

§ 240.14d-1

TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§ 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.

(a) *Scope.* Regulation 14D (§§ 240.14d-1 through 240.14d-101) shall apply to any tender offer that is subject to section 14(d)(1) of the Act (15 U.S.C. 78n(d)(1)), including, but not limited to, any tender offer for securities of a class described in that section that is made by an affiliate of the issuer of such class. Regulation 14E (§§ 240.14e-1 through 240.14e-8) shall apply to any tender offer for securities (other than exempted securities) unless otherwise noted therein.

(b) The requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act, Regulation 14D and Schedules TO and 14D-9 thereunder, and Rule 14e-1 of Regulation 14E under the Act, shall be deemed satisfied with respect to any tender offer, including any exchange offer, for the securities of an issuer incorporated or organized under the laws of Canada or any Canadian province or territory, if such issuer is a foreign private issuer and is not an investment company registered or required to be registered under the Investment Company Act of 1940, if less than 40 percent of the class of securities outstanding that is the subject of the tender offer is held by U.S. holders, and the tender offer is subject to, and the bidder complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer (unless the bidder has received an exemption(s) from, and the tender offer does not comply with, requirements that otherwise would be prescribed by Regulation 14D or 14E), *provided that:*

(1) In the case of tender offers subject to section 14(d)(1) of the Act, where the consideration for a tender offer subject to this section consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Com-

17 CFR Ch. II (4-1-13 Edition)

mission on Schedule 14D-1F (§ 240.14d-102) and disseminated to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for a tender offer subject to this section includes securities of the bidder to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 14D-1F referred to in paragraph (b)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies.

NOTES: 1. For purposes of any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d-1(b) under the Act, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to the commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 40 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S. ownership equals or exceeds 40 percent of such securities.

2. Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions imposing requirements that otherwise would be prescribed by Regulation 14D or 14E, the tender offer will be eligible to proceed in accordance with the requirements of this section if the

Commission by order determines that the applicable Canadian regulatory provisions are adequate to protect the interest of investors.

(c) *Tier I.* Any tender offer for the securities of a foreign private issuer as defined in § 240.3b-4 is exempt from the requirements of sections 14(d)(1) through 14(d)(7) of the Act (15 U.S.C. 78n(d)(1) through 78n(d)(7)), Regulation 14D (§§ 240.14d-1 through 240.14d-10) and Schedules TO (§240.14d-100) and 14D-9 (§240.14d-101) thereunder, and §240.14e-1 and §240.14e-2 of Regulation 14E under the Act if the following conditions are satisfied:

(1) *U.S. ownership limitation.* Except in the case of a tender offer that is commenced during the pendency of a tender offer made by a prior bidder in reliance on this paragraph or §240.13e-4(h)(8), U.S. holders do not hold more than 10 percent of the class of securities sought in the offer (as determined under Instructions 2 or 3 to paragraphs (c) and (d) of this section).

(2) *Equal treatment.* The bidder must permit U.S. holders to participate in the offer on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offer; however:

(i) *Registered exchange offers.* If the bidder offers securities registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the bidder need not extend the offer to security holders in those states or jurisdictions that prohibit the offer or sale of the securities after the bidder has made a good faith effort to register or qualify the offer and sale of securities in that state or jurisdiction, except that the bidder must offer the same cash alternative to security holders in any such state or jurisdiction that it has offered to security holders in any other state or jurisdiction.

(ii) *Exempt exchange offers.* If the bidder offers securities exempt from registration under §230.802 of this chapter, the bidder need not extend the offer to security holders in those states or jurisdictions that require registration or qualification, except that the bidder must offer the same cash alternative to security holders in any such state or jurisdiction that it has offered to security holders in any other state or jurisdiction.

(iii) *Cash only consideration.* The bidder may offer U.S. holders only a cash consideration for the tender of the subject securities, notwithstanding the fact that the bidder is offering security holders outside the United States a consideration that consists in whole or in part of securities of the bidder, so long as the bidder has a reasonable basis for believing that the amount of cash is substantially equivalent to the value of the consideration offered to non-U.S. holders, and either of the following conditions are satisfied:

(A) The offered security is a “margin security” within the meaning of Regulation T (12 CFR 220.2) and the issuer undertakes to provide, upon the request of any U.S. holder or the Commission staff, the closing price and daily trading volume of the security on the principal trading market for the security as of the last trading day of each of the six months preceding the announcement of the offer and each of the trading days thereafter; or

(B) If the offered security is not a “margin security” within the meaning of Regulation T (12 CFR 220.2) the issuer undertakes to provide, upon the request of any U.S. holder or the Commission staff, an opinion of an independent expert stating that the cash consideration offered to U.S. holders is substantially equivalent to the value of the consideration offered security holders outside the United States.

(iv) *Disparate tax treatment.* If the bidder offers loan notes solely to offer sellers tax advantages not available in the United States and these notes are neither listed on any organized securities market nor registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the loan notes need not be offered to U.S. holders.

(3) *Informational documents.* (i) The bidder must disseminate any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the home jurisdiction.

(ii) If the bidder disseminates by publication in its home jurisdiction, the bidder must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(iii) In the case of tender offers for securities described in section 14(d)(1) of the Act (15 U.S.C. 78n(d)(1)), if the bidder publishes or otherwise disseminates an informational document to the holders of the securities in connection with the tender offer, the bidder must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§249.480 of this chapter) by the first business day after publication or dissemination. If the bidder is a foreign company, it must also file a Form F-X (§239.42 of this chapter) with the Commission at the same time as the submission of Form CB to appoint an agent for service in the United States.

(4) *Investment companies.* The issuer of the securities that are the subject of the tender offer is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), other than a registered closed-end investment company.

(d) *Tier II.* A person conducting a tender offer (including any exchange offer) that meets the conditions in paragraph (d)(1) of this section shall be entitled to the exemptive relief specified in paragraph (d)(2) of this section, provided that such tender offer complies with all the requirements of this section other than those for which an exemption has been specifically provided in paragraph (d)(2) of this section. In addition, a person conducting a tender offer subject only to the requirements of section 14(e) of the Act (15 U.S.C. 78n(e)) and Regulation 14E thereunder (§§240.14e-1 through 240.14e-8) that meets the conditions in paragraph (d)(1) of the section also shall be entitled to the exemptive relief specified in paragraph (d)(2) of this section, to the extent needed under the requirements of Regulation 14E, so long as the tender offer complies with all requirements of Regulation 14E other than those for which an exemption has been specifically provided in paragraph (d)(2) of this section:

(1) *Conditions.* (i) The subject company is a foreign private issuer as defined in §240.3b-4 and is not an investment company registered or required to be registered under the Investment

Company Act of 1940 (15 U.S.C. 80a-1 et seq.), other than a registered closed-end investment company;

(ii) Except in the case of a tender offer that is commenced during the pendency of a tender offer made by a prior bidder in reliance on this paragraph or §240.13e-4(i), U.S. holders do not hold more than 40 percent of the class of securities sought in the offer (as determined under Instructions 2 or 3 to paragraphs (c) and (d) of this section); and

(iii) The bidder complies with all applicable U.S. tender offer laws and regulations, other than those for which an exemption has been provided for in paragraph (d)(2) of this section.

(2) *Exemptions—(i) Equal treatment—loan notes.* If the bidder offers loan notes solely to offer sellers tax advantages not available in the United States and these notes are neither listed on any organized securities market nor registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the loan notes need not be offered to U.S. holders, notwithstanding §240.14d-10.

(ii) *Equal treatment—separate U.S. and foreign offers.* Notwithstanding the provisions of §240.14d-10, a bidder conducting a tender offer meeting the conditions of paragraph (d)(1) of this section may separate the offer into multiple offers: One offer made to U.S. holders, which also may include all holders of American Depositary Shares representing interests in the subject securities, and one or more offers made to non-U.S. holders. The U.S. offer must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers. U.S. holders may be included in the foreign offer(s) only where the laws of the jurisdiction governing such foreign offer(s) expressly preclude the exclusion of U.S. holders from the foreign offer(s) and where the offer materials distributed to U.S. holders fully and adequately disclose the risks of participating in the foreign offer(s).

(iii) *Notice of extensions.* Notice of extensions made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of §240.14e-1(d).

(iv) *Prompt payment.* Payment made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of § 240.14e-1(c). Where payment may not be made on a more expedited basis under home jurisdiction law or practice, payment for securities tendered during any subsequent offering period within 20 business days of the date of tender will satisfy the prompt payment requirements of § 240.14d-11(e). For purposes of this paragraph (d), a business day is determined with reference to the target's home jurisdiction.

(v) *Subsequent offering period/Withdrawal rights.* A bidder will satisfy the announcement and prompt payment requirements of § 240.14d-11(d), if the bidder announces the results of the tender offer, including the approximate number of securities deposited to date, and pays for tendered securities in accordance with the requirements of the home jurisdiction law or practice and the subsequent offering period commences immediately following such announcement. Notwithstanding section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)), the bidder need not extend withdrawal rights following the close of the offer and prior to the commencement of the subsequent offering period.

