the fol-
lowing: (a) pre-tax income from continuing
operations before adjustment for income or
loss from equity investees; (b) fixed charges;
(c) amortization of capitalized interest; (d)
distributed income of equity investees; and
(e) your share of pre-tax losses of equity
investees for which charges arising from
guarantees are included in fixed charges.
From the total of the added items, subtract the
following: (a) interest capitalized; (b)
preference security dividend requirements of
consolidated subsidiaries; and (c) the non-
controlling interest in pre-tax income of sub-
sidiaries that have not incurred fixed
charges. Equity investees are investments
that you account for using the equity meth-
od of accounting. Public utilities following
FASB ASC Topic 980, Regulated Operations,
should not add amortization of capitalized
interest in determining earnings, nor reduce
fixed charges by any allowance for funds
used during construction.

2. Disclosure. Disclose the following infor-
mation when showing the ratio of earnings
to fixed charges:

(A) Deficiency. If a ratio indicates less than
one-to-one coverage, disclose the dollar
amount of the deficiency.

(B) Pro forma ratio. You may show the pro
forma ratio only for the most recent fiscal
year and the latest interim period. Use the
net change in interest or dividends from the
refinancing to calculate the pro forma ratio.

(C) Foreign private issuers. A foreign private
issuer must show the ratio based on the fig-
ures in the primary financial statement. A
foreign private issuer must show the ratio
based on the figures resulting from the rec-
conciliation to U.S. generally accepted ac-
counting principles if this ratio is materially
different.

(D) Summary Section. If you provide a sum-
mary or similar section in the prospectus,
show the ratios in that section.

3. Exhibit. File an exhibit to the registra-
tion statement to show the figures used to
calculate the ratios. See paragraph (b)(12) of
Item 601 of Regulation S-K (17 CFR
229.601(b)(12)).

(e) Smaller reporting companies. A reg-
istrant that qualifies as a smaller re-
porting company, as defined by
§ 229.10(f), need not comply with para-
graph (d) of this Item.

Instruction to Item 503: For asset-backed secu-
rities, see also Item 1103 of Regulation AB
§ 229.1103.

[63 FR 6383, Feb. 6, 1998, as amended at 70 FR
1594, Jan. 7, 2005; 73 FR 964, Jan. 4, 2008; 74 FR
18617, Apr. 23, 2009; 76 FR 50121, Aug. 12, 2011]

§ 229.504 (Item 504) Use of proceeds.

State the principal purposes for
which the net proceeds to the reg-
istrant from the securities to be offered
are intended to be used and the approx-
imate amount intended to be used for
each such purpose. Where registrant
has no current specific plan for the pro-
cesses, or a significant portion thereof,
the registrant shall so state and dis-
cuss the principal reasons for the offer-
ing.

Instructions to Item 504: 1. Where less than all
the securities to be offered may be sold and
more than one use is listed for the proceeds,
indicate the order of priority of such pur-
poses and discuss the registrant’s plans if
substantially less than the maximum pro-
cesses are obtained. Such discussion need not
be included if underwriting arrangements
with respect to such securities are such that,
if any securities are sold to the public, it
reasonably can be expected that the actual
proceeds will not be substantially less than the
aggregate proceeds to the registrant.