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Title 17 → Chapter II → Part 229

Title 17: Commodity and Securities Exchanges

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

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SOURCE: 47 FR 11401, Mar. 16, 1982, unless otherwise noted.

ATTENTION ELECTRONIC FILERS

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PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

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Subpart 229.1—General

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§229.10 (Item 10) General.

(a) *Application of Regulation S-K.* This part (together with the General Rules and Regulations under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, as amended (*Securities Act*), and the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, as amended (*Exchange Act*) (parts 230 and 240 of this chapter), the Interpretative Releases under these Acts (parts 231 and 241 of this chapter) and the forms under these Acts (parts 239 and 249 of this chapter)) states the requirements applicable to the content of the non-financial statement portions of:

(1) Registration statements under the Securities Act (part 239 of this chapter) to the extent provided in the forms to be used for registration under such Act; and

(2) Registration statements under section 12 (subpart C of part 249 of this chapter), annual or other reports under sections 13 and 15(d) (subparts D and E of part 249 of this chapter), going-private transaction statements under section 13 (part 240 of this chapter), tender offer statements under sections 13 and 14 (part 240 of this chapter), annual reports to security holders and proxy and information statements under section 14 (part 240 of this chapter), and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under that Act.

(b) *Commission policy on projections.* The Commission encourages the use in documents specified in Rule 175 under the Securities Act (§230.175 of this chapter) and Rule 3b-6 under the Exchange Act (§240.3b-6 of this chapter) of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines set forth herein represent the Commission's views on important factors to be considered in formulating and disclosing such projections.

(1) *Basis for projections.* The Commission believes that management must have the option to present in Commission filings its good faith assessment of a registrant's future performance. Management, however, must have a reasonable basis for such an assessment. Although a history of operations or experience in projecting may be among the factors providing a basis for management's assessment, the Commission does not believe that a registrant always must have had

such a history or experience in order to formulate projections with a reasonable basis. An outside review of management's projections may furnish additional support for having a reasonable basis for a projection. If management decides to include a report of such a review in a Commission filing, there also should be disclosure of the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant, and other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act, the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

(2) *Format for projections.* In determining the appropriate format for projections included in Commission filings, consideration must be given to, among other things, the financial items to be projected, the period to be covered, and the manner of presentation to be used. Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items. Revenues, net income (loss) and earnings (loss) per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There may be instances, however, when it is appropriate to present earnings (loss) from continuing operations, or income (loss) before extraordinary items in addition to or in lieu of net income (loss). It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstances. In addition, management, in making a projection, should disclose what, in its opinion, is the most probable specific amount or the most reasonable range for each financial item projected based on the selected assumptions. Ranges, however, should not be so wide as to make the disclosures meaningless. Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range and would be permitted.

(3) *Investor understanding.* (i) When management chooses to include its projections in a Commission filing, the disclosures accompanying the projections should facilitate investor understanding of the basis for and limitations of projections. In this regard investors should be cautioned against attributing undue certainty to management's assessment, and the Commission believes that investors would be aided by a statement indicating management's intention regarding the furnishing of updated projections. The Commission also believes that investor understanding would be enhanced by disclosure of the assumptions which in management's opinion are most significant to the projections or are the key factors upon which the financial results of the enterprise depend and encourages disclosure of assumptions in a manner that will provide a framework for analysis of the projection.

(ii) Management also should consider whether disclosure of the accuracy or inaccuracy of previous projections would provide investors with important insights into the limitations of projections. In this regard, consideration should be given to presenting the projections in a format that will facilitate subsequent analysis of the reasons for differences between actual and forecast results. An important benefit may arise from the systematic analysis of variances between projected and actual results on a continuing basis, since such disclosure may highlight for investors the most significant risk and profit-sensitive areas in a business operation.

(iii) With respect to previously issued projections, registrants are reminded of their responsibility to make full and prompt disclosure of material facts, both favorable and unfavorable, regarding their financial condition. This responsibility may extend to situations where management knows or has reason to know that its previously disclosed projections no longer have a reasonable basis.

(iv) Since a registrant's ability to make projections with relative confidence may vary with all the facts and circumstances, the responsibility for determining whether to discontinue or to resume making projections is best left to management. However, the Commission encourages registrants not to discontinue or to resume projections in Commission filings without a reasonable basis.

(c) *Commission policy on security ratings.* In view of the importance of security ratings (*ratings*) to investors and the marketplace, the Commission permits registrants to disclose, on a voluntary basis, ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock in registration statements and periodic reports. Set forth herein are the Commission's views on important matters to be considered in disclosing security ratings.

(1) *Securities Act filings.* (i) If a registrant includes in a registration statement filed under the Securities Act any rating (s) assigned to a class of securities, it should consider including: (A) Any other rating intended for public dissemination assigned to such class by a nationally recognized statistical rating organization (NRSRO) (*additional NRSRO rating*) that is available on the date of the initial filing of the document and that is materially different from any rating disclosed; and (B) the name of each rating organization whose rating is disclosed; each such rating organization's definition or description of the category in which it rated the class of securities; the relative rank of each rating within the assigning rating organization's overall classification system; and a statement informing investors that a security rating is not a recommendation to buy, sell or hold securities, that it may be subject to revision or withdrawal at any time by the assigning rating organization, and that each rating should be evaluated independently of any other rating. The registrant also should

include the written consent of any rating organization that is not a NRSRO whose rating is included. With respect to the written consent of any NRSRO whose rating is included, see Rule 436(g) under the Securities Act (§230.436(g) of this chapter).

(ii) If a change in a rating already included is available subsequent to the filing of the registration statement, but prior to its effectiveness, the registrant should consider including such rating change in the final prospectus. If the rating change is material or if a materially different rating from any disclosed becomes available during this period, the registrant should consider amending the registration statement to include the rating change or additional rating and recirculating the preliminary prospectus.

(iii) If a materially different additional NRSRO rating or a material change in a rating already included becomes available during any period in which offers or sales are being made, the registrant should consider disclosing such additional rating or rating change by means of post-effective amendment or sticker to the prospectus pursuant to Rule 424 (b) under the Securities Act (§230.424(b) of this chapter), unless, in the case of a registration statement on Form S-3 (§239.13 of this chapter), it has been disclosed in a document incorporated by reference into the registration statement subsequent to its effectiveness and prior to the termination of the offering.

(2) *Exchange Act filings.* (i) If a registrant includes in a registration statement or periodic report filed under the Exchange Act any rating(s) assigned to a class of securities, it should consider including the information specified in paragraphs (c)(1)(i)(A) and (B) of this section.

(ii) If there is a material change in the rating(s) assigned by any NRSRO(s) to any outstanding class(es) of securities of a registrant subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act, the registrant should consider filing a report on Form 8-K (§249.308 of this chapter) or other appropriate report under the Exchange Act disclosing such rating change.

(d) *Incorporation by Reference.* Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted. Except where a registrant or issuer is expressly required to incorporate a document or documents by reference (or for purposes of Item 1100(c) of Regulation AB (§229.1100(c)) with respect to an asset-backed issuer, as that term is defined in Item 1101 of Regulation AB (§229.1101)), reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except:

(1) Documents contained in registration statements, which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission; or

(2) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

(e) *Use of non-GAAP financial measures in Commission filings.* (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:

(i) The registrant must include the following in the filing:

(A) A presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);

(B) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (e)(1)(i)(A) of this section;

(C) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

(D) To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not disclosed pursuant to paragraph (e)(1)(i)(C) of this section; and

(ii) A registrant must not:

(A) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation, and amortization (EBITDA);

(B) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years;

(C) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(D) Present non-GAAP financial measures on the face of any *pro forma* financial information required to be disclosed by Article 11 of Regulation S-X (17 CFR 210.11-01 through 210.11-03); or

(E) Use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures; and

(iii) If the filing is not an annual report on Form 10-K or Form 20-F (17 CFR 249.220f), a registrant need not include the information required by paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10-K or Form 20-F or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section at the time of the registrant's current filing.

(2) For purposes of this paragraph (e), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.

(3) For purposes of this paragraph (e), GAAP refers to generally accepted accounting principles in the United States, except that:

(i) In the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(ii) In the case of foreign private issuers that include a non-GAAP financial measure derived from or based on a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of this paragraph (e) to the disclosure of that measure.

(4) For purposes of this paragraph (e), non-GAAP financial measures exclude:

(i) Operating and other statistical measures; and

(ii) Ratios or statistical measures calculated using exclusively one or both of:

(A) Financial measures calculated in accordance with GAAP; and

(B) Operating measures or other measures that are not non-GAAP financial measures.

(5) For purposes of this paragraph (e), non-GAAP financial measures exclude financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant. However, the financial measure should be presented outside of the financial statements unless the financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements.

(6) The requirements of paragraph (e) of this section shall not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto, if the disclosure is contained in a communication that is subject to §230.425 of this chapter, §240.14a-12 or §240.14d-2(b)(2) of this chapter or §229.1015 of this chapter.

(7) The requirements of paragraph (e) of this section shall not apply to investment companies registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

NOTE TO PARAGRAPH (e): A non-GAAP financial measure that would otherwise be prohibited by paragraph (e)(1)(ii) of this section is permitted in a filing of a foreign private issuer if:

1. The non-GAAP financial measure relates to the GAAP used in the registrant's primary financial statements included in its filing with the Commission;

2. The non-GAAP financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements; and

3. The non-GAAP financial measure is included in the annual report prepared by the registrant for use in the jurisdiction in which it is domiciled, incorporated or organized or for distribution to its security holders.

(f) *Smaller reporting companies.* The requirements of this part apply to smaller reporting companies. A smaller reporting company may comply with either the requirements applicable to smaller reporting companies or the requirements applicable to other companies for each item, unless the requirements for smaller reporting companies specify that smaller reporting companies must comply with the smaller reporting company requirements. The following items of this part set forth requirements for smaller reporting companies that are different from requirements applicable to other companies:

INDEX OF SCALED DISCLOSURE AVAILABLE TO SMALLER REPORTING COMPANIES

Item 101	Description of business.
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Item 402	Executive compensation.
Item 404	Transactions with related persons, promoters and certain control persons.
Item 407	Corporate governance.
Item 503	Prospectus summary, risk factors, and ratio of earnings to fixed charges.
Item 504	Use of proceeds.
Item 601	Exhibits.

(1) *Definition of smaller reporting company.* As used in this part, the term *smaller reporting company* means an issuer that is not an investment company, an asset-backed issuer (as defined in §229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

(i) Had a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter, computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity; or

(ii) In the case of an initial registration statement under the Securities Act or Exchange Act for shares of its common equity, had a public float of less than $75 million as of a date within 30 days of the date of the filing of the registration statement, computed by multiplying the aggregate worldwide number of such shares held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of such shares included in the registration statement by the estimated public offering price of the shares; or

(iii) In the case of an issuer whose public float as calculated under paragraph (i) or (ii) of this definition was zero, had annual revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available.

(2) *Determination:* Whether or not an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act, the determination is based on whether the issuer came within the definition of smaller reporting company, using the amounts specified in paragraph (f)(2)(iii) of this Item, as of the last business day of the second fiscal quarter of the issuer's previous fiscal year. An issuer in this category must reflect this determination in the information it provides in its quarterly report on Form 10-Q for the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether or not it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10-Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial Securities Act or Exchange Act registration statement under paragraph (f)(1)(ii) of this Item, the issuer must reflect the determination in the information it provides in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether or not it is a smaller reporting company. The issuer must redetermine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (f)(2)(i) of this Item. In the case of a determination based on an initial Securities Act registration statement, an issuer that was not determined to be a smaller reporting company has the option to redetermine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer fails to qualify for smaller reporting company status, it will remain unqualified unless it determines that its public float, as calculated in accordance with paragraph (f)(1) of this Item, was less than $50 million as of the last business day of its second fiscal quarter or, if that calculation results in zero because the issuer had no public equity outstanding or no market price for its equity existed, if the issuers had annual revenues of less than $40 million during its previous fiscal year.

[47 FR 11401, Mar. 16, 1982, as amended at 52 FR 21260, June 5, 1987; 58 FR 14665, Mar. 18, 1993; 58 FR 62029, Nov. 23, 1993; 60 FR 32824, June 23, 1995; 64 FR 61443, Nov. 10, 1999; 68 FR 4831, Jan. 30, 2003; 70 FR 1593, Jan. 7, 2005; 73 FR 956, Jan. 4, 2008; 76 FR 46617, Aug. 3, 2011]

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Subpart 229.100—Business

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§229.101 (Item 101) Description of business.

(a) *General development of business.* Describe the general development of the business of the registrant, its subsidiaries and any predecessor(s) during the past five years, or such shorter period as the registrant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business.

(1) In describing developments, information shall be given as to matters such as the following: the year in which the registrant was organized and its form of organization; the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reclassification, merger or consolidation of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

(2) Registrants:

(i) Filing a registration statement on Form S-1 (§239.11 of this chapter) under the Securities Act or on Form 10 (§249.210 of this chapter) under the Exchange Act;

(ii) Not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately before the filing of such registration statement; and

(iii) That (including predecessors) have not received revenue from operations during each of the three fiscal years immediately before the filing of such registration statement, shall provide the following information:

(A) If the registration statement is filed prior to the end of the registrant's second fiscal quarter, a description of the registrant's plan of operation for the remainder of the fiscal year; or

(B) If the registration statement is filed subsequent to the end of the registrant's second fiscal quarter, a description of the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year. If such information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan shall include such matters as:

(*1*) In the case of a registration statement on Form S-1, a statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant; the specific reasons for such opinion shall be set forth and categories of expenditures and sources of cash resources shall be identified; however, amounts of expenditures and cash resources need not be provided; in addition, if the narrative statement is based on a cash budget, such budget shall be furnished to the Commission as supplemental information, but not as part of the registration statement;

(*2*) An explanation of material product research and development to be performed during the period covered in the plan;

(*3*) Any anticipated material acquisition of plant and equipment and the capacity thereof;

(*4*) Any anticipated material changes in number of employees in the various departments such as research and development, production, sales or administration; and

(*5*) Other material areas which may be peculiar to the registrant's business.