(vi) *Payment of interest on securities tendered during subsequent offering period.* Notwithstanding the requirements of § 240.14d-11(f), the bidder may pay interest on securities tendered during a subsequent offering period, if required under applicable foreign law. Paying interest on securities tendered during a subsequent offering period in accordance with this section will not be deemed to violate § 240.14d-10(a)(2).

(vii) *Suspension of withdrawal rights during counting of tendered securities.* The bidder may suspend withdrawal rights required under section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)) at the end of the offer and during the period that securities tendered into the offer are being counted, provided that:

(A) The bidder has provided an offer period including withdrawal rights for a period of at least 20 U.S. business days;

(B) At the time withdrawal rights are suspended, all offer conditions have been satisfied or waived, except to the

extent that the bidder is in the process of determining whether a minimum acceptance condition included in the terms of the offer has been satisfied by counting tendered securities; and

(C) Withdrawal rights are suspended only during the counting process and are reinstated immediately thereafter, except to the extent that they are terminated through the acceptance of tendered securities.

(viii) *Mix and match elections and the subsequent offering period.* Notwithstanding the requirements of § 240.14d-11(b), where the bidder offers target security holders a choice between different forms of consideration, it may establish a ceiling on one or more forms of consideration offered. Notwithstanding the requirements of § 240.14d-11(f), a bidder that establishes a ceiling on one or more forms of consideration offered pursuant to this subsection may offset elections of tendering security holders against one another, subject to proration, so that elections are satisfied to the greatest extent possible and prorated to the extent that they cannot be satisfied in full. Such a bidder also may separately offset and prorate securities tendered during the initial offering period and those tendered during any subsequent offering period, notwithstanding the requirements of § 240.14d-10(c).

(ix) *Early termination of an initial offering period.* A bidder may terminate an initial offering period, including a voluntary extension of that period, if at the time the initial offering period and withdrawal rights terminate, the following conditions are met:

(A) The initial offering period has been open for at least 20 U.S. business days;

(B) The bidder has adequately discussed the possibility of and the impact of the early termination in the original offer materials;

(C) The bidder provides a subsequent offering period after the termination of the initial offering period;

(D) All offer conditions are satisfied as of the time when the initial offering period ends; and

(E) The bidder does not terminate the initial offering period or any extension of that period during any mandatory

extension required under U.S. tender offer rules.

Instructions to paragraphs (c) and (d):

1. *Home jurisdiction* means both the jurisdiction of the subject company's incorporation, organization or chartering and the principal foreign market where the subject company's securities are listed or quoted.

2. *U.S. holder* means any security holder resident in the United States. Except as otherwise provided in Instruction 3 below, to determine the percentage of outstanding securities held by U.S. holders:

i. Calculate the U.S. ownership as of a date no more than 60 before and no more than 30 days after public announcement of the tender offer. If you are unable to calculate as of a date within these time frames, the calculation may be made as of the most recent practicable date before public announcement, but in no event earlier than 120 days before announcement;

ii. Include securities underlying American Depositary Shares convertible or exchangeable into the securities that are the subject of the tender offer when calculating the number of subject securities outstanding, as well as the number held by U.S. holders. Exclude from the calculations other types of securities that are convertible or exchangeable into the securities that are the subject of the tender offer, such as warrants, options and convertible securities. Exclude from those calculations securities held by the bidder;

iii. Use the method of calculating record ownership in Rule 12g3-2(a) under the Act (§240.12g3-2(a) of this chapter), except that your inquiry as to the amount of securities represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in the United States, the subject company's jurisdiction of incorporation or that of each participant in a business combination, and the jurisdiction that is the primary trading market for the subject securities, if different than the subject company's jurisdiction of incorporation;

iv. If, after reasonable inquiry, you are unable to obtain information about the amount of securities represented by accounts of customers resident in the United States, you may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business; and

v. Count securities as beneficially owned by residents of the United States as reported on reports of beneficial ownership that are provided to you or publicly filed and based on information otherwise provided to you.

3. In a tender offer by a bidder other than an affiliate of the issuer of the subject securities that is not made pursuant to an agreement with the issuer of the subject securities, the issuer of the subject securities will

be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 10 percent (40 percent in the case of paragraph (d) of this section) of such outstanding securities, unless paragraphs 3.i., ii., or iii. of the instructions to paragraphs (c) and (d) of this section indicate otherwise. In addition, where the bidder is unable to conduct the analysis of U.S. ownership set forth in Instruction 2 to paragraphs (c) and (d) of this section, the bidder may presume that the percentage of securities held by U.S. holders is less than 10 percent (40 percent in the case of paragraph (d) of this section) of the outstanding securities so long as there is a primary trading market for the subject securities outside the U.S., as defined in §240.12h-6(f)(5) of this chapter, unless:

i. Average daily trading volume of the subject securities in the United States for a recent twelve-month period ending on a date no more than 60 days before the public announcement of the offer exceeds 10 percent (40 percent in the case of paragraph (d) of this section) of the average daily trading volume of that class of securities on a worldwide basis for the same period; or

ii. The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission or any jurisdiction in which the subject securities trade before the public announcement of the offer indicates that U.S. holders hold more than 10 percent (40 percent in the case of paragraph (d) of this section) of the outstanding subject class of securities; or

iii. The bidder knows or has reason to know, before the public announcement of the offer, that the level of U.S. ownership exceeds 10 percent (40 percent in the case of paragraph (d) of this section) of such securities. As an example, a bidder is deemed to know information about U.S. ownership of the subject class of securities that is publicly available and that appears in any filing with the Commission or any regulatory body in the issuer's jurisdiction of incorporation or (if different) the non-U.S. jurisdiction in which the primary trading market for the subject securities is located. The bidder is deemed to know information about U.S. ownership available from the issuer or obtained or readily available from any other source that is reasonably reliable, including from persons it has retained to advise it about the transaction, as well as from third-party information providers. These examples are not intended to be exclusive.

iv. The bidder knows or has reason to know that the level of U.S. ownership exceeds 10 percent (40 percent in the case of 14d-1(d)) of such securities.

4. *United States* means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

5. The exemptions provided by paragraphs (c) and (d) of this section are not available for any securities transaction or series of transactions that technically complies with paragraph (c) or (d) of this section but are part of a plan or scheme to evade the provisions of Regulations 14D or 14E.

(e) Notwithstanding paragraph (a) of this section, the requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act [15 U.S.C. 78n(d)(1) through 78n(d)(7)], Regulation 14D promulgated thereunder (§§ 240.14d-1 through 240.14d-10), and §§ 240.14e-1 and 240.14e-2 shall not apply by virtue of the fact that a bidder for the securities of a foreign private issuer, as defined in § 240.3b-4, the subject company of such a tender offer, their representatives, or any other person specified in § 240.14d-9(d), provides any journalist with access to its press conferences held outside of the United States, to meetings with its representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed tender offer is discussed, if:

(1) Access is provided to both U.S. and foreign journalists; and

(2) With respect to any written press-related materials released by the bidder or its representatives that discuss a present or proposed tender offer for equity securities registered under Section 12 of the Act [15 U.S.C. 78l], the written press-related materials must state that these written press-related materials are not an extension of a tender offer in the United States for a class of equity securities of the subject company. If the bidder intends to extend the tender offer in the United States at some future time, a statement regarding this intention, and that the procedural and filing requirements of the Williams Act will be satisfied at that time, also must be included in these written press-related materials. No means to tender securities, or coupons that could be returned to indicate interest in the tender offer, may be provided as part of, or attached to, these written press-related materials.

(f) For the purpose of § 240.14d-1(e), a bidder may presume that a target company qualifies as a foreign private issuer if the target company is a foreign issuer and files registration state-

ments or reports on the disclosure forms specifically designated for foreign private issuers, claims the exemption from registration under the Act pursuant to § 240.12g3-2(b), or is not reporting in the United States.

(g) *Definitions.* Unless the context otherwise requires, all terms used in Regulation 14D and Regulation 14E have the same meaning as in the Act and in Rule 12b-2 (§ 240.12b-2) promulgated thereunder. In addition, for purposes of sections 14(d) and 14(e) of the Act and Regulations 14D and 14E, the following definitions apply:

(1) The term *beneficial owner* shall have the same meaning as that set forth in Rule 13d-3: *Provided, however,* That, except with respect to Rule 14d-3, Rule 14d-9(d), the term shall not include a person who does not have or share investment power or who is deemed to be a beneficial owner by virtue of Rule 13d-3(d)(1) (§ 240.13d-3(d)(1));

(2) The term *bidder* means any person who makes a tender offer or on whose behalf a tender offer is made: *Provided, however,* That the term does not include an issuer which makes a tender offer for securities of any class of which it is the issuer;

(3) The term *business day* means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under Regulation 14D or Regulation 14E, the date of the event which begins the running of such time period shall be included *except that* if such event occurs on other than a business day such period shall begin to run on and shall include the first business day thereafter; and

(4) The term *initial offering period* means the period from the time the offer commences until all minimum time periods, including extensions, required by Regulations 14D (§§ 240.14d-1 through 240.14d-103) and 14E (§§ 240.14e-1 through 240.14e-8) have been satisfied and all conditions to the offer have been satisfied or waived within these time periods.

