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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

REGULATION 14D

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERCEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

DISCLOSURE REQUIREMENTS AND MINIMUM TIME FOR TENDER OFFERS

Scope of and Definitions Applicable to Regulations 14D and 14E

Reg. §240.14d-1.

- (a) *Scope.* Regulation 14D (§§240.14d-1 through 240.14d-101) shall apply to any tender offer which is subject to section 14(d)(1) of the Act, including but not limited to, any tender offer for securities of a class described in that section which is made by an affiliate of the issuer of such class. Regulation 14E (§§240.14e-1 and 240.14e-2) 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 14D-1 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 Commission 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 Schedules, 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 exchange 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 offer 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 interests of investors.
- (c) *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 section 14(d) and 14(e) of the Act and Regulations 14D and 14E, the following definitions apply:
- (1) 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;
 - (2) The term “subject company” means any issuer of securities which are sought by a bidder pursuant to a tender offer;
 - (3) The term “security holders” means holders of record and beneficial owners of securities which are the subject of a tender offer;
 - (4) 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) and Item 6 of Schedule 14D-1, 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 13-3(d)(1) (§240.13d-3(d)(1));
 - (5) 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 depositary) 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;
 - (6) 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
 - (7) 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.

Date of Commencement of a Tender Offer

Reg. §240.14d-2.

- (a) *Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:
- (1) The long form publication of the tender offer is first published by the bidder pursuant to Rule 14d-4(a)(1) (§240.14d-4(a)(1));
 - (2) The summary advertisement of the tender offer is first published by the bidder pursuant to Rule 14d-4(a)(2) (§240.14d-4(a)(2));
 - (3) The summary advertisement or the long form publication of the tender offer is first published by the bidder pursuant to Rule 14d-4(a)(3) (§240.14d-4(a)(3));
 - (4) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered pursuant to the Securities Act of 1933, are first published or sent or given by the bidder to security holders; or
 - (5) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in paragraphs (a)(1) through (a)(4) of this section.
- (b) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information in paragraph (c) of this section with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section *except that* such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under paragraph (a)(5) of this section on the date of such public announcement if within five business days of such public announcement, the bidder either:
- (1) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event paragraph (a)(5) of this section shall not apply to the initial public announcement; or
 - (2) Complies with Rule 14d-3(a) (§240.14d-3(a)) and contemporaneously disseminates the disclosure required by Rule 14d-6 (§240.14d-6) to security holders pursuant to Rule 14d-4 (§240.14d-4) or otherwise in which event:
 - (i) The date of commencement of such tender offer under paragraph (a) of this section will be determined by the date the information required by Rule 14d-6 is first published or sent or given to security holders pursuant to Rule 14d-4 or otherwise; and
 - (ii) Notwithstanding paragraph (b)(2)(i) of this section, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.
- (c) *Information.* The information referred to in paragraph (b) of this section is as follows:
- (1) The identity of the bidder;
 - (2) The identity of the subject company; and
 - (3) The amount and class of securities being sought and the price or range of prices being offered therefor.
- (d) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which only discloses the information in paragraphs (d)(1) through (d)(3) of this section concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section.
- (1) The identity of the bidder;

(2) The identity of the subject company; and

(3) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject company which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(e) *Announcement made pursuant to Rule 135.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which discloses only the information in Rule 135(a)(4) (§230.135(a)(4)) concerning a tender offer in which the consideration consists solely or in part of securities to be registered under the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section: *Provided* That such bidder files a registration statement with respect to such securities promptly after such public announcement.

Filing and Transmission of Tender Offer Statement

Reg. §240.14d-3.

(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 ten copies of a Tender Offer Statement on Schedule 14D-1 (§240.14d-100), including all exhibits thereto;

(2) Hand delivers a copy of such Schedule 14D-1, 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 14D-1 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 14D-1);

(3) Gives telephonic notice of the information required by Rule 14d-6(e)(2)(i) and (ii) (§240.14d-6(e)(2)(i) and (ii)) and mails by means of first class mail a copy of such Schedule 14D-1, 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 and Form 10-KSB (§249.310 and §249.310b) 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 prior to 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) *Additional materials.* The bidder shall file with the Commission ten copies of any additional tender offer materials as an exhibit to the Schedule 14D-1 required by this section, and if a material change occurs in the information set forth in such Schedule 14D-1, ten copies of an amendment to Schedule 14D-1 (each of which shall include all exhibits other than those required by Item 11(a) of Schedule 14D-1) disclosing such change and shall send a copy of such additional tender offer material or such amendment to the subject company and to any exchange and/or the NASD, as required by paragraph (a) of this section, promptly but not later than the date such additional tender offer material or such change is 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 14D-1 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 offer material is first published or sent or given to security holders.