(b) *Financial information about segments.* Report for each segment, as defined by generally accepted accounting principles, revenues from external customers, a measure of profit or loss and total assets. A registrant must report this information for each of the last three fiscal years or for as long as it has been in business, whichever period is shorter. If the information provided in response to this paragraph (b) conforms with generally accepted accounting principles, a

registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative information in the financial statements; conversely, a registrant may cross reference to the financial statements.

(1) If a registrant changes the structure of its internal organization in a manner that causes the composition of its reportable segments to change, the registrant must restate the corresponding information for earlier periods, including interim periods, unless it is impracticable to do so. Following a change in the composition of its reportable segments, a registrant shall disclose whether it has restated the corresponding items of segment information for earlier periods. If it has not restated the items from earlier periods, the registrant shall disclose in the year in which the change occurs segment information for the current period under both the old basis and the new basis of segmentation, unless it is impracticable to do so.

(2) If the registrant includes, or is required by Article 3 of Regulation S-X (17 CFR 210) to include, interim financial statements, discuss any facts relating to the performance of any of the segments during the period which, in the opinion of management, indicate that the three year segment financial data may not be indicative of current or future operations of the segment. Comparative financial information shall be included to the extent necessary to the discussion.

(c) *Narrative description of business.* (1) Describe the business done and intended to be done by the registrant and its subsidiaries, focusing upon the registrant's dominant segment or each reportable segment about which financial information is presented in the financial statements. To the extent material to an understanding of the registrant's business taken as a whole, the description of each such segment shall include the information specified in paragraphs (c)(1) (i) through (x) of this section. The matters specified in paragraphs (c)(1) (xi) through (xiii) of this section shall be discussed with respect to the registrant's business in general; where material, the segments to which these matters are significant shall be identified.

(i) The principal products produced and services rendered by the registrant in the segment and the principal markets for, and methods of distribution of, the segment's principal products and services. In addition, state for each of the last three fiscal years the amount or percentage of total revenue contributed by any class of similar products or services which accounted for 10 percent or more of consolidated revenue in any of the last three fiscal years or 15 percent or more of consolidated revenue, if total revenue did not exceed $50,000,000 during any of such fiscal years.

(ii) A description of the status of a product or segment (e.g. whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary), if there has been a public announcement of, or if the registrant otherwise has made public information about, a new product or segment that would require the investment of a material amount of the assets of the registrant or that otherwise is material. This paragraph is not intended to require disclosure of otherwise nonpublic corporate information the disclosure of which would affect adversely the registrant's competitive position.

(iii) The sources and availability of raw materials.

(iv) The importance to the segment and the duration and effect of all patents, trademarks, licenses, franchises and concessions held.

(v) The extent to which the business of the segment is or may be seasonal.

(vi) The practices of the registrant and the industry (respective industries) relating to working capital items (e.g., where the registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; where the registrant provides rights to return merchandise; or where the registrant has provided extended payment terms to customers).

(vii) The dependence of the segment upon a single customer, or a few customers, the loss of any one or more of which would have a material adverse effect on the segment. The name of any customer and its relationship, if any, with the registrant or its subsidiaries shall be disclosed if sales to the customer by one or more segments are made in an aggregate amount equal to 10 percent or more of the registrant's consolidated revenues and the loss of such customer would have a material adverse effect on the registrant and its subsidiaries taken as a whole. The names of other customers may be included, unless in the particular case the effect of including the names would be misleading. For purposes of this paragraph, a group of customers under common control or customers that are affiliates of each other shall be regarded as a single customer.

(viii) The dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog. (There may be included as firm orders government orders that are firm but not yet funded and contracts awarded but not yet signed, provided an appropriate statement is added to explain the nature of such orders and the amount thereof. The portion of orders already included in sales or operating revenues on the basis of percentage of completion or program accounting shall be excluded.)

(ix) A description of any material portion of the business that may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government.

(x) Competitive conditions in the business involved including, where material, the identity of the particular markets in which the registrant competes, an estimate of the number of competitors and the registrant's competitive position, if known or reasonably available to the registrant. Separate consideration shall be given to the principal products or services or classes of products or services of the segment, if any. Generally, the names of competitors need not be disclosed. The registrant may include such names, unless in the particular case the effect of including the names would be misleading. Where, however, the registrant knows or has reason to know that one or a small number of competitors is dominant in the industry it shall be identified. The principal methods of competition (e.g., price, service, warranty or product performance) shall be identified, and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist, shall be explained if known or reasonably available to the registrant.

(xi) If material, the estimated amount spent during each of the last three fiscal years on company-sponsored research and development activities determined in accordance with generally accepted accounting principles. In addition, state, if material, the estimated dollar amount spent during each of such years on customer-sponsored research activities relating to the development of new products, services or techniques or the improvement of existing products, services or techniques.

(xii) Appropriate disclosure also shall be made as to the material effects that compliance with Federal, State and local provisions which have been enacted or adopted regulating the discharge of materials into the environment, or otherwise relating to the protection of the environment, may have upon the capital expenditures, earnings and competitive position of the registrant and its subsidiaries. The registrant shall disclose any material estimated capital expenditures for environmental control facilities for the remainder of its current fiscal year and its succeeding fiscal year and for such further periods as the registrant may deem materials.

(xiii) The number of persons employed by the registrant.

(d) *Financial information about geographic areas.* (1) State for each of the registrant's last three fiscal years, or for each fiscal year the registrant has been engaged in business, whichever period is shorter:

(i) Revenues from external customers attributed to:

(A) The registrant's country of domicile;

(B) All foreign countries, in total, from which the registrant derives revenues; and

(C) Any individual foreign country, if material. Disclose the basis for attributing revenues from external customers to individual countries.

(ii) Long-lived assets, other than financial instruments, long-term customer relationships of a financial institution, mortgage and other servicing rights, deferred policy acquisition costs, and deferred tax assets, located in:

(A) The registrant's country of domicile;

(B) All foreign countries, in total, in which the registrant holds assets; and

(C) Any individual foreign country, if material.

(2) A registrant shall report the amounts based on the financial information that it uses to produce the general-purpose financial statements. If providing the geographic information is impracticable, the registrant shall disclose that fact. A registrant may wish to provide, in addition to the information required by paragraph (d)(1) of this section, subtotals of geographic information about groups of countries. To the extent that the disclosed information conforms with generally accepted accounting principles, the registrant may include in its financial statements a cross reference to this data in lieu of presenting duplicative data in its financial statements; conversely, a registrant may cross-reference to the financial statements.

(3) A registrant shall describe any risks attendant to the foreign operations and any dependence on one or more of the registrant's segments upon such foreign operations, unless it would be more appropriate to discuss this information in connection with the description of one or more of the registrant's segments under paragraph (c) of this item.

(4) If the registrant includes, or is required by Article 3 of Regulation S-X (17 CFR 210), to include, interim financial statements, discuss any facts relating to the information furnished under this paragraph (d) that, in the opinion of management, indicate that the three year financial data for geographic areas may not be indicative of current or future operations. To the extent necessary to the discussion, include comparative information.

(e) *Available information.* Disclose the information in paragraphs (e)(1), (e)(2) and (e)(3) of this section in any registration statement you file under the Securities Act (15 U.S.C. 77a *et seq.*), and disclose the information in paragraphs (e)(3) and (e)(4) of this section if you are an accelerated filer or a large accelerated filer (as defined in §240.12b-2 of this chapter) filing an annual report on Form 10-K (§249.310 of this chapter):

(1) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the SEC.

(2) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*).

(3) You are encouraged to give your Internet address, if available, except that if you are an accelerated filer or a large accelerated filer filing your annual report on Form 10-K, you must disclose your Internet address, if you have one.

(4)(i) Whether you make available free of charge on or through your Internet website, if you have one, your annual report on Form 10-K, quarterly reports on Form 10-Q (§249.308a of this chapter), current reports on Form 8-K (§249.308 of this chapter), and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) as soon as reasonably practicable after you electronically file such material with, or furnish it to, the SEC;

(ii) If you do not make your filings available in this manner, the reasons you do not do so (including, where applicable, that you do not have an Internet website); and

(iii) If you do not make your filings available in this manner, whether you voluntarily will provide electronic or paper copies of your filings free of charge upon request.

(f) *Reports to security holders.* Disclose the following information in any registration statement you file under the Securities Act:

(1) If the SEC's proxy rules or regulations, or stock exchange requirements, do not require you to send an annual report to security holders or to holders of American depository receipts, describe briefly the nature and frequency of reports that you will give to security holders. Specify whether the reports that you give will contain financial information that has been examined and reported on, with an opinion expressed "by" an independent public or certified public accountant.

(2) For a foreign private issuer, if the report will not contain financial information prepared in accordance with U.S. generally accepted accounting principles, you must state whether the report will include a reconciliation of this information with U.S. generally accepted accounting principles.

(g) *Enforceability of civil liabilities against foreign persons.* Disclose the following if you are a foreign private issuer filing a registration statement under the Securities Act:

(1) Whether or not investors may bring actions under the civil liability provisions of the U.S. Federal securities laws against the foreign private issuer, any of its officers and directors who are residents of a foreign country, any underwriters or experts named in the registration statement that are residents of a foreign country, and whether investors may enforce these civil liability provisions when the assets of the issuer or these other persons are located outside of the United States. The disclosure must address the following matters:

(i) The investor's ability to effect service of process within the United States on the foreign private issuer or any person;

(ii) The investor's ability to enforce judgments obtained in U.S. courts against foreign persons based upon the civil liability provisions of the U.S. Federal securities laws;

(iii) The investor's ability to enforce, in an appropriate foreign court, judgments of U.S. courts based upon the civil liability provisions of the U.S. Federal securities laws; and

(iv) The investor's ability to bring an original action in an appropriate foreign court to enforce liabilities against the foreign private issuer or any person based upon the U.S. Federal securities laws.

(2) If you provide this disclosure based on an opinion of counsel, name counsel in the prospectus and file as an exhibit to the registration statement a signed consent of counsel to the use of its name and opinion.

(h) *Smaller reporting companies.* A smaller reporting company, as defined by §229.10(f)(1), may satisfy its obligations under this Item by describing the development of its business during the last three years. If the smaller reporting company has not been in business for three years, give the same information for predecessor(s) of the smaller reporting company if there are any. This business development description should include:

(1) Form and year of organization;

(2) Any bankruptcy, receivership or similar proceeding; and

(3) Any material reclassification, merger, consolidation, or purchase or sale of a significant amount of assets not in the ordinary course of business.

(4) *Business of the smaller reporting company.* Briefly describe the business and include, to the extent material to an understanding of the smaller reporting company:

(i) Principal products or services and their markets;

(ii) Distribution methods of the products or services;

(iii) Status of any publicly announced new product or service;

(iv) Competitive business conditions and the smaller reporting company's competitive position in the industry and methods of competition;

(v) Sources and availability of raw materials and the names of principal suppliers;

(vi) Dependence on one or a few major customers;

(vii) Patents, trademarks, licenses, franchises, concessions, royalty agreements or labor contracts, including duration;

(viii) Need for any government approval of principal products or services. If government approval is necessary and the smaller reporting company has not yet received that approval, discuss the status of the approval within the government approval process;

(ix) Effect of existing or probable governmental regulations on the business;

(x) Estimate of the amount spent during each of the last two fiscal years on research and development activities, and if applicable, the extent to which the cost of such activities is borne directly by customers;

(xi) Costs and effects of compliance with environmental laws (federal, state and local); and

(xii) Number of total employees and number of full-time employees.

(5) *Reports to security holders.* Disclose the following in any registration statement you file under the Securities Act of 1933:

(i) If you are not required to deliver an annual report to security holders, whether you will voluntarily send an annual report and whether the report will include audited financial statements;

(ii) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the Commission; and

(iii) That the public may read and copy any materials you file with the Commission at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549, on official business days during the hours of 10 a.m. to 3 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the Commission at 1-800-SEC-0330. State that the Commission maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (*http://www.sec.gov*). You are encouraged to give your Internet address, if available.

(6) *Foreign issuers.* Provide the information required by Item 101(g) of Regulation S-K (§229.101(g)).

Instructions to Item 101: 1. In determining what information about the segments is material to an understanding of the registrant's business taken as a whole and therefore required to be disclosed, pursuant to paragraph (c) of this Item, the registrant should take into account both quantitative and qualitative factors such as the significance of the matter to the registrant (e.g., whether a matter with a relatively minor impact on the registrant's business is represented by management to be important to its future profitability), the pervasiveness of the matter (e.g., whether it affects or may affect numerous items in the segment information), and the impact of the matter (e.g., whether it distorts the trends reflected in the segment information). Situations may arise when information should be disclosed about a segment, although the information in quantitative terms may not appear significant to the registrant's business taken as a whole.

2. Base the determination of whether information about segments is required for a particular year upon an evaluation of interperiod comparability. For instance, interperiod comparability would require a registrant to report segment information in the current period even if not material under the criteria for reportability of FASB ASC Topic 280, *Segment Reporting,* if a segment has been significant in the immediately preceding period and the registrant expects it to be significant in the future.

3. The Commission, upon written request of the registrant and where consistent with the protection of investors, may permit the omission of any of the information required by this Item or the furnishing in substitution thereof of appropriate information of comparable character.