(5) The term *security holders* means holders of record and beneficial owners

§ 240.14d-2

of securities which are the subject of a tender offer;

(6) The term *security position listing* means, with respect to securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(7) The term *subject company* means any issuer of securities which are sought by a bidder pursuant to a tender offer;

(8) The term *subsequent offering period* means the period immediately following the initial offering period meeting the conditions specified in § 240.14d-11.

(9) The term *tender offer material* means:

(i) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(ii) The related transmittal letter (whereby securities of the subject company which are sought in the tender offer may be transmitted to the bidder or its depository) and all amendments thereto; and

(iii) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer;

(h) *Signatures*. Where the Act or the rules, forms, reports or schedules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to

17 CFR Ch. II (4-1-13 Edition)

the Commission or its staff a copy of any or all documents retained pursuant to this section.

[44 FR 70340, Dec. 6, 1979, as amended at 47 FR 11470, Mar. 16, 1982; 56 FR 30071, July 1, 1991; 60 FR 26622, May 17, 1995; 61 FR 30403, June 14, 1996; 62 FR 53955, Oct. 17, 1997; 64 FR 61404, 61459, Nov. 10, 1999; 73 FR 17814, Apr. 1, 2008; 73 FR 60091, Oct. 9, 2008]

§ 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

Securities and Exchange Commission

§ 240.14d-3

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]

§ 240.14d-3 Filing and transmission of tender offer statement.

(a) *Filing and transmittal.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject company's securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer such bidder:

(1) Files with the Commission a Tender Offer Statement on Schedule TO (§ 240.14d-100), including all exhibits thereto;

(2) Delivers a copy of such Schedule TO, including all exhibits thereto:

(i) To the subject company at its principal executive office; and

(ii) To any other bidder, which has filed a Schedule TO with the Commission relating to a tender offer which has not yet terminated for the same class of securities of the subject company, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Schedule TO);

(3) Gives telephonic notice of the information required by Rule 14d-6(d)(2)(i) and (ii) (§ 240.14d-6(d)(2)(i) and (ii)) and mails by means of first class mail a copy of such Schedule TO, including all exhibits thereto;

(i) To each national securities exchange where such class of the subject company's securities is registered and listed for trading (which may be based upon information contained in the subject company's most recent Annual Report on Form 10-K (§ 249.310 of this chapter) filed with the Commission unless the bidder has reason to believe that such information is not current), which telephonic notice shall be made when practicable before the opening of each such exchange; and

(ii) To the National Association of Securities Dealers, Inc. ("NASD") if such class of the subject company's securities is authorized for quotation in the NASDAQ interdealer quotation system.

(b) *Post-commencement amendments and additional materials.* The bidder making the tender offer must file with the Commission:

(1) An amendment to Schedule TO (§ 240.14d-100) reporting promptly any material changes in the information set forth in the schedule previously filed and including copies of any additional tender offer materials as exhibits; and

(2) A final amendment to Schedule TO (§ 240.14d-100) reporting promptly the results of the tender offer.

Instruction to paragraph (b): A copy of any additional tender offer materials or amendment filed under this section must be sent promptly to the subject company and to any exchange and/or NASD, as required by paragraph (a) of this section, but in no event later than the date the materials are first published, sent or given to security holders.

(c) *Certain announcements.* Notwithstanding the provisions of paragraph (b) of this section, if the additional tender offer material or an amendment to Schedule TO discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject company, any exchange and/or the NASD, as required by paragraph (a) of this section, promptly after the date such tender

§ 240.14d-4

17 CFR Ch. II (4-1-13 Edition)

offer material is first published or sent or given to security holders.

[44 FR 70341, Dec. 6, 1979; 64 FR 61460, Nov. 10, 1999, as amended at 73 FR 977, Jan. 4, 2008; 73 FR 17814, Apr. 1, 2008]

§ 240.14d-4 Dissemination of tender offers to security holders.

As soon as practicable on the date of commencement of a tender offer, the bidder must publish, send or give the disclosure required by § 240.14d-6 to security holders of the class of securities that is the subject of the offer, by complying with all of the requirements of any of the following:

(a) *Cash tender offers and exempt securities offers.* For tender offers in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 (15 U.S.C. 77c):

(1) *Long-form publication.* The bidder makes adequate publication in a newspaper or newspapers of long-form publication of the tender offer.

(2) *Summary publication.* (i) If the tender offer is not subject to Rule 13e-3 (§ 240.13e-3), the bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(ii) Mails by first class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials pursuant to the summary advertisement or otherwise.

(3) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings under § 240.14d-5 must comply with paragraph (a)(1) or (2) of this section on or before the date of the bidder's request under § 240.14d-5(a).

Instruction to paragraph (a): Tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication and the use of stockholder lists and security position listings under § 240.14d-5, paragraphs (a)(2) and (a)(3) of this section are exclusive.

(b) *Registered securities offers.* For tender offers in which the consideration consists solely or partially of securities registered under the Securities Act of 1933, a registration statement containing all of the required information,

including pricing information, has been filed and a preliminary prospectus or a prospectus that meets the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)), including a letter of transmittal, is delivered to security holders. However, for going-private transactions (as defined by § 240.13e-3) and roll-up transactions (as described by Item 901 of Regulation S-K (§ 229.901 of this chapter)), a registration statement registering the securities to be offered must have become effective and only a prospectus that meets the requirements of section 10(a) of the Securities Act may be delivered to security holders on the date of commencement.

Instructions to paragraph (b):

1. If the prospectus is being delivered by mail, mailing on the date of commencement is sufficient.

2. A preliminary prospectus used under this section may not omit information under §§ 230.430 or 230.430A of this chapter.

3. If a preliminary prospectus is used under this section and the bidder must disseminate material changes, the tender offer must remain open for the period specified in paragraph (d)(2) of this section.

4. If a preliminary prospectus is used under this section, tenders may be requested in accordance with § 230.162(a) of this chapter.

(c) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer pursuant to this section may require publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(d) *Publication of changes and extension of the offer.* (1) If a tender offer has been published or sent or given to security holders by one or more of the methods enumerated in this section, a material change in the information published or sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change; *Provided, however,* That if the bidder has elected pursuant

to rule 14d-5 (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to Rule 14d-5, the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to Rule 14d-5.

(2) In a registered securities offer where the bidder disseminates the preliminary prospectus as permitted by paragraph (b) of this section, the offer must remain open from the date that material changes to the tender offer materials are disseminated to security holders, as follows:

(i) Five business days for a prospectus supplement containing a material change other than price or share levels;

(ii) Ten business days for a prospectus supplement containing a change in price, the amount of securities sought, the dealer's soliciting fee, or other similarly significant change;

(iii) Ten business days for a prospectus supplement included as part of a post-effective amendment; and

(iv) Twenty business days for a revised prospectus when the initial prospectus was materially deficient.

[44 FR 70341, Dec. 6, 1979, as amended at 64 FR 61460, Nov. 10, 1999; 76 FR 71876, Nov. 21, 2011]

§ 240.14d-5 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

(a) *Obligations of the subject company.* Upon receipt by a subject company at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (e) of this section, the subject company shall comply with the following sub-paragraphs.

(1) The subject company shall notify promptly transfer agents and any other person who will assist the subject company in complying with the requirements of this section of the receipt by the subject company of a request by a bidder pursuant to this section.

(2) The subject company shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject company was prepared as

of a date earlier than ten business days before the date of the bidder's request and, if so, the subject company shall promptly prepare or cause to be prepared a stockholder list as of the most recent practicable date which shall not be more than ten business days before the date of the bidder's request.

(3) The subject company shall make an election to comply and shall comply with all of the provisions of either paragraph (b) or paragraph (c) of this section. The subject company's election once made shall not be modified or revoked during the bidder's tender offer and extensions thereof.

(4) No later than the second business day after the date of the bidder's request, the subject company shall orally notify the bidder, which notification shall be confirmed in writing, of the subject company's election made pursuant to paragraph (a)(3) of this section. Such notification shall indicate (i) the approximate number of security holders of the class of securities being sought by the bidder and, (ii) if the subject company elects to comply with paragraph (b) of this section, appropriate information concerning the location for delivery of the bidder's tender offer materials and the approximate direct costs incidental to the mailing to security holders of the bidder's tender offer materials computed in accordance with paragraph (g)(2) of this section.

(b) *Mailing of tender offer materials by the subject company.* A subject company which elects pursuant to paragraph (a)(3) of this section to comply with the provisions of this paragraph shall perform the acts prescribed by the following paragraphs.

(1) The subject company shall promptly contact each participant named on the most recent security position listing of any clearing agency within the access of the subject company and make inquiry of each such participant as to the approximate number of beneficial owners of the subject company securities being sought in the tender offer held by each such participant.

(2) No later than the third business day after delivery of the bidder's tender offer materials pursuant to paragraph (g)(1) of this section, the subject

company shall begin to mail or cause to be mailed by means of first class mail a copy of the bidder's tender offer materials to each person whose name appears as a record holder of the class of securities for which the offer is made on the most recent stockholder list referred to in paragraph (a)(2) of this section. The subject company shall use its best efforts to complete the mailing in a timely manner but in no event shall such mailing be completed in a substantially greater period of time than the subject company would complete a mailing to security holders of its own materials relating to the tender offer.