Dissemination of Certain Tender Offers

Reg. §240.14d-4.

- (a) *Materials deemed published or sent or given.* A tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed “published or sent or given to security holders” within the meaning of section 14(d)(1) of the Act if the bidder complies with all of the requirements of any one of the following subparagraphs: *Provided, however,* That any such 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 pursuant to Rule 14d-5, paragraphs (a)(2) and (a)(3) of this section are exclusive.
- (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 newspaper 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 pursuant to Rule 14d-5 shall comply with paragraphs (a)(1) and (a)(2) of this section on or prior to the date of the bidder’s request for such lists or listing pursuant to Rule 14d-5(a).
- (b) *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.
- (c) *Publication of changes.* If a tender offer has been published or sent or given to security holders by one or more of the methods enumerated in paragraph (a) of this section, a material change in the information published, 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.

Dissemination of Certain Tender Offers by the Use of Stockholder Lists and Security Position Listings

Reg §240.14d-5.

- (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 subparagraphs.
- (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 subparagraphs.

- (1) No later than the third business day after the date of the bidder's request, the subject company shall furnish to the bidder at the subject company's principal executive office a copy of the name and addresses of the record holders on the most recent stockholder list referred to in paragraph (a)(2) of this section and a copy of the names and addresses of participants identified on the most recent security position listing of any clearing agency which is within the access of the subject company.
- (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 subparagraphs.
- (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 subject company 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 (c)(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 cost 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 direct 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.

Disclosure Requirement with Respect to Tender Offers

Reg. §240.14d-6.

(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 pursuant to Rule 14d-4(a)(1) (§240.14d-4(a)(1)), such long-form publication shall include the information required by paragraph (e)(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 pursuant to Rule 14d-4(a)(2) (§240.14d-4(a)(2)),
 - (i) The summary advertisement shall contain and shall be limited to, the information required by paragraph (e)(2) of this section; and
 - (ii) The tender offer materials furnished by the bidder upon the request of any security holder shall include the information required by paragraph (e)(1) of this section.

- (3) *Use of stockholder lists and security position listings.* If a tender offer is published or sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings pursuant to Rule 14d-4(a)(3) (§240.14d-4(a)(3)),
- (i) Either (A) the summary advertisement shall contain, and shall be limited to the information required by paragraph (e)(2) of this section, or (B) if long form publication of the tender offer is made, such long form publication shall include the information required by paragraph (e)(1) 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 shall include the information required by paragraph (e)(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 Rule 14d-4(a) (§240.14d-4(a)), the tender offer materials which are published or sent or given to security holders on the date of commencement of such offer shall include the information required by paragraph (e)(1) of this section.
- (b) *Information required in summary advertisement made after commencement.* A summary advertisement published subsequent to the date of commencement of the tender offer shall include at least the information specified in paragraphs (e)(1)(i)-(iv) and (e)(2)(iv) of this section.
- (c) *Information required in other tender offer materials published after commencement.* Except for summary advertisements described in paragraph (b) of this section and 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 subsequent to the date of commencement shall include the information required by paragraphs (e)(1) and may omit any of the information required by paragraphs (e)(1)(v)-(viii) of this section which has been previously furnished by the bidder in connection with the tender offer.
- (d) *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.
- (e) *Information to be included.*
- (1) *Long-form publication and tender offer materials.* The information required to be disclosed by paragraphs (a)(1), (a)(2)(ii), (a)(3)(i)(B) and (a)(4) of this section shall include the following:
 - (i) The identity of the bidder;
 - (ii) The identity of the subject company;
 - (iii) The amount of class of securities being sought and the type and amount of consideration being offered therefor;
 - (iv) 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;
 - (v) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d)(5) of the Act and Rule 14d-7 (§240.14d-7) and the manner in which shares will be accepted for payment and in which withdrawal may be effected;
 - (vi) If the tender offer is for less than all the outstanding securities of a class of equity securities and the bidder is not obligated to purchase all of the securities tendered, the period or periods, and in the case of the period from the commencement of the offer, the date of the expiration of such period during which the securities will be taken up pro rata pursuant to Section 14(d)(6) of the Act or Rule 14d-8 (§240.14d-8), and the present