[47 FR 11401, Mar. 16, 1982, as amended at 63 FR 6381, Feb. 6, 1998; 64 FR 1734, Jan. 12, 1999; 67 FR 58504, Sept. 16, 2002; 70 FR 76641, Dec. 27, 2005; 73 FR 957, Jan. 4, 2008; 76 FR 50120, Aug. 12, 2011]

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§229.102 (Item 102) Description of property.

State briefly the location and general character of the principal plants, mines and other materially important physical properties of the registrant and its subsidiaries. In addition, identify the segment(s), as reported in the financial statements, that use the properties described. If any such property is not held in fee or is held subject to any major encumbrance, so state and describe briefly how held.

Instructions to Item 102: 1. What is required is such information as reasonably will inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities by the registrant. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required and shall not be given.

2. In determining whether properties should be described, the registrant should take into account both quantitative and qualitative factors. See Instruction 1 to Item 101 of Regulation S-K (§229.101).

3. In the case of an extractive enterprise, not involved in oil and gas producing activities, material information shall be given as to production, reserves, locations, development, and the nature of the registrant's interest. If individual properties are of major significance to an industry segment:

A. More detailed information concerning these matters shall be furnished; and

B. Appropriate maps shall be used to disclose location data of significant properties except in cases for which numerous maps would be required.

4. A registrant engaged in oil and gas producing activities shall provide the information required by Subpart 1200 of Regulation S-K.

5. In the case of extractive reserves other than oil and gas reserves, estimates other than proven or probable reserves (and any estimated values of such reserves) shall not be disclosed in any document publicly filed with the Commission, unless such information is required to be disclosed in the document by foreign or state law; provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with the registrant, or otherwise to acquire the registrant's securities, such estimates may be included in documents relating to such acquisition.

6. The definitions in §210.4-10(a) of Regulation S-X [17 CFR 210] shall apply to this Item with respect to oil and gas operations.

7. The attention of issuers engaged in significant mining operations is directed to the information called for in Guide 7 (§229.801 (g) and §229.802(g)).

8. The attention of certain issuers engaged in oil and gas producing activities is directed to the information called for in Securities Act Industry Guide 4 (referred to in §229.801(d)).

9. The attention of issuers engaged in real estate activities is directed to the information called for in Guide 5 (§229.801(e) of this chapter).

[47 FR 11401, Mar. 16, 1982, as amended at 64 FR 1735, Jan. 12, 1999; 73 FR 957, Jan. 4, 2008; 74 FR 2193, Jan. 14, 2009]

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§229.103 (Item 103) Legal proceedings.

Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions to Item 103: 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need be described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding that involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same legal and factual issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding Instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described.

4. Any material proceedings to which any director, officer or affiliate of the registrant, any owner of record or beneficially of more than five percent of any class of voting securities of the registrant, or any associate of any such director, officer, affiliate of the registrant, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries also shall be described.

5. Notwithstanding the foregoing, an administrative or judicial proceeding (including, for purposes of A and B of this Instruction, proceedings which present in large degree the same issues) arising under any Federal, State or local provisions that have been

enacted or adopted regulating the discharge of materials into the environment or primary for the purpose of protecting the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if:

A. Such proceeding is material to the business or financial condition of the registrant;

B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or

C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than $100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

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§229.104 (Item 104) Mine safety disclosure.

(a) A registrant that is the operator, or that has a subsidiary that is an operator, of a coal or other mine shall provide the information specified below for the time period covered by the report:

(1) For each coal or other mine of which the registrant or a subsidiary of the registrant is an operator, identify the mine and disclose:

(i) The total number of violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard under section 104 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 814) for which the operator received a citation from the Mine Safety and Health Administration.

(ii) The total number of orders issued under section 104(b) of such Act (30 U.S.C. 814(b)).

(iii) The total number of citations and orders for unwarrantable failure of the mine operator to comply with mandatory health or safety standards under section 104(d) of such Act (30 U.S.C. 814(d)).

(iv) The total number of flagrant violations under section 110(b)(2) of such Act (30 U.S.C. 820(b)(2)).

(v) The total number of imminent danger orders issued under section 107(a) of such Act (30 U.S.C. 817(a)).

(vi) The total dollar value of proposed assessments from the Mine Safety and Health Administration under such Act (30 U.S.C. 801 *et seq.*).

Instruction to Item 104(a)(1)(vi): Registrants must provide the total dollar value of assessments proposed by MSHA relating to any type of violation during the period covered by the report, regardless of whether the registrant has challenged or appealed the assessment.

(vii) The total number of mining-related fatalities.

Instruction to Item 104(a)(1)(vii): Registrants must report all fatalities occurring at a coal or other mine during the period covered by the report unless the fatality has been determined by MSHA to be unrelated to mining activity.

(2) A list of coal or other mines, of which the registrant or a subsidiary of the registrant is an operator, that receive written notice from the Mine Safety and Health Administration of:

(i) A pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of coal or other mine health or safety hazards under section 104(e) of such Act (30 U.S.C. 814(e)); or

(ii) The potential to have such a pattern.

(3) Any pending legal action before the Federal Mine Safety and Health Review Commission involving such coal or other mine.

Instruction to Item 104(a)(3): The registrant must report the total number of legal actions that were pending before the Federal Mine Safety and Health Review Commission as of the last day of the time period covered by the report, as well as the aggregate number of legal actions instituted and the aggregate number of legal actions resolved during the reporting period. With respect to the total number of legal actions that were pending before the Federal Mine Safety and Health Review Commission as of the last day of the time period covered by the report, the registrant must also report the number of such legal actions that are:

1. Contests of citations and orders referenced in Subpart B of 29 CFR part 2700;

2. Contests of proposed penalties referenced in Subpart C of 29 CFR part 2700;

3. Complaints for compensation referenced in Subpart D of 29 CFR part 2700;

4. Complaints of discharge, discrimination or interference referenced in Subpart E of 29 CFR part 2700;

5. Applications for temporary relief referenced in Subpart F of 29 CFR part 2700; and

6. Appeals of judges' decisions or orders to the Federal Mine Safety and Health Review Commission referenced in Subpart H of 29 CFR part 2700.

(b) *Definitions.* For purposes of this Item:

(1) The term *coal or other mine* means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 *et seq.*).

(2) The term *operator* has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

(3) The term *subsidiary* has the meaning given the term in Exchange Act Rule 12b-2 (17 CFR 240.12b-2).

Instructions to Item 104: 1. The registrant must provide the information required by this Item as specified by §229.601(b)(95) of this chapter. In addition, the registrant must provide a statement, in an appropriately captioned section of the periodic report, that the information concerning mine safety violations or other regulatory matters required by Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and this Item is included in exhibit 95 to the periodic report.

2. When the disclosure required by this item is included in an exhibit to an annual report on Form 10-K, the information is to be provided for the registrant's fiscal year.

[76 FR 81782, Dec. 28, 2011]

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Subpart 229.200—Securities of the Registrant

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§229.201 (Item 201) Market price of and dividends on the registrant's common equity and related stockholder matters.

(a) *Market information.* (1)(i) Identify the principal United States market or markets in which each class of the registrant's common equity is being traded. Where there is no established public trading market for a class of common equity, furnish a statement to that effect. For purposes of this Item the existence of limited or sporadic quotations should not of itself be deemed to constitute an "established public trading market." In the case of foreign registrants, also identify the principal established foreign public trading market, if any, for each class of the registrant's common equity.

(ii) If the principal United States market for such common equity is an exchange, state the high and low sales prices for the equity for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included, or are required to be included by Article 3-01 through 3-04 of Regulation S-X (§210.3-01 through 3-04 of this chapter), or Article 8-02 through 8-03 of Regulation S-X (§210.8-02 through 8-03 of this chapter) in the case of smaller reporting companies, as reported in the consolidated transaction reporting system or, if not so reported, as reported on the principal exchange market for such equity.

(iii) If the principal United States market for such common equity is not an exchange, state the range of high and low bid information for the equity for each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included, or are required to be included by Article 3 of Regulation S-X, as regularly quoted in the automated quotation system of a registered securities association, or where the equity is not quoted in such a system, the range of reported high and low bid quotations, indicating the source of such quotations. Indicate, as applicable, that such over-the-counter market quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not necessarily represent actual transactions. Where there is an absence of an established public trading market, reference to quotations shall be qualified by appropriate explanation.

(iv) Where a foreign registrant has identified a principal established foreign trading market for its common equity pursuant to paragraph (a)(1) of this Item, also provide market price information comparable, to the extent practicable, to that required for the principal United States market, including the source of such information. Such prices shall be stated in the currency in which they are quoted. The registrant may translate such prices into United States currency at the currency exchange rate in effect on the date the price disclosed was reported on the foreign exchange. If the primary United States market for the registrant's common equity trades using American Depositary Receipts, the United States prices disclosed shall be on that basis.

(v) If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or a proxy or information statement filed pursuant to the Exchange Act, the document also shall include price information as of the latest practicable date, and, in the case of securities to be issued in connection with an

acquisition, business combination or other reorganization, as of the date immediately prior to the public announcement of such transaction.

(2) If the information called for by this paragraph (a) is being presented in a registration statement on Form S-1 (§239.11 of this chapter) under the Securities Act or on Form 10 (§249.210 of this chapter) under the Exchange Act relating to a class of common equity for which at the time of filing there is no established United States public trading market, indicate the amount(s) of common equity:

(i) That is subject to outstanding options or warrants to purchase, or securities convertible into, common equity of the registrant;

(ii) That could be sold pursuant to §230.144 of this chapter or that the registrant has agreed to register under the Securities Act for sale by security holders; or

(iii) That is being, or has been publicly proposed to be, publicly offered by the registrant (unless such common equity is being offered pursuant to an employee benefit plan or dividend reinvestment plan), the offering of which could have a material effect on the market price of the registrant's common equity.

(b) *Holders.* (1) Set forth the approximate number of holders of each class of common equity of the registrant as of the latest practicable date.

(2) If the information called for by this paragraph (b) is being presented in a registration statement filed pursuant to the Securities Act or a proxy statement or information statement filed pursuant to the Exchange Act that relates to an acquisition, business combination or other reorganization, indicate the effect of such transaction on the amount and percentage of present holdings of the registrant's common equity owned beneficially by (i) any person (including any group as that term is used in section 13(d)(3) of the Exchange Act) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's common equity and (ii) each director and nominee and (iii) all directors and officers as a group, and the registrant's present commitments to such persons with respect to the issuance of shares of any class of its common equity.

(c) *Dividends.* (1) State the frequency and amount of any cash dividends declared on each class of its common equity by the registrant for the two most recent fiscal years and any subsequent interim period for which financial statements are required to be presented by §210.3 of Regulation S-X. Where there are restrictions (including, where appropriate, restrictions on the ability of registrant's subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances) that currently materially limit the registrant's ability to pay such dividends or that the registrant reasonably believes are likely to limit materially the future payment of dividends on the common equity so state and either (i) describe briefly (where appropriate quantify) such restrictions, or (ii) cross reference to the specific discussion of such restrictions in the Management's Discussion and Analysis of financial condition and operating results prescribed by Item 303 of Regulation S-K (§229.303) and the description of such restrictions required by Regulation S-X in the registrant's financial statements.

(2) Where registrants have a record of paying no cash dividends although earnings indicate an ability to do so, they are encouraged to consider the question of their intention to pay cash dividends in the foreseeable future and, if no such intention exists, to make a statement of that fact in the filing. Registrants which have a history of paying cash dividends also are encouraged to indicate whether they currently expect that comparable cash dividends will continue to be paid in the future and, if not, the nature of the change in the amount or rate of cash dividend payments.

(d) *Securities authorized for issuance under equity compensation plans.* (1) In the following tabular format, provide the information specified in paragraph (d)(2) of this Item as of the end of the most recently completed fiscal year with respect to compensation plans (including individual compensation arrangements) under which equity securities of the registrant are authorized for issuance, aggregated as follows:

(i) All compensation plans previously approved by security holders; and

(ii) All compensation plans not previously approved by security holders.

EQUITY COMPENSATION PLAN INFORMATION

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Equity compensation plans not approved by security holders			
Total			

(2) The table shall include the following information as of the end of the most recently completed fiscal year for each category of equity compensation plan described in paragraph (d)(1) of this Item:

(i) The number of securities to be issued upon the exercise of outstanding options, warrants and rights (column (a));

(ii) The weighted-average exercise price of the outstanding options, warrants and rights disclosed pursuant to paragraph (d)(2)(i) of this Item (column (b)); and

(iii) Other than securities to be issued upon the exercise of the outstanding options, warrants and rights disclosed in paragraph (d)(2)(i) of this Item, the number of securities remaining available for future issuance under the plan (column (c)).

(3) For each compensation plan under which equity securities of the registrant are authorized for issuance that was adopted without the approval of security holders, describe briefly, in narrative form, the material features of the plan.

Instructions to paragraph (d). 1. Disclosure shall be provided with respect to any compensation plan and individual compensation arrangement of the registrant (or parent, subsidiary or affiliate of the registrant) under which equity securities of the registrant are authorized for issuance to employees or non-employees (such as directors, consultants, advisors, vendors, customers, suppliers or lenders) in exchange for consideration in the form of goods or services as described in FASB ASC Topic 718, *Compensation—Stock Compensation,* and FASB ASC Subtopic 505-50, *Equity—Equity-Based Payments to Non-Employees".* No disclosure is required with respect to

a. Any plan, contract or arrangement for the issuance of warrants or rights to all security holders of the registrant as such on a pro rata basis (such as a stock rights offering) or

b. Any employee benefit plan that is intended to meet the qualification requirements of Section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)).