(3) No later than the third business day after the delivery of the bidder's tender offer materials pursuant to paragraph (g)(1) of this section, the subject company shall begin to transmit or cause to be transmitted a sufficient number of sets of the bidder's tender offer materials to the participants named on the security position listings described in paragraph (b)(1) of this section. The subject company shall use its best efforts to complete the transmittal in a timely manner but in no event shall such transmittal be completed in a substantially greater period of time than the subject company would complete a transmittal to such participants pursuant to security position listings of clearing agencies of its own material relating to the tender offer.

(4) The subject company shall promptly give oral notification to the bidder, which notification shall be confirmed in writing, of the commencement of the mailing pursuant to paragraph (b)(2) of this section and of the transmittal pursuant to paragraph (b)(3) of this section.

(5) During the tender offer and any extension thereof the subject company shall use reasonable efforts to update the stockholder list and shall mail or cause to be mailed promptly following each update a copy of the bidder's tender offer materials (to the extent sufficient sets of such materials have been furnished by the bidder) to each person who has become a record holder since the later of (i) the date of preparation of the most recent stockholder list referred to in paragraph (a)(2) of this section or (ii) the last preceding update.

(6) If the bidder has elected pursuant to paragraph (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to this section, the subject company, promptly following delivery of each such amendment, shall mail or cause to be mailed a copy of each such amendment to each record holder whose name appears on the shareholder list described in paragraphs (a)(2) and (b)(5) of this section and shall transmit or cause to be transmitted sufficient copies of such amendment to each participant named on security position listings who received sets of the bidder's tender offer materials pursuant to paragraph (b)(3) of this section.

(7) The subject company shall not include any communication other than the bidder's tender offer materials or amendments thereto in the envelopes or other containers furnished by the bidder.

(8) Promptly following the termination of the tender offer, the subject company shall reimburse the bidder the excess, if any, of the amounts advanced pursuant to paragraph (f)(3)(iii) over the direct costs incidental to compliance by the subject company and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section.

(c) *Delivery of stockholder lists and security position listings.* A subject company which elects pursuant to paragraph (a)(3) of this section to comply with the provisions of this paragraph shall perform the acts prescribed by the following paragraphs.

(1) No later than the third business day after the date of the bidder's request, the subject company must furnish to the bidder at the subject company's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in paragraph (a)(2) of this section; the names and addresses of participants identified on the most recent security position listing of any clearing agency that is within the access of the subject company; and the most recent list of names, addresses and security positions of beneficial owners as specified in §240.14a-13(b), in the possession of

the subject company, or that subsequently comes into its possession. All security holder list information must be in the format requested by the bidder to the extent the format is available to the subject company without undue burden or expense.

(2) If the bidder has elected pursuant to paragraph (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials, the subject company shall update the stockholder list by furnishing the bidder with the name and address of each record holder named on the stockholder list, and not previously furnished to the bidder, promptly after such information becomes available to the subject company during the tender offer and any extensions thereof.

(d) *Liability of subject company and others.* Neither the subject company nor any affiliate or agent of the subject company nor any clearing agency shall be:

(1) Deemed to have made a solicitation or recommendation respecting the tender offer within the meaning of section 14(d)(4) based solely upon the compliance or noncompliance by the subject company or any affiliate or agent of the subject company with one or more requirements of this section;

(2) Liable under any provision of the Federal securities laws to the bidder or to any security holder based solely upon the inaccuracy of the current names or addresses on the stockholder list or security position listing, unless such inaccuracy results from a lack of reasonable care on the part of the subject company or any affiliate or agent of the subject company;

(3) Deemed to be an “underwriter” within the meaning of section (2)(11) of the Securities Act of 1933 for any purpose of that Act or any rule or regulation promulgated thereunder based solely upon the compliance or noncompliance by the subject company or any affiliate or agent of the subject company with one or more of the requirements of this section;

(4) Liable under any provision of the Federal securities laws for the disclosure in the bidder’s tender offer materials, including any amendment thereto, based solely upon the compliance or

noncompliance by the subject company or any affiliate or agent of the subject company with one or more of the requirements of this section.

(e) *Content of the bidder’s request.* The bidder’s written request referred to in paragraph (a) of this section shall include the following:

(1) The identity of the bidder;

(2) The title of the class of securities which is the subject of the bidder’s tender offer;

(3) A statement that the bidder is making a request to the subject company pursuant to paragraph (a) of this section for the use of the stockholder list and security position listings for the purpose of disseminating a tender offer to security holders;

(4) A statement that the bidder is aware of and will comply with the provisions of paragraph (f) of this section;

(5) A statement as to whether or not it has elected pursuant to paragraph (f)(1) of this section to disseminate amendments disclosing material changes to the tender offer materials pursuant to this section; and

(6) The name, address and telephone number of the person whom the subject company shall contact pursuant to paragraph (a)(4) of this section.

(f) *Obligations of the bidder.* Any bidder who requests that a subject company comply with the provisions of paragraph (a) of this section shall comply with the following paragraphs.

(1) The bidder shall make an election whether or not to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to this section, which election shall be included in the request referred to in paragraph (a) of this section and shall not be revocable by the bidder during the tender offer and extensions thereof.

(2) With respect to a tender offer subject to section 14(d)(1) of the Act in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933, the bidder shall comply with the requirements of Rule 14d-4(a)(3).

(3) If the subject company elects to comply with paragraph (b) of this section,

(i) The bidder shall promptly deliver the tender offer materials after receipt of the notification from the subject company as provided in paragraph (a)(4) of this section;

(ii) The bidder shall promptly notify the subject company of any amendment to the bidder's tender offer materials requiring compliance by the subject company with paragraph (b)(6) of this section and shall promptly deliver such amendment to the subject company pursuant to paragraph (g)(1) of this section;

(iii) The bidder shall advance to the subject company an amount equal to the approximate cost of conducting mailings to security holders computed in accordance with paragraph (g)(2) of this section;

(iv) The bidder shall promptly reimburse the subject company for the direct costs incidental to compliance by the subject company and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section which are in excess of the amount advanced pursuant to paragraph (f)(2)(iii) of this section; and

(v) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials.

(4) If the subject company elects to comply with paragraph (c) of this section,

(i) The bidder shall use the stockholder list and security position listings furnished to the bidder pursuant to paragraph (c) of this section exclusively in the dissemination of tender offer materials to security holders in connection with the bidder's tender offer and extensions thereof;

(ii) The bidder shall return the stockholder lists and security position listings furnished to the bidder pursuant to paragraph (c) of this section promptly after the termination of the bidder's tender offer;

(iii) The bidder shall accept, handle and return the stockholder lists and security position listings furnished to the bidder pursuant to paragraph (c) of this section to the subject company on a confidential basis;

(iv) The bidder shall not retain any stockholder list or security position listing furnished by the subject company pursuant to paragraph (c) of this section, or any copy thereof, nor retain any information derived from any such list or listing or copy thereof after the termination of the bidder's tender offer;

(v) The bidder shall mail by means of first class mail, at its own expense, a copy of its tender offer materials to each person whose identity appears on the stockholder list as furnished and updated by the subject company pursuant to paragraphs (c)(1) and (2) of this section;

(vi) The bidder shall contact the participants named on the security position listing of any clearing agency, make inquiry of each participant as to the approximate number of sets of tender offer materials required by each such participant, and furnish, at its own expense, sufficient sets of tender offer materials and any amendment thereto to each such participant for subsequent transmission to the beneficial owners of the securities being sought by the bidder;

(vii) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials; and

(viii) The bidder shall promptly reimburse the subject company for direct costs incidental to compliance by the subject company and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section.

(g) *Delivery of materials, computation of direct costs.* (1) Whenever the bidder is required to deliver tender offer materials or amendments to tender offer materials, the bidder shall deliver to the subject company at the location specified by the subject company in its notice given pursuant to paragraph (a)(4) of this section a number of sets of the materials or of the amendment, as the case may be, at least equal to the approximate number of security holders specified by the subject company in such notice, together with appropriate envelopes or other containers therefor: *Provided, however,* That such delivery shall be deemed not to have been made

unless the bidder has complied with paragraph (f)(3)(iii) of this section at the time the materials or amendments, as the case may be, are delivered.

(2) The approximate direct cost of mailing the bidder's tender offer materials shall be computed by adding (i) the direct cost incidental to the mailing of the subject company's last annual report to shareholders (excluding employee time), less the costs of preparation and printing of the report, and postage, plus (ii) the amount of first class postage required to mail the bidder's tender offer materials. The approximate direct costs incidental to the mailing of the amendments to the bidder's tender offer materials shall be computed by adding (iii) the estimated direct costs of preparing mailing labels, of updating shareholder lists and of third party handling charges plus (iv) the amount of first class postage required to mail the bidder's amendment. Direct costs incidental to the mailing of the bidder's tender offer materials and amendments thereto when finally computed may include all reasonable charges paid by the subject company to third parties for supplies or services, including costs attendant to preparing shareholder lists, mailing labels, handling the bidder's materials, contacting participants named on security position listings and for postage, but shall exclude indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject company. The final billing for direct costs shall be accompanied by an appropriate accounting in reasonable detail.