intention or plan of the bidder with respect to the tender offer in the event of an oversubscription by security holders;

- (vii) The disclosure required by Items 1(c); 2 (with respect to persons other than the bidder, excluding sub-items (b) and (d)); 3; 4; 5; 6; 7; 8; and 10 of Schedule 14D-1 (§240.14d-100) or a fair and adequate summary thereof; *Provided, however,* That negative responses to any such item or sub-item or Schedule 14D-1 (§240.14d-100) need not be included; and
- (viii) The disclosure required by Item 9 of Schedule 14d-1 or a fair and adequate summary thereof. (Under normal circumstances, the following summary financial information for the period covered by the financial information furnished in response to Item 9 will be a sufficient summary. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained).

Income Statement:

Net sales and operating revenues and other revenues

Income before extraordinary Items

Net income

Balance sheet (at end of period):

Work capital

Total assets

Total assets less deferred research and development charges and excess cost of assets acquired over book value

Total indebtedness

Shareholders' equity

Per share¹

Income per common share before extraordinary items

Extraordinary items

Net income per common share (and common share equivalents, if applicable)

Net income per share on a fully diluted basis

- (ix) If the financial statements are prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States, the summary financial information shall be accompanied by a reconciliation to generally accepted accounting principles of the United States.
- (2) *Summary publication.* The information required to be disclosed by paragraphs (a)(2)(i) and (a)(3)(i)(A) of this section in a summary advertisement is as follows:
- (i) The information required by paragraph (e)(1)(i) through (vi) of this section;
 - (ii) If the tender offer is for less than all 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;
 - (iii) A statement that the information required by paragraph (e)(1)(vii) of this section is incorporated by reference into the summary advertisement;
 - (iv) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and
 - (v) In a tender offer published or sent or given to security holders by the use of stockholder lists and security position listings pursuant to Rule 14d-4(a)(3) (§240.14d-4(a)(3)), a statement that a request is being made for such lists and listings and 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 stockholders 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.

¹Average number of share of common stock outstanding during each period was . . . (as adjusted to given effect to stock dividends or stock splits).

- (3) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement shall include a transmittal letter (whereby securities of the subject company which are sought in the tender offer may be transmitted to the bidder or its depository) or any amendment thereto.

Additional Withdrawal Rights

Reg. §240.14d-7.

- (a) *Rights.* 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.
- (d) *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.

Exemption from Statutory Pro Rata Requirement

Reg. §240.14d-8. 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.

Solicitation/Recommendation Statements with Respect to Certain Tender Offers

Reg. §240.14d-9.

- (a) *Filing and transmittal of recommendation statement.* No solicitation or recommendation to security holders shall be made by any person described in paragraph (d) 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 subparagraphs.
- (1) Such person shall file with the Commission eight copies of 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 14D-1 (§240.14d-100) filed with the Commission); and
 - (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 2 and 4(a) of Schedule 14D-9 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 14D-1 (§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.

- (b) *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 eight copies of 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 (a)(2) or paragraph (a)(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.
- (c) *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, 2, 3(b), 4, 6, 7 and 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.
- (d) *Applicability.*
- (1) Except as is provided in paragraphs (d)(2) and (e) 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 (d)(1) of this section, this section shall not apply to the following persons:
 - (i) A bidder who has filed a Schedule 14D-1 (§240.14d-101) 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.
- (e) *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; express 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 (e)(3) of this section.

- (f) *Statement of management's position.* A statement by the subject company 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.

Equal Treatment of Security Holders

Reg. §240.14d-10.

- (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 pursuant to the tender offer is the highest consideration paid to any other security holder during such 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) 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.

- (e) 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.