2. For purposes of this paragraph, an "individual compensation arrangement" includes, but is not limited to, the following: a written compensation contract within the meaning of "employee benefit plan" under §230.405 of this chapter and a plan (whether or not set forth in any formal document) applicable to one person as provided under Item 402(a)(6)(ii) of Regulation S-K (§229.402(a)(6)(ii)).

3. If more than one class of equity security is issued under its equity compensation plans, a registrant should aggregate plan information for each class of security.

4. A registrant may aggregate information regarding individual compensation arrangements with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable.

5. A registrant may aggregate information regarding a compensation plan assumed in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make subsequent grants or awards of its equity securities with the plan information required under paragraph (d)(1)(i) and (ii) of this Item, as applicable. A registrant shall disclose on an aggregated basis in a footnote to the table the information required under paragraph (d)(2)(i) and (ii) of this Item with respect to any individual options, warrants or rights assumed in connection with a merger, consolidation or other acquisition transaction.

6. To the extent that the number of securities remaining available for future issuance disclosed in column (c) includes securities available for future issuance under any compensation plan or individual compensation arrangement other than upon the exercise of an option, warrant or right, disclose the number of securities and type of plan separately for each such plan in a footnote to the table.

7. If the description of an equity compensation plan set forth in a registrant's financial statements contains the disclosure required by paragraph (d)(3) of this Item, a cross-reference to such description will satisfy the requirements of paragraph (d)(3) of this Item.

8. If an equity compensation plan contains a formula for calculating the number of securities available for issuance under the plan, including, without limitation, a formula that automatically increases the number of securities available for issuance by a percentage of the number of outstanding securities of the registrant, a description of this formula shall be disclosed in a footnote to the table.

9. Except where it is part of a document that is incorporated by reference into a prospectus, the information required by this paragraph need not be provided in any registration statement filed under the Securities Act.

(e) *Performance graph.* (1) Provide a line graph comparing the yearly percentage change in the registrant's cumulative total shareholder return on a class of common stock registered under section 12 of the Exchange Act (as measured by dividing the sum of the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and the difference between the registrant's share price at the end and the beginning of the measurement period; by the share price at the beginning of the measurement period) with:

(i) The cumulative total return of a broad equity market index assuming reinvestment of dividends, that includes companies whose equity securities are traded on the same exchange or are of comparable market capitalization; *provided, however,* that if the registrant is a company within the Standard & Poor's 500 Stock Index, the registrant must use that index; and

(ii) The cumulative total return, assuming reinvestment of dividends, of:

(A) A published industry or line-of-business index;

(B) Peer issuer(s) selected in good faith. If the registrant does not select its peer issuer(s) on an industry or line-of-business basis, the registrant shall disclose the basis for its selection; or

(C) Issuer(s) with similar market capitalization(s), but only if the registrant does not use a published industry or line-of-business index and does not believe it can reasonably identify a peer group. If the registrant uses this alternative, the graph shall be accompanied by a statement of the reasons for this selection.

(2) For purposes of paragraph (e)(1) of this Item, the term "measurement period" shall be the period beginning at the "measurement point" established by the market close on the last trading day before the beginning of the registrant's fifth preceding fiscal year, through and including the end of the registrant's last completed fiscal year. If the class of securities has been registered under section 12 of the Exchange Act (15 U.S.C. 78*l*) for a shorter period of time, the period covered by the comparison may correspond to that time period.

(3) For purposes of paragraph (e)(1)(ii)(A) of this Item, the term "published industry or line-of-business index" means any index that is prepared by a party other than the registrant or an affiliate and is accessible to the registrant's security holders; *provided, however,* that registrants may use an index prepared by the registrant or affiliate if such index is widely recognized and used.

(4) If the registrant selects a different index from an index used for the immediately preceding fiscal year, explain the reason(s) for this change and also compare the registrant's total return with that of both the newly selected index and the index used in the immediately preceding fiscal year.

Instructions to Item 201(e): 1. In preparing the required graphic comparisons, the registrant should:

a. Use, to the extent feasible, comparable methods of presentation and assumptions for the total return calculations required by paragraph (e)(1) of this Item; *provided, however,* that if the registrant constructs its own peer group index under paragraph (e)(1)(ii)(B), the same methodology must be used in calculating both the registrant's total return and that on the peer group index; and

b. Assume the reinvestment of dividends into additional shares of the same class of equity securities at the frequency with which dividends are paid on such securities during the applicable fiscal year.

2. In constructing the graph:

a. The closing price at the measurement point must be converted into a fixed investment, stated in dollars, in the registrant's stock (or in the stocks represented by a given index) with cumulative returns for each subsequent fiscal year measured as a change from that investment; and

b. Each fiscal year should be plotted with points showing the cumulative total return as of that point. The value of the investment as of each point plotted on a given return line is the number of shares held at that point multiplied by the then-prevailing share price.

3. The registrant is required to present information for the registrant's last five fiscal years, and may choose to graph a longer period; but the measurement point, however, shall remain the same.

4. Registrants may include comparisons using performance measures in addition to total return, such as return on average common shareholders' equity.

5. If the registrant uses a peer issuer(s) comparison or comparison with issuer(s) with similar market capitalizations, the identity of those issuers must be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer's stock market capitalization at the beginning of each period for which a return is indicated.

6. *Smaller reporting companies.* A registrant that qualifies as a smaller reporting company, as defined by §229.10(f)(1), is not required to provide the information required by paragraph (e) of this Item.

7. The information required by paragraph (e) of this Item need not be provided in any filings other than an annual report to security holders required by Exchange Act Rule 14a-3 (17 CFR 240.14a-3) or Exchange Act Rule 14c-3 (17 CFR 240.14c-3) that precedes or accompanies a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

8. The information required by paragraph (e) of this Item shall not be deemed to be "soliciting material" or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1-240.14a-104 or 240.14c-1-240.14c-101), other than as provided in this item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that such information be treated as soliciting material or specifically incorporates it by reference into a filing under the Securities Act or the Exchange Act.

Instructions to Item 201: 1. Registrants, the common equity of which is listed for trading on more than one securities exchange registered under the Exchange Act, are required to indicate each such exchange pursuant to paragraph (a)(1)(i) of this Item; such registrants, however, need only report one set of price quotations pursuant to paragraph (a)(1)(ii) of this Item; where available, these shall be the prices as reported in the consolidated transaction reporting system and, where the prices are not so reported, the prices on the most significant (in terms of volume) securities exchange for such shares.

2. Market prices and dividends reported pursuant to this Item shall be adjusted to give retroactive effect to material changes resulting from stock dividends, stock splits and reverse stock splits.

3. The computation of the approximate number of holders of registrant's common equity may be based upon the number of record holders or also may include individual participants in security position listings. See Rule 17Ad-8 under the Exchange Act. The method of computation that is chosen shall be indicated.

4. If the registrant is a foreign issuer, describe briefly:

A. Any governmental laws, decrees or regulations in the country in which the registrant is organized that restrict the export or import of capital, including, but not limited to, foreign exchange controls, or that affect the remittance of dividends or other payments to nonresident holders of the registrant's common equity; and

B. All taxes, including withholding provisions, to which United States common equity holders are subject under existing laws and regulations of the foreign country in which the registrant is organized. Include a brief description of pertinent provisions of any reciprocal tax treaty between such foreign country and the United States regarding withholding. If there is no such treaty, so state.

5. If the registrant is a foreign private issuer whose common equity of the class being registered is wholly or partially in bearer form, the response to this Item shall so indicate together with as much information as the registrant is able to provide with respect to security holdings in the United States. If the securities being registered trade in the United States in the form of American Depositary Receipts or similar certificates, the response to this Item shall so indicate together with the name of the depositary issuing such receipts and the number of shares or other units of the underlying security representing the trading units in such receipts.

[47 FR 11401, Mar. 16, 1982, as amended at 47 FR 25127, June 10, 1982; 47 FR 54768, Dec. 6, 1982; 67 FR 246, Jan. 2, 2002; 71 FR 53240, Sept. 8, 2006; 73 FR 957, Jan. 4, 2008; 76 FR 50120, Aug. 12, 2011]

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§229.202 (Item 202) Description of registrant's securities.

NOTE: If the securities being described have been accepted for listing on an exchange, the exchange may be identified. The document should not however, convey the impression that the registrant may apply successfully for listing of the securities on an exchange or that, in the case of an underwritten offering, the underwriters may request the registrant to apply for such listing, unless there is reasonable assurance that the securities to be offered will be acceptable to a securities exchange for listing.

(a) *Capital stock.* If capital stock is to be registered, state the title of the class and describe such of the matters listed in paragraphs (a) (1) through (5) as are relevant. A complete legal description of the securities need not be given.

(1) Outline briefly: (i) dividend rights; (ii) terms of conversion; (iii) sinking fund provisions; (iv) redemption provisions; (v) voting rights, including any provisions specifying the vote required by security holders to take action; (vi) any classification of the Board of Directors, and the impact of such classification where cumulative voting is permitted or required; (vii) liquidation rights; (viii) preemption rights; and (ix) liability to further calls or to assessment by the registrant and for liabilities of the registrant imposed on its stockholders under state statutes (e.g., to laborers, servants or employees of the registrant), unless such disclosure would be immaterial because the financial resources of the registrant or other factors make it improbable that liability under such state statutes would be imposed; (x) any restriction on alienability of the securities to be registered; and (xi) any provision discriminating against any existing or prospective holder of such securities as a result of such security holder owning a substantial amount of securities.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, describe briefly any restriction on the repurchase or redemption of shares by the registrant while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by, or amounts payable with respect to, the shares to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, include the information regarding such other securities as will enable investors to understand such limitations or qualifications. No information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the registrant of the shares.

(5) Describe briefly or cross-reference to a description in another part of the document, any provision of the registrant's charter or by-laws that would have an effect of delaying, deferring or preventing a change in control of the registrant and that would operate only with respect to an extraordinary corporate transaction involving the registrant (or any of its subsidiaries), such as a merger, reorganization, tender offer, sale or transfer of substantially all of its assets, or liquidation. Provisions and arrangements required by law or imposed by governmental or judicial authority need not be described or discussed pursuant to this paragraph (a)(5). Provisions or arrangements adopted by the registrant to effect, or further, compliance with laws or governmental or judicial mandate are not subject to the immediately preceding sentence where such compliance did not require the specific provisions or arrangements adopted.

(b) *Debt securities.* If debt securities are to be registered, state the title of such securities, the principal amount being offered, and, if a series, the total amount authorized and the total amount outstanding as of the most recent practicable

date; and describe such of the matter listed in paragraphs (b) (1) through (10) as are relevant. A complete legal description of the securities need not be given. For purposes solely of this Item, debt securities that differ from one another only as to the interest rate or maturity shall be regarded as securities of the same class. Outline briefly:

(1) Provisions with respect to maturity, interest, conversion, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the securities, together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities to other security holders or creditors of the registrant; where debt securities are designated as subordinated in accordance with Instruction 1 to this Item, set forth the aggregate amount of outstanding indebtedness as of the most recent practicable date that by the terms of such debt securities would be senior to such subordinated debt and describe briefly any limitation on the issuance of such additional senior indebtedness or state that there is no such limitation;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any asset ratio or the creation or maintenance of reserves;

(5) Provisions restricting the incurrence of additional debt or the issuance of additional securities; in the case of secured debt, whether the securities being registered are to be issued on the basis of unbonded bondable property, the deposit of cash or otherwise; as of the most recent practicable date, the approximate amount of unbonded bondable property available as a basis for the issuance of bonds; provisions permitting the withdrawal of cash deposited as a basis for the issuance of bonds; and provisions permitting the release or substitution of assets securing the issue; *Provided, however,* That provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain or the application of insurance moneys, and other similar provisions need not be described;

(6) The general type of event that constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture;

(7) Provisions relating to modification of the terms of the security or the rights of security holders;

(8) If the rights evidenced by the securities to be registered are, or may be, materially limited or qualified by the rights of any other authorized class of securities, the information regarding such other securities as will enable investors to understand the rights evidenced by the securities; to the extent not otherwise disclosed pursuant to this Item; no information need be given, however, as to any class of securities all of which will be retired, provided appropriate steps to ensure such retirement will be completed prior to or upon delivery by the registrant of the securities;

(9) If debt securities are to be offered at a price such that they will be deemed to be offered at an "original issue discount" as defined in paragraph (a) of section 1273 of the Internal Revenue Code (26 U.S.C. 1273), or if a debt security is sold in a package with another security and the allocation of the offering price between the two securities may have the effect of offering the debt security at such an original issue discount, the tax effects thereof pursuant to sections 1271-1278;

(10) The name of the trustee(s) and the nature of any material relationship with the registrant or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(c) *Warrants and rights.* If the securities described are to be offered pursuant to warrants or rights state:

(1) The amount of securities called for by such warrants or rights;

(2) The period during which and the price at which the warrants or rights are exercisable;

(3) The amount of warrants or rights outstanding;

(4) Provisions for changes to or adjustments in the exercise price; and

(5) Any other material terms of such rights on warrants.

(d) *Other securities.* If securities other than capital stock, debt, warrants or rights are to be registered, include a brief description (comparable to that required in paragraphs (a), (b) and (c) of Item 202) of the rights evidenced thereby.

(e) *Market information for securities other than common equity.* If securities other than common equity are to be registered and there is an established public trading market for such securities (as that term is used in Item 201 of Regulation S-K (§229.201 of this chapter)) provide market information with respect to such securities comparable to that required by paragraph (a) of Item 201 of Regulation S-K (§229.201).

(f) *American Depositary Receipts.* If Depositary Shares represented by American Depositary Receipts are being registered, furnish the following information:

(1) The name of the depositary and the address of its principal executive office.