NOTE TO § 240.14d-5. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If alternative methods are chosen, the approximate direct costs of distribution shall be computed by adding the estimated direct costs of preparing the document for distribution 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 include 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.

§ 240.14d-7

17 CFR Ch. II (4-1-13 Edition)

(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 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, 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.

[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; 76 FR 71876, Nov. 21, 2011]

§ 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 nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor during the period such offer, request or invitation remains open.

(Sec. 23, 48 Stat. 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 580; sec. 3, 82 Stat. 455; secs. 3-5, 84 Stat. 1497; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(e), 78w(a))

[47 FR 57680, Dec. 28, 1982]

§ 240.14d-9 Recommendation or solicitation by the subject company and others.

(a) *Pre-commencement communications.* A communication by a person described in paragraph (e) of this section with respect to a tender offer will not be deemed to constitute a recommendation or solicitation under this section if:

(1) The tender offer has not commenced under § 240.14d-2; and

(2) The communication is filed under cover of Schedule 14D-9 (§ 240.14d-101) with the Commission no later than the date of the communication.

Instructions to paragraph (a)(2):

1. The box on the front of Schedule 14D-9 (§ 240.14d-101) 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 company's solicitation/recommendation statement when it is available because it contains important information. The legend also must advise investors that they can get the recommendation and other filed documents for free at the Commission's web site and explain which documents are free from the filer.

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

(b) *Post-commencement communications.* After commencement by a bidder under § 240.14d-2, no solicitation or recommendation to security holders may be made by any person described in paragraph (e) of this section with respect to a tender offer for such securities unless as soon as practicable on the date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following:

(1) Such person shall file with the Commission a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9 (§ 240.14d-101), including all exhibits thereto; and

(2) If such person is either the subject company or an affiliate of the subject company,

(i) Such person shall hand deliver a copy of the Schedule 14D-9 to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Schedule TO (§ 240.14d-100) filed with the Commission; and

§ 240.14d-9

17 CFR Ch. II (4-1-13 Edition)

(ii) Such person shall give telephonic notice (which notice to the extent possible shall be given prior to the opening of the market) of the information required by Items 1003(d) and 1012(a) of Regulation M—A (§ 229.1003(d) and § 229.1012(a)) and shall mail a copy of the Schedule to each national securities exchange where the class of securities is registered and listed for trading and, if the class is authorized for quotation in the NASDAQ interdealer quotation system, to the National Association of Securities Dealers, Inc. (“NASD”).

(3) If such person is neither the subject company nor an affiliate of the subject company,

(i) Such person shall mail a copy of the schedule to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder’s Schedule TO (§ 240.14d-100) filed with the Commission); and

(ii) Such person shall mail a copy of the Schedule to the subject company at its principal office.

(c) *Amendments.* If any material change occurs in the information set forth in the Schedule 14D-9 (§ 240.14d-101) required by this section, the person who filed such Schedule 14D-9 shall:

(1) File with the Commission an amendment on Schedule 14D-9 (§ 240.14d-101) disclosing such change promptly, but not later than the date such material is first published, sent or given to security holders; and

(2) Promptly deliver copies and give notice of the amendment in the same manner as that specified in paragraph (b)(2) or (3) of this section, whichever is applicable; and

(3) Promptly disclose and disseminate such change in a manner reasonably designed to inform security holders of such change.

(d) *Information required in solicitation or recommendation.* Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-

101) or a fair and adequate summary thereof: *Provided, however,* That such solicitation or recommendation may omit any of such information previously furnished to security holders of such class of securities by such person with respect to such tender offer.

(e) *Applicability.* (1) Except as is provided in paragraphs (e)(2) and (f) of this section, this section shall only apply to the following persons:

(i) The subject company, any director, officer, employee, affiliate or subsidiary of the subject company;

(ii) Any record holder or beneficial owner of any security issued by the subject company, by the bidder, or by any affiliate of either the subject company or the bidder; and

(iii) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the Commission pursuant to this section or Rule 14d-3 (§ 240.14d-3).

(2) Notwithstanding paragraph (e)(1) of this section, this section shall not apply to the following persons:

(i) A bidder who has filed a Schedule TO (§ 240.14d-100) pursuant to Rule 14d-3 (§ 240.14d-3);

(ii) Attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity and who furnish information and/or advice regarding such tender offer to their customers or clients on the unsolicited request of such customers or clients or solely pursuant to a contract or a relationship providing for advice to the customer or client to whom the information and/or advice is given.

(iii) Any person specified in paragraph (e)(1) of this section if:

(A) The subject company is the subject of a tender offer conducted under § 240.14d-1(c);

(B) Any person specified in paragraph (e)(1) of this section furnishes to the Commission on Form CB (§ 249.480 of this chapter) the entire informational document it publishes or otherwise disseminates to holders of the class of securities in connection with the tender

Securities and Exchange Commission

§ 240.14d-10

offer no later than the next business day after publication or dissemination;

(C) Any person specified in paragraph (e)(1) of this section disseminates any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the issuer's home jurisdiction; and

(D) Any person specified in paragraph (e)(1) of this section disseminates by publication in its home jurisdiction, such person must publish the information in the United States in a manner reasonably calculated to inform U.S. security holders of the offer.

(f) *Stop-look-and-listen communication.* This section shall not apply to the subject company with respect to a communication by the subject company to its security holders which only:

(1) Identifies the tender offer by the bidder;

(2) States that such tender offer is under consideration by the subject company's board of directors and/or management;

(3) States that on or before a specified date (which shall be no later than 10 business days from the date of commencement of such tender offer) the subject company will advise such security holders of (i) whether the subject company recommends acceptance or rejection of such tender offer; expresses no opinion and remains neutral toward such tender offer; or is unable to take a position with respect to such tender offer and (ii) the reason(s) for the position taken by the subject company with respect to the tender offer (including the inability to take a position); and

(4) Requests such security holders to defer making a determination whether to accept or reject such tender offer until they have been advised of the subject company's position with respect thereto pursuant to paragraph (f)(3) of this section.

(g) *Statement of management's position.* A statement by the subject company's of its position with respect to a tender offer which is required to be published or sent or given to security holders pursuant to Rule 14e-2 shall be deemed to constitute a solicitation or recommendation within the meaning of

this section and section 14(d)(4) of the Act.

[44 FR 70345, Dec. 6, 1979, as amended at 64 FR 61406, 61461-61462, Nov. 10, 1999; 73 FR 17814, Apr. 1, 2008]

§ 240.14d-10 Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; and

(2) The consideration paid to any security holder for securities tendered in the tender offer is the highest consideration paid to any other security holder for securities tendered in the tender offer.

(b) Paragraph (a)(1) of this section shall not:

(1) Affect dissemination under Rule 14d-4 (§ 240.14d-4); or

(2) Prohibit a bidder from making a tender offer excluding all security holders in a state where the bidder is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the bidder to comply with such statute.

(c) Paragraph (a)(2) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, *Provided*, That:

(1) Security holders are afforded equal right to elect among each of the types of consideration offered; and

(2) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(d)(1) Paragraph (a)(2) of this section shall not prohibit the negotiation, execution or amendment of an employment compensation, severance or other employee benefit arrangement, or payments made or to be made or benefits granted or to be granted according to such an arrangement, with respect to any security holder of the subject company, where the amount payable under the arrangement:

(i) Is being paid or granted as compensation for past services performed, future services to be performed, or future services to be refrained from performing, by the security holder (and matters incidental thereto); and

(ii) Is not calculated based on the number of securities tendered or to be tendered in the tender offer by the security holder.

(2) The provisions of paragraph (d)(1) of this section shall be satisfied and, therefore, pursuant to this non-exclusive safe harbor, the negotiation, execution or amendment of an arrangement and any payments made or to be made or benefits granted or to be granted according to that arrangement shall not be prohibited by paragraph (a)(2) of this section, if the arrangement is approved as an employment compensation, severance or other employee benefit arrangement solely by independent directors as follows:

(i) The compensation committee or a committee of the board of directors that performs functions similar to a compensation committee of the subject company approves the arrangement, regardless of whether the subject company is a party to the arrangement, or, if the bidder is a party to the arrangement, the compensation committee or a committee of the board of directors that performs functions similar to a compensation committee of the bidder approves the arrangement; or

(ii) If the subject company's or bidder's board of directors, as applicable, does not have a compensation committee or a committee of the board of directors that performs functions similar to a compensation committee or if none of the members of the subject company's or bidder's compensation committee or committee that performs functions similar to a compensation committee is independent, a special committee of the board of directors formed to consider and approve the arrangement approves the arrangement; or

(iii) If the subject company or bidder, as applicable, is a foreign private issuer, any or all members of the board of directors or any committee of the board of directors authorized to approve employment compensation, severance or other employee benefit arrangements under the laws or regulations of the home country approves the arrangement.

Instructions to paragraph (d)(2): For purposes of determining whether the members of the committee approving an arrangement

in accordance with the provisions of paragraph (d)(2) of this section are independent, the following provisions shall apply:

1. If the bidder or subject company, as applicable, is a listed issuer (as defined in §240.10A-3 of this chapter) whose securities are listed either on a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or in an inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o-3(a)) that has independence requirements for compensation committee members that have been approved by the Commission (as those requirements may be modified or supplemented), apply the bidder's or subject company's definition of independence that it uses for determining that the members of the compensation committee are independent in compliance with the listing standards applicable to compensation committee members of the listed issuer.