(2) State the title of the American Depositary Receipts and identify the deposited security. Describe briefly the terms of deposit, including the provisions, if any, with respect to:

(i) The amount of deposited securities represented by one unit of American Depositary Receipts;

(ii) The procedure for voting, if any, the deposited securities;

(iii) The collection and distribution of dividends;

(iv) The transmission of notices, reports and proxy soliciting material;

(v) The sale or exercise of rights;

(vi) The deposit or sale of securities resulting from dividends, splits or plans of reorganization;

(vii) Amendment, extension or termination of the deposit;

(viii) Rights of holders of receipts to inspect the transfer books of the depositary and the list of holders of receipts;

(ix) Restrictions upon the right to deposit or withdraw the underlying securities;

(x) Limitation upon the liability of the depositary.

(3) Describe all fees and charges which may be imposed directly or indirectly against the holder of the American Depositary Receipts, indicating the type of service, the amount of fee or charges and to whom paid.

Instructions to Item 202: 1. Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

A. In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and if convertible or redeemable, a statement to that effect;

B. In the case of debt, the rate of interest; the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1955 to 1960"; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and, if convertible or callable, a statement to that effect; or

C. In the case of any other kind of security, appropriate information of comparable character.

2. If the registrant is a foreign registrant, include (to the extent not disclosed in the document pursuant to Item 201 of Regulation S-K (§229.201) or otherwise) in the description of the securities:

A. A brief description of any limitations on the right of nonresident or foreign owners to hold or vote such securities imposed by foreign law or by the charter or other constituent document of the registrant, or if no such limitations are applicable, so state;

B. A brief description of any governmental laws, decrees or regulations in the country in which the registrant is organized affecting the remittance of dividends, interest and other payments to nonresident holders of the securities being registered;

C. A brief outline of all taxes, including withholding provisions, to which United States security holders are subject under existing laws and regulations of the foreign country in which the registrant is organized; and

D. A brief description of pertinent provisions of any reciprocal tax treaty between such foreign country and the United States regarding withholding or, if there is no such treaty, so state.

3. Section 305(a)(2) of the Trust Indenture Act of 1939, 15 U.S.C. 77aaa *et seq.*, as amended ("Trust Indenture Act"), shall not be deemed to require the inclusion in a registration statement or in a prospectus of any information not required by this Item.

4. Where convertible securities or stock purchase warrants are being registered that are subject to redemption or call, the description of the conversion terms of the securities or material terms of the warrants shall disclose:

A. Whether the right to convert or purchase the securities will be forfeited unless it is exercised before the date specified in a notice of the redemption or call;

B. The expiration or termination date of the warrants;

C. The kinds, frequency and timing of notice of the redemption or call, including the cities or newspapers in which notice will be published (where the securities provide for a class of newspapers or group of cities in which the publication may be made at the discretion of the registrant, the registrant should describe such provision); and

D. In the case of bearer securities, that investors are responsible for making arrangements to prevent loss of the right to convert or purchase in the event of redemption of call, for example, by reading the newspapers in which the notice of redemption or call may be published.

5. The response to paragraph (f) shall include information with respect to fees and charges in connection with (A) the deposit or substitution of the underlying securities; (B) receipt and distribution of dividends; (C) the sale or exercise of rights; (D) the withdrawal of the underlying security; and (E) the transferring, splitting or grouping of receipts. Information with respect to the right to collect the fees and charges against dividends received and deposited securities shall be included in response to this item.

6. For asset-backed securities, see also Item 1113 of Regulation AB (§229.1113).

[47 FR 11401, Mar. 16, 1982, as amended at 47 FR 54768, Dec. 6, 1982; 51 FR 42056, Nov. 20, 1986; 70 FR 1593, Jan. 7, 2005]

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Subpart 229.300—Financial Information

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§229.301 (Item 301) Selected financial data.

Furnish in comparative columnar form the selected financial data for the registrant referred to below, for

(a) Each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessors, if less), and

(b) Any additional fiscal years necessary to keep the information from being misleading.

(c) *Smaller reporting companies.* A registrant that qualifies as a smaller reporting company, as defined by §229.10(f)(1), is not required to provide the information required by this Item.

Instructions to Item 301: 1. The purpose of the selected financial data shall be to supply in a convenient and readable format selected financial data which highlight certain significant trends in the registrant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the table of financial data: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations and redeemable preferred stock (including long-term debt, capital leases, and redeemable preferred stock as defined in §210.5-02.27(a) of Regulation S-X [17 CFR 210]; and cash dividends declared per common share. Registrants may include additional items which they believe would enhance an understanding of and would highlight other trends in their financial condition and results of operations.

Briefly describe, or cross-reference to a discussion thereof, factors such as accounting changes, business combinations or dispositions of business operations, that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where such matters might cause the data reflected herein not to be indicative of the registrant's future financial condition or results of operations.

3. All references to the registrant in the table of selected financial data and in this Item shall mean the registrant and its subsidiaries consolidated.

4. If interim period financial statements are included, or are required to be included, by Article 3 of Regulation S-X, registrants should consider whether any or all of the selected financial data need to be updated for such interim periods to reflect a material change in the trends indicated; where such updating information is necessary, registrants shall provide the information on a comparative basis unless not necessary to an understanding of such updating information.

5. A foreign private issuer shall disclose also the following information in all filings containing financial statements:

A. In the forepart of the document and as of the latest practicable date, the exchange rate into U.S. currency of the foreign currency in which the financial statements are denominated;

B. A history of exchange rates for the five most recent years and any subsequent interim period for which financial statements are presented setting forth the rates for period end, the average rates, and the range of high and low rates for each year; and

C. If equity securities are being registered, a five year summary of dividends per share stated in both the currency in which the financial statements are denominated and United States currency based on the exchange rates at each respective payment date.

6. A foreign private issuer shall present the selected financial data in the same currency as its financial statements. The issuer may present the selected financial data on the basis of the accounting principles used in its primary financial statements but in such case shall present this data also on the basis of any reconciliations of such data to United States generally accepted accounting principles and Regulation S-X made pursuant to Rule 4-01 of Regulation S-X (§210.4-01 of this chapter).

7. For purposes of this rule, the rate of exchange means the noon buying rate in New York City for cable transfers in foreign currencies as certified for customs purposes by the Federal Reserve Bank of New York. The average rate means the average of the exchange rates on the last day of each month during a year.

[47 FR 11401, Mar. 16, 1982, as amended at 47 FR 54768, Dec. 6, 1982; 52 FR 30919, Aug. 18, 1987; 73 FR 958, Jan. 4, 2008; 74 FR 18617, Apr. 23, 2009]

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§229.302 (Item 302) Supplementary financial information.

(a) *Selected quarterly financial data.* Registrants specified in paragraph (a)(5) of this Item shall provide the information specified below.

(1) Disclosure shall be made of net sales, gross profit (net sales less costs and expenses associated directly with or allocated to products sold or services rendered), income (loss) before extraordinary items and cumulative effect of a change in accounting, per share data based upon such income (loss), net income (loss) and net income (loss) attributable to the registrant, for each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S-X (part 210 of this chapter).

(2) When the data supplied pursuant to paragraph (a) of this section vary from the amounts previously reported on the Form 10-Q (§249.308a of this chapter) filed for any quarter, such as would be the case when a combination between entities under common control occurs or where an error is corrected, reconcile the amounts given with those previously reported and describe the reason for the difference.

(3) Describe the effect of any disposals of segments of a business, and extraordinary, unusual or infrequently occurring items recognized in each full quarter within the two most recent fiscal years and any subsequent interim period for which financial statements are included or are required to be included by Article 3 of Regulation S-X, as well as the aggregate effect and the nature of year-end or other adjustments which are material to the results of that quarter.

(4) If the financial statements to which this information relates have been reported on by an accountant, appropriate professional standards and procedures, as enumerated in the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants, shall be followed by the reporting accountant with regard to the data required by this paragraph (a).

(5) This paragraph (a) applies to any registrant, except a foreign private issuer, that has securities registered pursuant to sections 12(b) (15 U.S.C. §78*l*(b)) (other than mutual life insurance companies) or 12(g) of the Exchange Act (15 U.S.C. §78*l*(g)).

(b) *Information about oil and gas producing activities.* Registrants engaged in oil and gas producing activities shall present the information about oil and gas producing activities (as those activities are defined in Regulation S-X, §210.4-10 (a)) specified in FASB ASC Topic 932, *Extractive Activities—Oil and Gas,* if such oil and gas producing activities are regarded as significant under one or more of the tests set forth in FASB ASC Subtopic 932-235, *Extractive Activities—Oil and Gas—Notes to Financial Statements,* for 'Significant Activities.'

Instructions to paragraph (b): 1. (a) FASB ASC Subtopic 932-235 disclosures that relate to annual periods shall be presented for each annual period for which an income statement is required. (b) FASB ASC Subtopic 932-235 disclosures required as of the end of an annual period shall be presented as of the date of each audited balance sheet required, and (c) FASB ASC Subtopic 932-235 disclosures required as of the beginning of an annual period shall be presented as of the beginning of each annual period for which an income statement is required.

2. This paragraph, together with §210.4-10 of Regulation S-X, prescribes financial reporting standards for the preparation of accounts by persons engaged, in whole or in part, in the production of crude oil or natural gas in the United States, pursuant to Section 503 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 8383) ("EPCA") and Section 11(c) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796) ("ESECA") as amended by Section 506 of EPCA. The application of the paragraph to those oil and gas producing operations of companies regulated for ratemaking purposes on an individual-company-cost-of-service basis may, however, give appropriate recognition to differences arising because of the effect of the ratemaking process.

3. Any person exempted by the Department of Energy from any record-keeping or reporting requirements pursuant to Section 11(c) of ESECA, as amended, is similarly exempted from the related provisions of this paragraph in the preparation of accounts pursuant to EPCA. This exemption does not affect the applicability of this paragraph to filings pursuant to the federal securities laws.

(c) *Smaller reporting companies.* A registrant that qualifies as a smaller reporting company, as defined by §229.10(f)(1), is not required to provide the information required by this Item.

[47 FR 11401, Mar. 16, 1982, as amended at 47 FR 57914, Dec. 29, 1982; 52 FR 30919, Aug. 18, 1987; 56 FR 30053, July 1, 1991; 64 FR 73402, Dec. 30, 1999; 73 FR 958, Jan. 4, 2008; 74 FR 18617, Apr. 23, 2009; 76 FR 50120, Aug. 12, 2011]

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§229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) *Full fiscal years.* Discuss registrant's financial condition, changes in financial condition and results of operations. The discussion shall provide information as specified in paragraphs (a)(1) through (5) of this Item and also shall provide such other information that the registrant believes to be necessary to an understanding of its financial condition, changes in financial condition and results of operations. Discussions of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the registrant's judgment a discussion of segment information or of other subdivisions of the registrant's business would be appropriate to an understanding of such business, the discussion shall focus on each relevant, reportable segment or other subdivision of the business and on the registrant as a whole.

(1) *Liquidity.* Identify any known trends or any known demands, commitments, events or uncertainties that will result in or that are reasonably likely to result in the registrant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action that the registrant has taken or proposes to take to remedy the deficiency. Also identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets.

(2) *Capital resources.* (i) Describe the registrant's material commitments for capital expenditures as of the end of the latest fiscal period, and indicate the general purpose of such commitments and the anticipated source of funds needed to fulfill such commitments.

(ii) Describe any known material trends, favorable or unfavorable, in the registrant's capital resources. Indicate any expected material changes in the mix and relative cost of such resources. The discussion shall consider changes between equity, debt and any off-balance sheet financing arrangements.

(3) *Results of operations.* (i) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected. In addition, describe any other significant components of revenues or expenses that, in the registrant's judgment, should be described in order to understand the registrant's results of operations.

(ii) Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments), the change in the relationship shall be disclosed.

(iii) To the extent that the financial statements disclose material increases in net sales or revenues, provide a narrative discussion of the extent to which such increases are attributable to increases in prices or to increases in the volume or amount of goods or services being sold or to the introduction of new products or services.

(iv) For the three most recent fiscal years of the registrant or for those fiscal years in which the registrant has been engaged in business, whichever period is shortest, discuss the impact of inflation and changing prices on the registrant's net sales and revenues and on income from continuing operations.

(4) *Off-balance sheet arrangements.* (i) In a separately-captioned section, discuss the registrant's off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors. The disclosure shall include the items specified in paragraphs (a)(4)(i)(A), (B), (C) and (D) of this Item to the extent necessary to an understanding of such arrangements and effect and shall also include such other information that the registrant believes is necessary for such an understanding.

(A) The nature and business purpose to the registrant of such off-balance sheet arrangements;

(B) The importance to the registrant of such off-balance sheet arrangements in respect of its liquidity, capital resources, market risk support, credit risk support or other benefits;

(C) The amounts of revenues, expenses and cash flows of the registrant arising from such arrangements; the nature and amounts of any interests retained, securities issued and other indebtedness incurred by the registrant in connection with such arrangements; and the nature and amounts of any other obligations or liabilities (including contingent obligations or liabilities) of the registrant arising from such arrangements that are or are reasonably likely to become material and the triggering events or circumstances that could cause them to arise; and

(D) Any known event, demand, commitment, trend or uncertainty that will result in or is reasonably likely to result in the termination, or material reduction in availability to the registrant, of its off-balance sheet arrangements that provide material benefits to it, and the course of action that the registrant has taken or proposes to take in response to any such circumstances.

(ii) As used in this paragraph (a)(4), the term *off-balance sheet arrangement* means any transaction, agreement or other contractual arrangement to which an entity unconsolidated with the registrant is a party, under which the registrant has:

(A) Any obligation under a guarantee contract that has any of the characteristics identified in FASB ASC paragraph 460-10-15-4 (Guarantees Topic), as may be modified or supplemented, and that is not excluded from the initial recognition and measurement provisions of FASB ASC paragraphs 460-10-15-7, 460-10-25-1, and 460-10-30-1.

(B) A retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to such entity for such assets;

(C) Any obligation, including a contingent obligation, under a contract that would be accounted for as a derivative instrument, except that it is both indexed to the registrant's own stock and classified in stockholders' equity in the

registrant's statement of financial position, and therefore excluded from the scope of FASB ASC Topic 815, *Derivatives and Hedging,* pursuant to FASB ASC subparagraph 815-10-15-74(a), as may be modified or supplemented; or

(D) Any obligation, including a contingent obligation, arising out of a variable interest (as defined in the FASB ASC Master Glossary), as may be modified or supplemented) in an unconsolidated entity that is held by, and material to, the registrant, where such entity provides financing, liquidity, market risk or credit risk support to, or engages in leasing, hedging or research and development services with, the registrant.

(5) *Tabular disclosure of contractual obligations.* (i) In a tabular format, provide the information specified in this paragraph (a)(5) as of the latest fiscal year end balance sheet date with respect to the registrant's known contractual obligations specified in the table that follows this paragraph (a)(5)(i). The registrant shall provide amounts, aggregated by type of contractual obligation. The registrant may disaggregate the specified categories of contractual obligations using other categories suitable to its business, but the presentation must include all of the obligations of the registrant that fall within the specified categories. A presentation covering at least the periods specified shall be included. The tabular presentation may be accompanied by footnotes to describe provisions that create, increase or accelerate obligations, or other pertinent data to the extent necessary for an understanding of the timing and amount of the registrant's specified contractual obligations.

Contractual obligations	Payments due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
[Long-Term Debt Obligations]					
[Capital Lease Obligations]					
[Operating Lease Obligations]					
[Purchase Obligations]					
[Other Long-Term Liabilities Reflected on the Registrant's Balance Sheet under GAAP]					
Total					

(ii) *Definitions:* The following definitions apply to this paragraph (a)(5):

(A) *Long-term debt obligation* means a payment obligation under long-term borrowings referenced in FASB ASC paragraph 470-10-50-1 (Debt Topic), as may be modified or supplemented.

(B) *Capital lease obligation* means a payment obligation under a lease classified as a capital lease pursuant to FASB ASC Topic 840, *Leases".*, as may be modified or supplemented.

(C) *Operating lease obligation* means a payment obligation under a lease classified as an operating lease and disclosed pursuant to FASB ASC Topic 840, as may be modified or supplemented.

(D) *Purchase obligation* means an agreement to purchase goods or services that is enforceable and legally binding on the registrant that specifies all significant terms, including: fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction.

Instructions to paragraph 303(a): 1. The registrant's discussion and analysis shall be of the financial statements and other statistical data that the registrant believes will enhance a reader's understanding of its financial condition, changes in financial condition and results of operations. Generally, the discussion shall cover the three-year period covered by the financial statements and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing pursuant to Item 301 of Regulation S-K (§229.301) may be necessary. A smaller reporting company's discussion shall cover the two-year period required in Article 8 of Regulation S-X and shall use year-to-year comparisons or any other formats that in the registrant's judgment enhance a reader's understanding.

2. The purpose of the discussion and analysis shall be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the registrant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources.

3. The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past, and (B) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes shall be described to the extent necesary to an understanding of the registrant's businesses as a whole; *Provided, however,* That if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Registrants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in this Item refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the registrant shall indicate those balance sheet conditions or income or cash flow items which the registrant believes may be indicators of its liquidity condition. Liquidity generally shall be discussed on both a long-term and short-term basis. The issue of liquidity shall be discussed in the context of the registrant's

own business or businesses. For example a discussion of working capital may be appropriate for certain manufacturing, industrial or related operations but might be inappropriate for a bank or public utility.

6. Where financial statements presented or incorporated by reference in the registration statement are required by §210.4-08(e)(3) of Regulation S-X [17 CFR part 210] to include disclosure of restrictions on the ability of both consolidated and unconsolidated subsidiaries to transfer funds to the registrant in the form of cash dividends, loans or advances, the discussion of liquidity shall include a discussion of the nature and extent of such restrictions and the impact such restrictions have had and are expected to have on the ability of the parent company to meet its cash obligations.

7. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Rule 175 under the Securities Act [17 CFR 230.175], Rule 3b-6 under the Exchange Act [17 CFR 240.3b-6] and Securities Act Release No. 6084 (June 25, 1979) (44 FR 38810).

8. Registrants are only required to discuss the effects of inflation and other changes in prices when considered material. This discussion may be made in whatever manner appears appropriate under the circumstances. All that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented except as Rule 3-20(c) of Regulation S-X (§210.3-20(c) of this chapter) otherwise requires. However, registrants may elect to voluntarily disclose supplemental information on the effects of changing prices as provided for in FASB ASC Topic 255, *Changing Prices*, or through other supplemental disclosures. The Commission encourages experimentation with these disclosures in order to provide the most meaningful presentation of the impact of price changes on the registrant's financial statements.

9. Registrants that elect to disclose supplementary information on the effects of changing prices as specified by FASB ASC Topic 255 may combine such explanations with the discussion and analysis required pursuant to this Item or may supply such information separately with appropriate cross reference.

10. All references to the registrant in the discussion and in this Item shall mean the registrant and its subsidiaries consolidated.

11. Foreign private registrants also shall discuss briefly any pertinent governmental economic, fiscal, monetary, or political policies or factors that have materially affected or could materially affect, directly or indirectly, their operations or investments by United States nationals.

12. If the registrant is a foreign private issuer, the discussion shall focus on the primary financial statements presented in the registration statement or report. There shall be a reference to the reconciliation to United States generally accepted accounting principles, and a discussion of any aspects of the difference between foreign and United States generally accepted accounting principles, not discussed in the reconciliation, that the registrant believes is necessary for an understanding of the financial statements as a whole.

13. The attention of bank holding companies is directed to the information called for in Guide 3 (§229.801(c) and §229.802(c)).

14. The attention of property-casualty insurance companies is directed to the information called for in Guide 6 (§229.801(f)).

Instructions to paragraph 303(a)(4): 1. No obligation to make disclosure under paragraph (a)(4) of this Item shall arise in respect of an off-balance sheet arrangement until a definitive agreement that is unconditionally binding or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

2. Registrants should aggregate off-balance sheet arrangements in groups or categories that provide material information in an efficient and understandable manner and should avoid repetition and disclosure of immaterial information. Effects that are common or similar with respect to a number of off-balance sheet arrangements must be analyzed in the aggregate to the extent the aggregation increases understanding. Distinctions in arrangements and their effects must be discussed to the extent the information is material, but the discussion should avoid repetition and disclosure of immaterial information.

3. For purposes of paragraph (a)(4) of this Item only, contingent liabilities arising out of litigation, arbitration or regulatory actions are not considered to be off-balance sheet arrangements.

4. Generally, the disclosure required by paragraph (a)(4) shall cover the most recent fiscal year. However, the discussion should address changes from the previous year where such discussion is necessary to an understanding of the disclosure.

5. In satisfying the requirements of paragraph (a)(4) of this Item, the discussion of off-balance sheet arrangements need not repeat information provided in the footnotes to the financial statements, provided that such discussion clearly cross-references to specific information in the relevant footnotes and integrates the substance of the footnotes into such discussion in a manner designed to inform readers of the significance of the information that is not included within the body of such discussion.

(b) *Interim periods.* If interim period financial statements are included or are required to be included by Article 3 of Regulation S-X (17 CFR 210), a management's discussion and analysis of the financial condition and results of operations shall be provided so as to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (b) (1) and (2) of this Item. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (a) of this Item, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(1) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial condition from that date to the date of the most recent interim balance sheet provided also shall be discussed. If

discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the registrant.

(2) *Material changes in results of operations.* Discuss any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the registrant is required to or has elected to provide an income statement for the most recent fiscal quarter, such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the registrant has elected to provide an income statement for the twelve-month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that twelve-month period and the twelve-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year. Notwithstanding the above, if for purposes of a registration statement a registrant subject to paragraph (b) of §210.3-03 of Regulation S-X provides a statement of income for the twelve-month period ended as of the date of the most recent interim balance sheet provided in lieu of the interim income statements otherwise required, the discussion of material changes in that twelve-month period will be in respect to the preceding fiscal year rather than the corresponding preceding period.

Instructions to paragraph (b) of Item 303: 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to this paragraph (b) and the discussion of the full fiscal year's information shall be prepared pursuant to paragraph (a) of this Item. Such discussions may be combined.

2. In preparing the discussion and analysis required by this paragraph (b), the registrant may presume that users of the interim financial information have read or have access to the discussion and analysis required by paragraph (a) for the preceding fiscal year.

3. The discussion and analysis required by this paragraph (b) is required to focus only on material changes. Where the interim financial statements reveal material changes from period to period in one or more significant line items, the causes for the changes shall be described if they have not already been disclosed: *Provided, however,* That if the causes for a change in one line item also relate to other line items, no repetition is required. Registrants need not recite the amounts of changes from period to period which are readily computable from the financial statements. The discussion shall not merely repeat numerical data contained in the financial statements. The information provided shall include that which is available to the registrant without undue effort or expense and which does not clearly appear in the registrant's condensed interim financial statements.

4. The registrant's discussion of material changes in results of operations shall identify any significant elements of the registrant's income or loss from continuing operations which do not arise from or are not necessarily representative of the registrant's ongoing business.

5. The registrant shall discuss any seasonal aspects of its business which have had a material effect upon its financial condition or results of operation.

6. Any forward-looking information supplied is expressly covered by the safe harbor rule for projections. See Rule 175 under the Securities Act [17 CFR 230. 175], Rule 3b-6 under the Exchange Act [17 CFR 249.3b-6] and Securities Act Release No. 6084 (June 25, 1979) (44 FR 38810).

7. The registrant is not required to include the table required by paragraph (a)(5) of this Item for interim periods. Instead, the registrant should disclose material changes outside the ordinary course of the registrant's business in the specified contractual obligations during the interim period.

(c) *Safe harbor.* (1) The safe harbor provided in section 27A of the Securities Act of 1933 (15 U.S.C. 77z-2) and section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u-5) ("statutory safe harbors") shall apply to forward-looking information provided pursuant to paragraphs (a)(4) and (5) of this Item, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (c) of this Item only:

(i) All information required by paragraphs (a)(4) and (5) of this Item is deemed to be a *forward looking statement* as that term is defined in the statutory safe harbors, except for historical facts.

(ii) With respect to paragraph (a)(4) of this Item, the meaningful cautionary statements element of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same paragraph (a)(4) of this Item.

(d) *Smaller reporting companies.* A smaller reporting company, as defined by §229.10(f)(1), may provide the information required in paragraph (a)(3)(iv) of this Item for the last two most recent fiscal years of the registrant if it provides financial information on net sales and revenues and on income from continuing operations for only two years. A smaller reporting company is not required to provide the information required by paragraph (a)(5) of this Item.

[47 FR 11401, Mar. 16, 1982, as amended at 47 FR 29839, July 9, 1982; 47 FR 54768, Dec. 6, 1982; 52 FR 30919, Aug. 18, 1987; 68 FR 5999, Feb. 5, 2003; 73 FR 958, Jan. 4, 2008; 76 FR 50120, Aug. 12, 2011]

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§229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a)(1) If during the registrant's two most recent fiscal years or any subsequent interim period, an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant who was previously engaged to audit a significant subsidiary and on whom the principal accountant expressed reliance in its report, has resigned (or indicated it has declined to stand for re-election after the completion of the current audit) or was dismissed, then the registrant shall:

(i) State whether the former accountant resigned, declined to stand for re-election or was dismissed and the date thereof.

(ii) State whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles; and also describe the nature of each such adverse opinion, disclaimer of opinion, modification, or qualification.

(iii) State whether the decision to change accountants was recommended or approved by:

(A) Any audit or similar committee of the board of directors, if the issuer has such a committee; or

(B) The board of directors, if the issuer has no such committee.

(iv) State whether during the registrant's two most recent fiscal years and any subsequent interim period preceding such resignation, declination or dismissal there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of the former accountant, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report. Also, (A) describe each such disagreement; (B) state whether any audit or similar committee of the board of directors, or the board of directors, discussed the subject matter of each of such disagreements with the former accountant; and (C) state whether the registrant has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each of such disagreements and, if not, describe the nature of any limitation thereon and the reason therefore. The disagreements required to be reported in response to this Item include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Item are those that occur at the decision-making level, *i.e.*, between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

(v) Provide the information required by paragraph (a)(1)(iv) of this Item for each of the kinds of events (even though the registrant and the former accountant did not express a difference of opinion regarding the event) listed in paragraphs (a)(1)(v) (A) through (D) of this section, that occurred within the registrant's two most recent fiscal years and any subsequent interim period preceding the former accountant's resignation, declination to stand for re-election, or dismissal ("reportable events"). If the event led to a disagreement or difference of opinion, then the event should be reported as a disagreement under paragraph (a)(1)(iv) and need not be repeated under this paragraph.