2. If the bidder or subject company, as applicable, is not a listed issuer (as defined in §240.10A-3 of this chapter), apply the independence requirements for compensation committee members of a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or an inter-dealer quotation system of a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o-3(a)) that have been approved by the Commission (as those requirements may be modified or supplemented). Whatever definition the bidder or subject company, as applicable, chooses, it must apply that definition consistently to all members of the committee approving the arrangement.

3. Notwithstanding Instructions 1 and 2 to paragraph (d)(2), if the bidder or subject company, as applicable, is a closed-end investment company registered under the Investment Company Act of 1940, a director is considered to be independent if the director is not, other than in his or her capacity as a member of the board of directors or any board committee, an "interested person" of the investment company, as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)).

4. If the bidder or the subject company, as applicable, is a foreign private issuer, apply either the independence standards set forth in Instructions 1 and 2 to paragraph (d)(2) or the independence requirements of the laws, regulations, codes or standards of the home country of the bidder or subject company, as applicable, for members of the board of directors or the committee of the board of directors approving the arrangement.

Securities and Exchange Commission

§ 240.14d-100

5. A determination by the bidder's or the subject company's board of directors, as applicable, that the members of the board of directors or the committee of the board of directors, as applicable, approving an arrangement in accordance with the provisions of paragraph (d)(2) are independent in accordance with the provisions of this instruction to paragraph (d)(2) shall satisfy the independence requirements of paragraph (d)(2).

Instruction to paragraph (d): The fact that the provisions of paragraph (d) of this section extend only to employment compensation, severance and other employee benefit arrangements and not to other arrangements, such as commercial arrangements, does not raise any inference that a payment under any such other arrangement constitutes consideration paid for securities in a tender offer.

(e) If the offer and sale of securities constituting consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state:

(1) The bidder may offer security holders in such state an alternative form of consideration; and

(2) Paragraph (c) of this section shall not operate to require the bidder to offer or pay the alternative form of consideration to security holders in any other state.

(f) This section shall not apply to any tender offer with respect to which the Commission, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with this section is not necessary or appropriate in the public interest or for the protection of investors.

[51 FR 25882, July 17, 1986, as amended at 71 FR 65408, Nov. 8, 2006]

§ 240.14d-11 Subsequent offering period.

A bidder may elect to provide a subsequent offering period of at least three business days during which tenders will be accepted if:

(a) The initial offering period of at least 20 business days has expired;

(b) The offer is for all outstanding securities of the class that is the subject of the tender offer, and if the bidder is offering security holders a choice of different forms of consideration, there

is no ceiling on any form of consideration offered;

(c) The bidder immediately accepts and promptly pays for all securities tendered during the initial offering period;

(d) The bidder announces the results of the tender offer, including the approximate number and percentage of securities deposited to date, no later than 9:00 a.m. Eastern time on the next business day after the expiration date of the initial offering period and immediately begins the subsequent offering period;

(e) The bidder immediately accepts and promptly pays for all securities as they are tendered during the subsequent offering period; and

(f) The bidder offers the same form and amount of consideration to security holders in both the initial and the subsequent offering period.

NOTE TO § 240.14d-11: No withdrawal rights apply during the subsequent offering period in accordance with § 240.14d-7(a)(2).

[64 FR 61462, Nov. 10, 1999, as amended at 73 FR 60092, Oct. 9, 2008]

§ 240.14d-100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

Securities and Exchange Commission,
Washington, D.C. 20549
Schedule TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No. _____)*

(Name of Subject Company (issuer))

(Names of Filing Persons (identifying status as offeror, issuer or other person))

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

§240.14d-100

17 CFR Ch. II (4-1-13 Edition)

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

General Instructions:

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. This filing must be accompanied by a fee payable to the Commission as required by §240.0-11.

C. If the statement is filed by a general or limited partnership, syndicate or other group, the information called for by Items 3 and 5-8 for a third-party tender offer and Items 5-8 for an issuer tender offer must be given with respect to: (i) Each partner of the general partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the items specified above must be given with respect to: (a) Each executive officer and director of the corporation; (b) each person controlling the corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of the corporation.

D. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature or filing fee is required. The filer need not respond to

the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.

E. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

F. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Act.

G. A filing person may amend its previously filed Schedule 13D (§240.13d-101) on Schedule TO (§240.14d-100) if the appropriate box on the cover page is checked to indicate a combined filing and the information called for by the fourteen disclosure items on the cover page of Schedule 13D (§240.13d-101) is provided on the cover page of the combined filing with respect to each filing person.

H. The final amendment required by §240.14d-3(b)(2) and §240.13e-4(c)(4) will satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the offeror in the tender offer.

I. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

J. If the tender offer disclosed on this statement involves a going-private transaction, a combined Schedule TO (§240.14d-100) and Schedule 13E-3 (§240.13e-100) may be filed with the Commission under cover of Schedule TO. The Rule 13e-3 box on the cover page of the Schedule TO must be checked to indicate a combined filing. All information called for by both schedules must be provided except that Items 1-3, 5, 8 and 9 of Schedule TO may be omitted to the extent

Securities and Exchange Commission

§ 240.14d-100

those items call for information that duplicates the item requirements in Schedule 13E-3.

K. For purposes of this statement, the following definitions apply:

(1) The term *offeror* means any person who makes a tender offer or on whose behalf a tender offer is made;

(2) The term *issuer tender offer* has the same meaning as in Rule 13e-4(a)(2); and

(3) The term *third-party tender offer* means a tender offer that is not an issuer tender offer.

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE TO

Under Sections 13(e), 14(d) and 23 of the Act and the rules and regulations of the Act, the Commission is authorized to solicit the information required to be supplied by this schedule.

Disclosure of the information specified in this schedule is mandatory. The information will be used for the primary purpose of disclosing tender offer and going-private transactions. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the federal securities laws or other civil, criminal or regulatory statutes or provisions.

Failure to disclose the information required by this schedule may result in civil or criminal action against the persons involved for violation of the federal securities laws and rules.

Item 1. Summary Term Sheet

Furnish the information required by Item 1001 of Regulation M-A (§229.1001 of this chapter) unless information is disclosed to security holders in a prospectus that meets the requirements of §230.421(d) of this chapter.

Item 2. Subject Company Information

Furnish the information required by Item 1002(a) through (c) of Regulation M-A (§229.1002 of this chapter).

Item 3. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) through (c) of Regulation M-A (§229.1003 of this chapter) for a third-party tender offer and the information required by Item 1003(a) of Regulation M-A (§229.1003 of this chapter) for an issuer tender offer.

Item 4. Terms of the Transaction

Furnish the information required by Item 1004(a) of Regulation M-A (§229.1004 of this chapter) for a third-party tender offer and the information required by Item 1004(a) through (b) of Regulation M-A (§229.1004 of this chapter) for an issuer tender offer.

Item 5. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(a) and (b) of Regulation M-A (§229.1005 of this chapter) for a third-party tender offer and the information required by Item 1005(e) of Regulation M-A (§229.1005) for an issuer tender offer.

Item 6. Purposes of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(a) and (c)(1) through (7) of Regulation M-A (§229.1006 of this chapter) for a third-party tender offer and the information required by Item 1006(a) through (c) of Regulation M-A (§229.1006 of this chapter) for an issuer tender offer.

Item 7. Source and Amount of Funds or Other Consideration

Furnish the information required by Item 1007(a), (b) and (d) of Regulation M-A (§229.1007 of this chapter).

Item 8. Interest in Securities of the Subject Company

Furnish the information required by Item 1008 of Regulation M-A (§229.1008 of this chapter).

Item 9. Persons/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009(a) of Regulation M-A (§229.1009 of this chapter).

Item 10. Financial Statements

If material, furnish the information required by Item 1010(a) and (b) of Regulation M-A (§229.1010 of this chapter) for the issuer in an issuer tender offer and for the offeror in a third-party tender offer.

Instructions to Item 10:

1. Financial statements must be provided when the offeror's financial condition is material to security holder's decision whether to sell, tender or hold the securities sought. The facts and circumstances of a tender offer, particularly the terms of the tender offer, may influence a determination as to whether financial statements are material, and thus required to be disclosed.

2. Financial statements are *not* considered material when: (a) The consideration offered consists solely of cash; (b) the offer is not

subject to any financing condition; *and* either: (c) the offeror is a public reporting company under Section 13(a) or 15(d) of the Act that files reports electronically on EDGAR, or (d) the offer is for all outstanding securities of the subject class. Financial information may be required, however, in a two-tier transaction. *See* Instruction 5 below.

3. The filing person may incorporate by reference financial statements contained in any document filed with the Commission, solely for the purposes of this schedule, if: (a) The financial statements substantially meet the requirements of this item; (b) an express statement is made that the financial statements are incorporated by reference; (c) the information incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and (d) if the information incorporated by reference is not filed with this schedule, an indication is made where the information may be inspected and copies obtained. Financial statements that are required to be presented in comparative form for two or more fiscal years or periods may not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given. *See* General Instruction F to this schedule.