(A) The accountant's having advised the registrant that the internal controls necessary for the registrant to develop reliable financial statements do not exist;

(B) The accountant's having advised the registrant that information has come to the accountant's attention that has led it to no longer be able to rely on management's representations, or that has made it unwilling to be associated with the financial statements prepared by management;

(C)(*1*) The accountant's having advised the registrant of the need to expand significantly the scope of its audit, or that information has come to the accountant's attention during the time period covered by Item 304(a)(1)(iv), that if further investigated may:

(*i*) Materially impact the fairness or reliability of either: a previously issued audit report or the underlying financial statements; or the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that may prevent it from rendering an unqualified audit report on those financial statements), or

(*ii*) Cause it to be unwilling to rely on management's representations or be associated with the registrant's financial statements, and

(2) Due to the accountant's resignation (due to audit scope limitations or otherwise) or dismissal, or for any other reason, the accountant did not so expand the scope of its audit or conduct such further investigation; or

(D)(*1*) The accountant's having advised the registrant that information has come to the accountant's attention that it has concluded materially impacts the fairness or reliability of either (*i*) a previously issued audit report or the underlying financial statements, or (*ii*) the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that, unless resolved to the accountant's satisfaction, would prevent it from rendering an unqualified audit report on those financial statements), and

(2) Due to the accountant's resignation, dismissal or declination to stand for re-election, or for any other reason, the issue has not been resolved to the accountant's satisfaction prior to its resignation, dismissal or declination to stand for re-election.

(2) If during the registrant's two most recent fiscal years or any subsequent interim period, a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements, or as an independent accountant to audit a significant subsidiary and on whom the principal accountant is expected to express reliance in its report, then the registrant shall identify the newly engaged accountant and indicate the date of such accountant's engagement. In addition, if during the registrant's two most recent fiscal years, and any subsequent interim period prior to engaging that accountant, the registrant (or someone on its behalf) consulted the newly engaged accountant regarding:

(i) Either: The application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the registrant's financial statements, and either a written report was provided to the registrant or oral advice was provided that the new accountant concluded was an important factor considered by the registrant in reaching a decision as to the accounting, auditing or financial reporting issue; or

(ii) Any matter that was either the subject of a disagreement (as defined in paragraph 304(a)(1)(iv) and the related instructions to this item) or a reportable event (as described in paragraph 304(a)(1)(v)), then the registrant shall:

(A) So state and identify the issues that were the subjects of those consultations;

(B) Briefly describe the views of the newly engaged accountant as expressed orally or in writing to the registrant on each such issue and, if written views were received by the registrant, file them as an exhibit to the report or registration statement requiring compliance with this Item 304(a);

(C) State whether the former accountant was consulted by the registrant regarding any such issues, and if so, provide a summary of the former accountant's views; and

(D) Request the newly engaged accountant to review the disclosure required by this Item 304(a) before it is filed with the Commission and provide the new accountant the opportunity to furnish the registrant with a letter addressed to the Commission containing any new information, clarification of the registrant's expression of its views, or the respects in which it does not agree with the statements made by the registrant in response to Item 304(a). The registrant shall file any such letter as an exhibit to the report or registration statement containing the disclosure required by this Item.

(3) The registrant shall provide the former accountant with a copy of the disclosures it is making in response to this Item 304(a) that the former accountant shall receive no later than the day that the disclosures are filed with the Commission. The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the report on registration statement containing this disclosure. If the former accountant's letter is unavailable at the time of filing such report or registration statement, then the registrant shall request the former accountant to provide the letter as promptly as possible so that the registrant can file the letter with the Commission within ten business days after the filing of the report or registration statement. Notwithstanding the ten business day period, the registrant shall file the letter by amendment within two business days of receipt; if the letter is received on a Saturday, Sunday or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and shall include the first business day thereafter. The former accountant may provide the registrant with an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming within the ten business day period noted above. If not filed with the report or registration statement containing the registrant's disclosure under this Item 304(a), then the interim letter, if any, shall be filed by the registrant by amendment within two business days of receipt.

(b) If: (1) In connection with a change in accountants subject to paragraph (a) of this Item 304, there was any disagreement of the type described in paragraph (a)(1)(iv) or any reportable event as described in paragraph (a)(1)(v) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the subsequent fiscal year, there have been any transactions or events similar to those which involved such disagreement or reportable event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, the registrant shall state the existence and nature of the disagreement or reportable event and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required.

These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

Instructions to Item 304: 1. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported as that term is defined in Rule 12b-2 under the Exchange Act (§240.12b-2 of this chapter); the disclosure called for by paragraph (a) must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A

(§240.14a-101 of this chapter). The disclosure called for by paragraph (b) of this section must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this section in an annual report to security holders pursuant to Rule 14a-3 (§240.14a-3 of this chapter) or Rule 14c-3 (§240.14c-3 of this chapter), or in a proxy or information statement filed pursuant to the requirements of Schedule 14A or 14C (§240.14a-101 or §240.14c-101 of this chapter), in lieu of a letter pursuant to paragraph (a)(2)(D) or (a)(3), prior to filing such materials with or furnishing such materials to the Commission, the registrant shall furnish the disclosure required by paragraph (a) of this section to any former accountant engaged by the registrant during the period set forth in paragraph (a) of this section and to the newly engaged accountant. If any such accountant believes that the statements made in response to paragraph (a) of this section are incorrect or incomplete, it may present its views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the registrant within ten business days of the date the accountant receives the registrant's disclosure. Further, unless the written views of the newly engaged accountant required to be filed as an exhibit by paragraph (a)(2)(B) of this Item 304 have been previously filed with the Commission the registrant shall file a Form 8-K concurrently with the annual report or proxy or information statement for the purpose of filing the written views as exhibits thereto.

3. The information required by Item 304(a) need not be provided for a company being acquired by the registrant that is not subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 for its latest fiscal year.

4. The term "disagreements" as used in this Item shall be interpreted broadly, to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion. For purposes of this Item, however, the term disagreements does not include initial differences of opinion based on incomplete facts or preliminary information that were later resolved to the former accountant's satisfaction by, and providing the registrant and the accountant do not continue to have a difference of opinion upon, obtaining additional relevant facts or information.

5. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or their designee) will generally suffice as the accountant advising the registrant of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

[53 FR 12929, Apr. 20, 1988, as amended at 54 FR 9774, Mar. 8, 1989]

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§229.305 (Item 305) Quantitative and qualitative disclosures about market risk.

(a) *Quantitative information about market risk.* (1) Registrants shall provide, in their reporting currency, quantitative information about market risk as of the end of the latest fiscal year, in accordance with one of the following three disclosure alternatives. In preparing this quantitative information, registrants shall categorize market risk sensitive instruments into instruments entered into for trading purposes and instruments entered into for purposes other than trading purposes. Within both the trading and other than trading portfolios, separate quantitative information shall be presented, to the extent material, for each market risk exposure category (*i.e.*, interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market risks, such as equity price risk). A registrant may use one of the three alternatives set forth in this section for all of the required quantitative disclosures about market risk. A registrant also may choose, from among the three alternatives, one disclosure alternative for market risk sensitive instruments entered into for trading purposes and another disclosure alternative for market risk sensitive instruments entered into for other than trading purposes. Alternatively, a registrant may choose any disclosure alternative, from among the three alternatives, for each risk exposure category within the trading and other than trading portfolios. The three disclosure alternatives are:

(i)(A)(*1*) Tabular presentation of information related to market risk sensitive instruments; such information shall include fair values of the market risk sensitive instruments and contract terms sufficient to determine future cash flows from those instruments, categorized by expected maturity dates.

(*2*) Tabular information relating to contract terms shall allow readers of the table to determine expected cash flows from the market risk sensitive instruments for each of the next five years. Comparable tabular information for any remaining years shall be displayed as an aggregate amount.

(*3*) Within each risk exposure category, the market risk sensitive instruments shall be grouped based on common characteristics. Within the foreign currency exchange rate risk category, the market risk sensitive instruments shall be grouped by functional currency and within the commodity price risk category, the market risk sensitive instruments shall be grouped by type of commodity.

(*4*) See the Appendix to this Item for a suggested format for presentation of this information; and

(B) Registrants shall provide a description of the contents of the table and any related assumptions necessary to understand the disclosures required under paragraph (a)(1)(i)(A) of this Item 305; or

(ii)(A) Sensitivity analysis disclosures that express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments resulting from one or more selected hypothetical changes in interest rates, foreign

currency exchange rates, commodity prices, and other relevant market rates or prices over a selected period of time. The magnitude of selected hypothetical changes in rates or prices may differ among and within market risk exposure categories; and

(B) Registrants shall provide a description of the model, assumptions, and parameters, which are necessary to understand the disclosures required under paragraph (a)(1)(ii)(A) of this Item 305; or

(iii)(A) Value at risk disclosures that express the potential loss in future earnings, fair values, or cash flows of market risk sensitive instruments over a selected period of time, with a selected likelihood of occurrence, from changes in interest rates, foreign currency exchange rates, commodity prices, and other relevant market rates or prices;

(B)(*1*) For each category for which value at risk disclosures are required under paragraph (a)(1)(iii)(A) of this Item 305, provide either:

(*i*) The average, high and low amounts, or the distribution of the value at risk amounts for the reporting period; or

(*ii*) The average, high and low amounts, or the distribution of actual changes in fair values, earnings, or cash flows from the market risk sensitive instruments occurring during the reporting period; or

(*iii*) The percentage or number of times the actual changes in fair values, earnings, or cash flows from the market risk sensitive instruments exceeded the value at risk amounts during the reporting period;

(2) Information required under paragraph (a)(1)(iii)(B)(*1*) of this Item 305 is not required for the first fiscal year end in which a registrant must present Item 305 information; and

(C) Registrants shall provide a description of the model, assumptions, and parameters, which are necessary to understand the disclosures required under paragraphs (a)(1)(iii)(A) and (B) of this Item 305.

(2) Registrants shall discuss material limitations that cause the information required under paragraph (a)(1) of this Item 305 not to reflect fully the net market risk exposures of the entity. This discussion shall include summarized descriptions of instruments, positions, and transactions omitted from the quantitative market risk disclosure information or the features of instruments, positions, and transactions that are included, but not reflected fully in the quantitative market risk disclosure information.

(3) Registrants shall present summarized market risk information for the preceding fiscal year. In addition, registrants shall discuss the reasons for material quantitative changes in market risk exposures between the current and preceding fiscal years. Information required by this paragraph (a)(3), however, is not required if disclosure is not required under paragraph (a)(1) of this Item 305 for the current fiscal year. Information required by this paragraph (a)(3) is not required for the first fiscal year end in which a registrant must present Item 305 information.

(4) If registrants change disclosure alternatives or key model characteristics, assumptions, and parameters used in providing quantitative information about market risk (e.g., changing from tabular presentation to value at risk, changing the scope of instruments included in the model, or changing the definition of loss from fair values to earnings), and if the effects of any such change is material, the registrant shall:

(i) Explain the reasons for the change; and

(ii) Either provide summarized comparable information, under the new disclosure method, for the year preceding the current year or, in addition to providing disclosure for the current year under the new method, provide disclosures for the current year and preceding fiscal year under the method used in the preceding year.

Instructions to paragraph 305(a): 1. Under paragraph 305(a)(1):

A. For each market risk exposure category within the trading and other than trading portfolios, registrants may report the average, high, and low sensitivity analysis or value at risk amounts for the reporting period, as an alternative to reporting year-end amounts.

B. In determining the average, high, and low amounts for the fiscal year under instruction 1.A. of the Instructions to Paragraph 305(a), registrants should use sensitivity analysis or value at risk amounts relating to at least four equal time periods throughout the reporting period (e.g., four quarter-end amounts, 12 month-end amounts, or 52 week-end amounts).

C. Functional currency means functional currency as defined by generally accepted accounting principles (see, e.g., FASB ASC Master Glossary).

D. Registrants using the sensitivity analysis and value at risk disclosure alternatives are encouraged, but not required, to provide quantitative amounts that reflect the aggregate market risk inherent in the trading and other than trading portfolios.

2. Under paragraph 305(a)(1)(i):

A. Examples of contract terms sufficient to determine future cash flows from market risk sensitive instruments include, but are not limited to:

i. Debt instruments—principal amounts and weighted average effective interest rates;

ii. Forwards and futures—contract amounts and weighted average settlement prices;

iii. Options—contract amounts and weighted average strike prices;

iv. Swaps—notional amounts, weighted average pay rates or prices, and weighted average receive rates or prices; and

v. Complex instruments—likely to be a combination of the contract terms presented in 2.A.i. through iv. of this Instruction;

B. When grouping based on common characteristics, instruments should be categorized, at a minimum, by the following characteristics, when material:

i. Fixed rate or variable rate assets or liabilities;

ii. Long or short forwards and futures;

iii. Written or purchased put or call options with similar strike prices;

iv. Receive fixed and pay variable swaps, receive variable and pay fixed swaps, and receive variable and pay variable swaps;

v. The currency in which the instruments' cash flows are denominated;

vi. Financial instruments for which foreign currency transaction gains and losses are reported in the same manner as translation adjustments under generally accepted accounting principles (see, e.g., FASB ASC paragraph 830-20-35-3 (Foreign Currency Matters Topic)); and

vii. Derivatives used to manage risks inherent in anticipated transactions;

C. Registrants may aggregate information regarding functional currencies that are economically related, managed together for internal risk management purposes, and have statistical correlations of greater than 75% over each of the past three years;

D. Market risk sensitive instruments that are exposed to rate or price changes in more than one market risk exposure category should be presented within the tabular information for each of the risk exposure categories to which those instruments are exposed;

E. If a currency swap eliminates all foreign currency exposures in the cash flows of a foreign currency denominated debt instrument, neither the currency swap nor the foreign currency denominated debt instrument are required to be disclosed in the foreign currency risk exposure category. However, both the currency swap and the foreign currency denominated debt instrument should be disclosed in the interest rate risk exposure category; and

F. The contents of the table and related assumptions that should be described include, but are not limited to:

i. The different amounts reported in the table for various categories of the market risk sensitive instruments (e.g., principal amounts for debt, notional amounts for swaps, and contract amounts for options and futures);

ii. The different types of reported market rates or prices (e.g., contractual rates or prices, spot rates or prices, forward rates or prices); and

iii. Key prepayment or reinvestment assumptions relating to the timing of reported amounts.