4. If the offeror in a third-party tender offer is a natural person, and such person's financial information is material, disclose the net worth of the offeror. If the offeror's net worth is derived from material amounts of assets that are not readily marketable or there are material guarantees and contingencies, disclose the nature and approximate amount of the individual's net worth that consists of illiquid assets and the magnitude of any guarantees or contingencies that may negatively affect the natural person's net worth.

5. Pro forma financial information is required in a negotiated third-party cash tender offer when securities are intended to be offered in a subsequent merger or other transaction in which remaining target securities are acquired and the acquisition of the subject company is significant to the offeror under § 210.11-01(b)(1) of this chapter. The offeror must disclose the financial information specified in Item 3(f) and Item 5 of Form S-4 (§ 239.25 of this chapter) in the schedule filed with the Commission, but may furnish only the summary financial information specified in Item 3(d), (e) and (f) of Form S-4 in the disclosure document sent to security holders. If pro forma financial information is required by this instruction, the historical financial statements specified in Item 1010 of Regulation M-A (§ 229.1010 of this chapter) are required for the bidder.

6. The disclosure materials disseminated to security holders may contain the summarized financial information specified by Item 1010(c) of Regulation M-A (§ 229.1010 of this

chapter) instead of the financial information required by Item 1010(a) and (b). In that case, the financial information required by Item 1010(a) and (b) of Regulation M-A must be disclosed in the statement. If summarized financial information is disseminated to security holders, include appropriate instructions on how more complete financial information can be obtained. If the summarized financial information is prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, the summarized financial information must be accompanied by a reconciliation as described in Instruction 8 of this Item.

7. If the offeror is not subject to the periodic reporting requirements of the Act, the financial statements required by this Item need not be audited if audited financial statements are not available or obtainable without unreasonable cost or expense. Make a statement to that effect and the reasons for their unavailability.

8. If the financial statements required by this Item are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20-F (§ 249.220f of this chapter), unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, however, when financial statements are prepared on a basis other than U.S. GAAP, a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. must be presented.

Item 11. Additional Information.

Furnish the information required by Item 1011(a) and (c) of Regulation M-A (§ 229.1011 of this chapter).

Item 12. Exhibits

File as an exhibit to the Schedule all documents specified by Item 1016 (a), (b), (d), (g) and (h) of Regulation M-A (§ 229.1016 of this chapter).

Item 13. Information Required by Schedule 13E-3

If the Schedule TO is combined with Schedule 13E-3 (§ 240.13e-100), set forth the information required by Schedule 13E-3 that is not included or covered by the items in Schedule TO.

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

Securities and Exchange Commission

§ 240.14d-101

(Name and title)

(Date)

Instruction to Signature: The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See §§ 240.12b-11 and 240.14d-1(h) with respect to signature requirements.

[64 FR 61462, Nov. 10, 1999, as amended at 72 FR 45112, Aug. 10, 2007; 73 FR 17814, Apr. 1, 2008; 73 FR 60093, Oct. 9, 2008; 76 FR 6046, Feb. 2, 2011]

§ 240.14d-101 Schedule 14D-9.

Securities and Exchange Commission, Washington, D.C. 20549 Schedule 14D-9

Solicitation/Recommendation Statement under Section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No. _____)

(Name of Subject Company)

(Names of Persons Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of the persons filing statement)

[] Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

General Instructions:

A. File eight copies of the statement, including all exhibits, with the Commission if paper filing is permitted.

B. If the filing contains only preliminary communications made before the commencement of a tender offer, no signature is required. The filer need not respond to the items in the schedule. Any pre-commencement communications that are filed under cover of this schedule need not be incorporated by reference into the schedule.

C. If an item is inapplicable or the answer is in the negative, so state. The statement published, sent or given to security holders may omit negative and not applicable responses. If the schedule includes any information that is not published, sent or given to security holders, provide that information or specifically incorporate it by reference under the appropriate item number and heading in the schedule. Do not recite the text of disclosure requirements in the schedule or any document published, sent or given to security holders. Indicate clearly the coverage of the requirements without referring to the text of the items.

D. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item unless it would render the answer misleading, incomplete, unclear or confusing. A copy of any information that is incorporated by reference or a copy of the pertinent pages of a document containing the information must be submitted with this statement as an exhibit, unless it was previously filed with the Commission electronically on EDGAR. If an exhibit contains information responding to more than one item in the schedule, all information in that exhibit may be incorporated by reference once in response to the several items in the schedule for which it provides an answer. Information incorporated by reference is deemed filed with the Commission for all purposes of the Act.

E. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Subject Company Information

Furnish the information required by Item 1002(a) and (b) of Regulation M-A (§229.1002 of this chapter).

Item 2. Identity and Background of Filing Person

Furnish the information required by Item 1003(a) and (d) of Regulation M-A (§229.1003 of this chapter).

Item 3. Past Contacts, Transactions, Negotiations and Agreements

Furnish the information required by Item 1005(d) of Regulation M-A (§229.1005 of this chapter).

Item 4. The Solicitation or Recommendation

Furnish the information required by Item 1012(a) through (c) of Regulation M-A (§229.1012 of this chapter).

Item 5. Person/Assets, Retained, Employed, Compensated or Used

Furnish the information required by Item 1009(a) of Regulation M-A (§229.1009 of this chapter).

§ 240.14d-102

17 CFR Ch. II (4-1-13 Edition)

Item 6. Interest in Securities of the Subject Company

Furnish the information required by Item 1008(b) of Regulation M-A (§ 229.1008 of this chapter).

Item 7. Purposes of the Transaction and Plans or Proposals

Furnish the information required by Item 1006(d) of Regulation M-A (§ 229.1006 of this chapter).

Item 8. Additional Information

Furnish the information required by Item 1011(b) and (c) of Regulation M-A (§ 229.1011 of this chapter).

Item 9. Exhibits

File as an exhibit to the Schedule all documents specified by Item 1016(a), (e) and (g) of Regulation M-A (§ 229.1016 of this chapter).

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and title)

(Date)

Instruction to Signature: The statement must be signed by the filing person or that person's authorized representative. If the statement is signed on behalf of a person by an authorized representative (other than an executive officer of a corporation or general partner of a partnership), evidence of the representative's authority to sign on behalf of the person must be filed with the statement. The name and any title of each person who signs the statement must be typed or printed beneath the signature. See § 240.14d-1(h) with respect to signature requirements.

[64 FR 61464, Nov. 10, 1999, as amended at 73 FR 17814, Apr. 1, 2008; 76 FR 6046, Feb. 2, 2011]

§ 240.14d-102 Schedule 14D-1F. Tender offer statement pursuant to rule 14d-1(b) under the Securities Exchange Act of 1934.

Securities and Exchange Commission
Washington, DC
Schedule 14D-1F

Tender Offer Statement Pursuant to Rule 14d-1(b) Under the Securities Exchange Act of 1934

[Amendment No. _____]

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] name into English (if applicable))

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of bidder)

(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fee*

Transaction Valuation
Amount of Filing Fee

*Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II. C. for rules governing the calculation of the filing fee.

[] Check box if any part of the fee is offset as provided by Rule 0-11(a) (2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____

Registration No.: _____

Filing Party: _____

Form: _____

Date Filed: _____

General Instructions

I. ELIGIBILITY REQUIREMENTS FOR USE OF SCHEDULE 14D-1F

A. Schedule 14D-1F may be used by any person making a cash tender or exchange offer (the "bidder") for securities of any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, where less than 40 percent of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. The calculation of U.S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term "U. S. holder" shall mean any person whose address appears on the records of the issuer, any voting trustee, any depository, any share transfer agent or any person acting in a similar capacity on behalf of the issuer as being located in the United States.

3. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d-1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer of the subject securities will be presumed to be a foreign private issuer and U. S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. ("CDN") over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U. S. holders hold 40 percent or more of the subject class of securities; or (c) the offeror has actual knowledge that the level of U. S. ownership equals or exceeds 40 percent of such securities.

4. If this Schedule is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to this offer that was commenced or was eligible to be commenced on Schedule 13E-4F, Schedule 14D-1F and/or Form F-8 or Form F-80, the date for calculation of U. S. ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.

5. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

B. Any bidder using this Schedule must extend the cash tender or exchange offer to U. S. holders of securities of the subject company upon terms and conditions not less favorable than those extended to any other holder of such securities, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the subject company is an investment company

registered or required to be registered under the Investment Company Act of 1940.

D. This Schedule shall not be used to comply with the reporting requirements of section 13(d) of the Exchange Act. Persons using this Schedule are reminded of their obligation to file or update a Schedule 13D where required by section 13(d)(1) of the Exchange Act and the Commission's rules and regulations thereunder.

II. FILING INSTRUCTIONS AND FEE

A.(1) The bidder must file this Schedule and any amendment to the Schedule (see Part I, Item 1.(b)), including all exhibits and other documents filed as part of the Schedule or amendment, in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 551-8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 551-3610.

(2) If filing the Schedule in paper under a hardship exemption in 17 CFR 232.201 or 232.202 of Regulation S-T, or as otherwise permitted, the bidder must file with the Commission at its principal office five copies of the complete Schedule and any amendment, including exhibits and all other documents filed as a part of the Schedule or amendment. The bidder must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The bidder must further bind the Schedule or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The bidder must provide three additional copies of the Schedule or amendment without exhibits to the Commission.

B. An electronic filer must provide the signatures required for the Schedule or amendment in accordance with 17 CFR 232.302 of Regulation S-T. A bidder filing in paper must have the original and at least one copy of the Schedule and any amendment signed in accordance with Exchange Act Rule 12b-11(d) (17 CFR 12b-11(d)) by the persons whose signatures are required for this Schedule or amendment. The bidder must also conform the unsigned copies.

C. At the time of filing this Schedule with the Commission, the bidder shall pay to the Commission in accordance with Rule 0-11 of the Exchange Act, a fee in U. S. dollars in the amount prescribed by section 14(g)(3) of the Exchange Act. See also Rule 0-9 under the Exchange Act.

(1) Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment

for the same securities, the value of the consideration shall be based on the market value of the securities to be received by the bidder as established by paragraph 3 of this section.

(2) If there is no market for the securities to be acquired by the bidder, the book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported for over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within five business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. The bidder must file the Schedule or amendment in electronic format in the English language in accordance with 17 CFR 232.306 of Regulation S-T. The bidder may file part of the Schedule or amendment, or exhibit or other attachment to the Schedule or amendment, in both French and English if the bidder included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in 17 CFR 232.11 of Regulation S-T. For both an electronic filing and a paper filing, the bidder may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the Schedule or amendment as permitted by the rules of the applicable Canadian securities administrator.

F. A paper filer must number sequentially the signed original of the Schedule or amendment (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the Schedule or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered Schedule or amendment.

III. COMPLIANCE WITH THE EXCHANGE ACT

A. Pursuant to Rule 14d-1(b) under the Exchange Act, the bidder shall be deemed to

comply with the requirements of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule TO thereunder, and Rule 14e-1 under Regulation 14E of the Exchange Act, in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule; *provided that*, if an exemption has been granted from requirements of Canadian federal, provincial, and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be prescribed by Regulation 14D or 14E, the bidder (absent an order from the Commission) shall comply with the provisions of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D and Schedule TO thereunder, and Rule 14e-1 under Regulation 14E.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and section 14(e) of the Exchange Act and Rule 14e-3 thereunder, and this Schedule shall be deemed "filed" for purposes of section 18 of the Exchange Act.

C. The bidder's attention is directed to Regulation M (§§242.100 through 242.105 of this chapter) in the case of an exchange offer, and to Rule 14e-5 under the Exchange Act (§240.14e-5) for any exchange or cash tender offer. [See Exchange Act Release No. 29355 (June 21, 1991) containing an exemption from Rule 10b-13, the predecessor to Rule 14e-5.]

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the bidder pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy.

(b) Any amendment made by the bidder to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the bidder have been or are to be offered or cancelled in the transaction, such securities shall be registered on forms promulgated by the Commission under the Securities Act of

Securities and Exchange Commission

§ 240.14d-102

1933 including, where available, the Commission's Form F-8 or F-80 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the home-jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which the subject company is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the subject company is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.

"Investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer, or of the issuer's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

In the case of an exchange offer:

"Investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer or of the issuer's related securities, or of the bidder's securities to be distributed or of the bidder's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

NOTE TO ITEM 2. If the home-jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or ter-

ritories. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the bidder in connection with the transaction but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the bidder is signed pursuant to a power of attorney, certified copies of the bidder's board of directors authorizing such signature also shall be filed.

PART III—UNDERTAKINGS AND CONSENT TO SERVICE OF PROCESS

1. Undertakings

The Schedule shall set forth the following undertakings of the bidder:

a. The bidder undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

b. The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities in connection with the cash tender or exchange offer covered by this Schedule. Such information shall be set forth in amendments to this Schedule.

c. In the case of an exchange offer:

The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, or otherwise discloses, information regarding purchases of the issuer's or bidder's securities in connection with the offer.

2. Consent to Service of Process

(a) At the time of filing this Schedule, the bidder (if a non-U. S. person) shall file with the Commission a written irrevocable consent and power of attorney on Form F-X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F-X referencing the file number of the registrant.

PART IV—SIGNATURES

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed

or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the bidder consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the filing on Schedule 14D-1F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and Title)

(Date)

[56 FR 30071, July 1, 1991; 57 FR 10615, Mar. 27, 1992, as amended at 61 FR 24657, May 15, 1996; 62 FR 544, Jan. 3, 1997; 67 FR 36705, May 24, 2002; 73 FR 17814, Apr. 1, 2008]

§ 240.14d-103 Schedule 14D-9F. Solicitation/recommendation statement pursuant to section 14(d)(4) of the Securities Exchange Act of 1934 and rules 14d-1(b) and 14e-2(c) thereunder.

Securities and Exchange Commission Washington, DC 20549

Schedule 14D-9F

Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934 and Rules 14d-1(b) and 14e-2(c) Thereunder

[Amendment No. ____]

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] Name into English (if applicable))

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

(Name(s) of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of the person(s) filing statement)

General Instructions

I. ELIGIBILITY REQUIREMENTS FOR USE OF SCHEDULE 14D-9F

A. Schedule 14D-9F is used by any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer (the "subject company"), or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of its securities filed on Schedule 14D-1F.

For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

B. Any person(s) using this Schedule must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to a recommendation by the subject issuer's board of directors, or any director or officer thereof, with respect to the offer.

II. FILING INSTRUCTIONS

A.(1) The subject issuer must file this Schedule and any amendment to the Schedule (see Part I, Item 1.(b)), including all exhibits and other documents filed as part of the Schedule or amendment, in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 551-8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 551-3610.

(2) If filing the Schedule in paper under a hardship exemption in 17 CFR 232.201 or 232.202 of Regulation S-T, or as otherwise permitted, the subject issuer must file with the Commission at its principal office five copies of the complete Schedule and any amendment, including exhibits and all other documents filed as a part of the Schedule or amendment. The subject issuer must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The subject issuer must further bind the Schedule or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The subject issuer must provide three additional copies of the Schedule or

amendment without exhibits to the Commission.

B. An electronic filer must provide the signatures required for the Schedule or amendment in accordance with 17 CFR 232.302 of Regulation S-T. A subject issuer filing in paper must have the original and at least one copy of the Schedule and any amendment signed in accordance with Exchange Act Rule 12b-11(d) (17 CFR 12b-11(d)) by the persons whose signatures are required for this Schedule or amendment. The subject issuer must also conform the unsigned copies.

C. The subject issuer must file the Schedule or amendment in electronic format in the English language in accordance with 17 CFR 232.306 of Regulation S-T. The subject issuer may file part of the Schedule or amendment, or exhibit or other attachment to the Schedule or amendment, in both French and English if the bidder included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in 17 CFR 232.11 of Regulation S-T. For both an electronic filing and a paper filing, the subject issuer may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the Schedule or amendment as permitted by the rules of the applicable Canadian securities administrator.

D. A paper filer must number sequentially the signed original of the Schedule or amendment (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the Schedule or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered Schedule or amendment.

III. COMPLIANCE WITH THE EXCHANGE ACT

A. Pursuant to Rule 14e-2(c) under the Securities Exchange Act of 1934 (the "Exchange Act"), this Schedule shall be filed by an issuer, a class of the securities of which is the subject of a cash tender or exchange offer filed on Schedule 14D-1F, and may be filed by any director or officer of such issuer.

B. Any recommendation with respect to a cash tender or exchange offer for a class of securities of the subject company made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b-5 thereunder and section 14(e) of the Exchange Act and Rule 14e-3 thereunder, and this Schedule shall be deemed "filed" with the Commission for purposes of section 18 of the Exchange Act.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy.

(b) Any amendment made to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which the subject issuer is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country."

NOTE TO ITEM 2. If the home jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, or regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenient reference.

§ 240.14e-1

17 CFR Ch. II (4-1-13 Edition)

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the person(s) filing this Schedule in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

The Schedule shall set forth the following undertaking of the person filing it:

The person(s) filing this Schedule undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

2. Consent to Service of Process.

(a) At the time of filing this Schedule, the person(s) (if a non-U. S. person) so filing shall file with the Commission a written irrevocable consent and power of attorney on Form F-X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F-X referencing the file number of the registrant.

Part IV—Signatures

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the subject company), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the persons signing consent without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with filing on this Schedule 14D-9F or any purchases or sales of any security

in connection therewith, may be commenced against them in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and Title)

(Date)

[56 FR 30073, July 1, 1991, as amended at 61 FR 24657, May 15, 1996; 67 FR 36706, May 24, 2002; 73 FR 17814, Apr. 1, 2008]

REGULATION 14E

NOTE: For the scope of and definitions applicable to Regulation 14E, refer to § 240.14d-1.

§ 240.14e-1 Unlawful tender offer practices.

As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, no person who makes a tender offer shall:

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent to security holders; provided, however, that if the tender offer involves a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)) and the securities being offered are registered (or authorized to be registered) on Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34), the offer shall not be open for less than sixty calendar days from the date the tender offer is first published or sent to security holders;

(b) Increase or decrease the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders.

Provided, however, That, for purposes of this paragraph, the acceptance for payment of an additional amount of securities not to exceed two percent of the