3. Under paragraph 305(a)(1)(ii):

A. Registrants should select hypothetical changes in market rates or prices that are expected to reflect reasonably possible near-term changes in those rates and prices. In this regard, absent economic justification for the selection of a different amount, registrants should use changes that are not less than 10 percent of end of period market rates or prices;

B. For purposes of instruction 3.A. of the Instructions to Paragraph 305(a), the term *reasonably possible* has the same meaning as defined by generally accepted accounting principles (see, e.g., FASB ASC Master Glossary);

C. For purposes of instruction 3.A. of the Instructions to Paragraph 305(a), the term *near term* means a period of time going forward up to one year from the date of the financial statements (see FASB ASC Master Glossary);

D. Market risk sensitive instruments that are exposed to rate or price changes in more than one market risk exposure category should be included in the sensitivity analysis disclosures for each market risk category to which those instruments are exposed;

E. Registrants with multiple foreign currency exchange rate exposures should prepare foreign currency sensitivity analysis disclosures that measure the aggregate sensitivity to changes in all foreign currency exchange rate exposures, including the effects of changes in both transactional currency/functional currency exchange rate exposures and functional currency/reporting currency exchange rate exposures. For example, assume a French division of a registrant presenting its financial statements in U.S. dollars ($US) invests in a deutschmark(DM)-denominated debt security. In these circumstances, the $US is the reporting currency and the DM is the transactional currency. In addition, assume this division determines that the French franc (FF) is its functional currency according to FASB ASC Topic 830, *Foreign Currency Matters*. In preparing the foreign currency sensitivity analysis disclosures, this registrant should report the aggregate potential loss from hypothetical changes in both the DM/FF exchange rate exposure and the FF/$US exchange rate exposure; and

F. Model, assumptions, and parameters that should be described include, but are not limited to, how *loss* is defined by the model (e.g., loss in earnings, fair values, or cash flows), a general description of the modeling technique (e.g., duration modeling,

modeling that measures the change in net present values arising from selected hypothetical changes in market rates or prices, and a description as to how optionality is addressed by the model), the types of instruments covered by the model (e.g., derivative financial instruments, other financial instruments, derivative commodity instruments, and whether other instruments are included voluntarily, such as certain commodity instruments and positions, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Paragraphs 305(a) and 305(b)), and other relevant information about the model's assumptions and parameters, (e.g., the magnitude and timing of selected hypothetical changes in market rates or prices used, the method by which discount rates are determined, and key prepayment or reinvestment assumptions).

4. Under paragraph 305(a)(1)(iii):

A. The confidence intervals selected should reflect reasonably possible near-term changes in market rates and prices. In this regard, absent economic justification for the selection of different confidence intervals, registrants should use intervals that are 95 percent or higher;

B. For purposes of instruction 4.A. of the Instructions to Paragraph 305(a), the term *reasonably possible* has the same meaning as defined by generally accepted accounting principles (see, e.g., FASB ASC Master Glossary);

C. For purposes of instruction 4.A. of the Instructions to Paragraphs 305(a), the term *near term* means a period of time going forward up to one year from the date of the financial statements (see FASB ASC Master Glossary);

D. Registrants with multiple foreign currency exchange rate exposures should prepare foreign currency value at risk analysis disclosures that measure the aggregate sensitivity to changes in all foreign currency exchange rate exposures, including the aggregate effects of changes in both transactional currency/functional currency exchange rate exposures and functional currency/reporting currency exchange rate exposures. For example, assume a French division of a registrant presenting its financial statements in U.S. dollars ($US) invests in a deutschmark(DM)-denominated debt security. In these circumstances, the $US is the reporting currency and the DM is the transactional currency. In addition, assume this division determines that the French franc (FF) is its functional currency according to FASB ASC Topic 830, *Foreign Currency Matters.* In preparing the foreign currency value at risk disclosures, this registrant should report the aggregate potential loss from hypothetical changes in both the DM/FF exchange rate exposure and the FF/$US exchange rate exposure; and

E. Model, assumptions, and parameters that should be described include, but are not limited to, how *loss* is defined by the model (e.g., loss in earnings, fair values, or cash flows), the type of model used (e.g., variance/covariance, historical simulation, or Monte Carlo simulation and a description as to how optionality is addressed by the model), the types of instruments covered by the model (e.g., derivative financial instruments, other financial instruments, derivative commodity instruments, and whether other instruments are included voluntarily, such as certain commodity instruments and positions, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Paragraphs 305(a) and 305(b)), and other relevant information about the model's assumptions and parameters, (e.g., holding periods, confidence intervals, and, when appropriate, the methods used for aggregating value at risk amounts across market risk exposure categories, such as by assuming perfect positive correlation, independence, or actual observed correlation).

5. Under paragraph 305(a)(2), limitations that should be considered include, but are not limited to:

A. The exclusion of certain market risk sensitive instruments, positions, and transactions from the disclosures required under paragraph 305(a)(1) (e.g., derivative commodity instruments not permitted by contract or business custom to be settled in cash or with another financial instrument, commodity positions, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Paragraphs 305(a) and 305(b)). Failure to include such instruments, positions, and transactions in preparing the disclosures under paragraph 305(a)(1) may be a limitation because the resulting disclosures may not fully reflect the net market risk of a registrant; and

B. The ability of disclosures required under paragraph 305(a)(1) to reflect fully the market risk that may be inherent in instruments with leverage, option, or prepayment features (e.g., options, including written options, structured notes, collateralized mortgage obligations, leveraged swaps, and options embedded in swaps).

(b) *Qualitative information about market risk.* (1) To the extent material, describe:

(i) The registrant's primary market risk exposures;

(ii) How those exposures are managed. Such descriptions shall include, but not be limited to, a discussion of the objectives, general strategies, and instruments, if any, used to manage those exposures; and

(iii) Changes in either the registrant's primary market risk exposures or how those exposures are managed, when compared to what was in effect during the most recently completed fiscal year and what is known or expected to be in effect in future reporting periods.

(2) Qualitative information about market risk shall be presented separately for market risk sensitive instruments entered into for trading purposes and those entered into for purposes other than trading.

Instructions to paragraph 305(b): 1. For purposes of disclosure under paragraph 305(b), *primary market risk exposures* means:

A. The following categories of market risk: interest rate risk, foreign currency exchange rate risk, commodity price risk, and other relevant market rate or price risks (e.g., equity price risk); and

B. Within each of these categories, the particular markets that present the primary risk of loss to the registrant. For example, if a registrant has a material exposure to foreign currency exchange rate risk and, within this category of market risk, is most vulnerable to changes in dollar/yen, dollar/pound, and dollar/peso exchange rates, the registrant should disclose those exposures. Similarly, if a

registrant has a material exposure to interest rate risk and, within this category of market risk, is most vulnerable to changes in short-term U.S. prime interest rates, it should disclose the existence of that exposure.

2. For purposes of disclosure under paragraph 305(b), registrants should describe primary market risk exposures that exist as of the end of the latest fiscal year, and how those exposures are managed.

General Instructions to paragraphs 305(a) and 305(b): 1. The disclosures called for by paragraphs 305(a) and 305(b) are intended to clarify the registrant's exposures to market risk associated with activities in derivative financial instruments, other financial instruments, and derivative commodity instruments.

2. In preparing the disclosures under paragraphs 305(a) and 305(b), registrants are required to include derivative financial instruments, other financial instruments, and derivative commodity instruments.

3. For purposes of paragraphs 305(a) and 305(b), derivative financial instruments, other financial instruments, and derivative commodity instruments (collectively referred to as "market risk sensitive instruments") are defined as follows:

A. *Derivative financial instruments* has the same meaning as defined by generally accepted accounting principles (see, e.g., FASB ASC Master Glossary), and includes futures, forwards, swaps, options, and other financial instruments with similar characteristics;

B. *Other financial instruments* means all financial instruments as defined by generally accepted accounting principles for which fair value disclosures are required (see, e.g., FASB ASC paragraph 825-10-50-8 (Financial Instruments Topic), except for derivative financial instruments, as defined above;

C.i. Other financial instruments include, but are not limited to, trade accounts receivable, investments, loans, structured notes, mortgage-backed securities, trade accounts payable, indexed debt instruments, interest-only and principal-only obligations, deposits, and other debt obligations;

ii. Other financial instruments exclude employers' and plans' obligations for pension and other post-retirement benefits, substantively extinguished debt, insurance contracts, lease contracts, warranty obligations and rights, unconditional purchase obligations, investments accounted for under the equity method, noncontrolling interests in consolidated enterprises, and equity instruments issued by the registrant and classified in stockholders' equity in the statement of financial position (see, e.g., FASB ASC paragraph 825-10-50-8). For purposes of this item, trade accounts receivable and trade accounts payable need not be considered other financial instruments when their carrying amounts approximate fair value; and

D. *Derivative commodity instruments* include, to the extent such instruments are not derivative financial instruments, commodity futures, commodity forwards, commodity swaps, commodity options, and other commodity instruments with similar characteristics that are permitted by contract or business custom to be settled in cash or with another financial instrument. For purposes of this paragraph, settlement in cash includes settlement in cash of the net change in value of the derivative commodity instrument (e.g., net cash settlement based on changes in the price of the underlying commodity).

4.A. In addition to providing required disclosures for the market risk sensitive instruments defined in instruction 2. of the General Instructions to Paragraphs 305(a) and 305(b), registrants are encouraged to include other market risk sensitive instruments, positions, and transactions within the disclosures required under paragraphs 305(a) and 305(b). Such instruments, positions, and transactions might include commodity positions, derivative commodity instruments that are not permitted by contract or business custom to be settled in cash or with another financial instrument, cash flows from anticipated transactions, and certain financial instruments excluded under instruction 3.C.ii. of the General Instructions to Paragraphs 305(a) and 305(b).

B. Registrants that voluntarily include other market risk sensitive instruments, positions and transactions within their quantitative disclosures about market risk under the sensitivity analysis or value at risk disclosure alternatives are not required to provide separate market risk disclosures for any voluntarily selected instruments, positions, or transactions. Instead, registrants selecting the sensitivity analysis and value at risk disclosure alternatives are permitted to present comprehensive market risk disclosures, which reflect the combined market risk exposures inherent in both the required and any voluntarily selected instruments, position, or transactions. Registrants that choose the tabular presentation disclosure alternative should present voluntarily selected instruments, positions, or transactions in a manner consistent with the requirements in Item 305(a) for market risk sensitive instruments.

C. If a registrant elects to include voluntarily a particular type of instrument, position, or transaction in their quantitative disclosures about market risk, that registrant should include all, rather than some, of those instruments, positions, or transactions within those disclosures. For example, if a registrant holds in inventory a particular type of commodity position and elects to include that commodity position within their market risk disclosures, the registrant should include the entire commodity position, rather than only a portion thereof, in their quantitative disclosures about market risk.

5.A. Under paragraphs 305(a) and 305(b), a materiality assessment should be made for each market risk exposure category within the trading and other than trading portfolios.

B. For purposes of making the materiality assessment under instruction 5.A. of the General Instructions to Paragraphs 305(a) and 305(b), registrants should evaluate both:

i. The materiality of the fair values of derivative financial instruments, other financial instruments, and derivative commodity instruments outstanding as of the end of the latest fiscal year; and

ii. The materiality of potential, near-term losses in future earnings, fair values, and/or cash flows from reasonably possible near-term changes in market rates or prices.

iii. If either paragraphs B.i. or B.ii. in this instruction of the General Instructions to Paragraphs 305(a) and 305(b) are material, the registrant should disclose quantitative and qualitative information about market risk, if such market risk for the particular market risk exposure category is material.

C. For purposes of instruction 5.B.i. of the General Instructions to Paragraphs 305(a) and 305(b), registrants generally should not net fair values, except to the extent allowed under generally accepted accounting principles (see, e.g., FASB ASC Subtopic 210-20, *Balance Sheet—Offsetting).* For example, under this instruction, the fair value of assets generally should not be netted with the fair value of liabilities.

D. For purposes of instruction 5.B.ii. of the General Instructions to Paragraphs 305(a) and 305(b), registrants should consider, among other things, the magnitude of:

i. Past market movements;

ii. Reasonably possible, near-term market movements; and

iii. Potential losses that may arise from leverage, option, and multiplier features.

E. For purposes of instructions 5.B.ii and 5.D.ii of the General Instructions to Paragraphs 305(a) and 305(b), the term *near term* means a period of time going forward up to one year from the date of the financial statements (see FASB ASC Master Glossary).

F. For the purpose of instructions 5.B.ii. and 5.D.ii. of the General Instructions to Paragraphs 305(a) and 305(b), the term *reasonably possible* has the same meaning as defined by generally accepted accounting principles (see, e.g., FASB ASC Master Glossary).

6. For purposes of paragraphs 305(a) and 305(b), registrants should present the information outside of, and not incorporate the information into, the financial statements (including the footnotes to the financial statements). In addition, registrants are encouraged to provide the required information in one location. However, alternative presentation, such as inclusion of all or part of the information in Management's Discussion and Analysis, may be used at the discretion of the registrant. If information is disclosed in more than one location, registrants should provide cross-references to the locations of the related disclosures.

7. For purposes of the instructions to paragraphs 305(a) and 305(b), *trading purposes* means dealing and other trading activities measured at fair value with gains and losses recognized in earnings. In addition, *anticipated transactions* means transactions (other than transactions involving existing assets or liabilities or transactions necessitated by existing firm commitments) an enterprise expects, but is not obligated, to carry out in the normal course of business.

(c) *Interim periods.* If interim period financial statements are included or are required to be included by Article 3 of Regulation S-X (17 CFR 210), discussion and analysis shall be provided so as to enable the reader to assess the sources and effects of material changes in information that would be provided under Item 305 of Regulation S-K from the end of the preceding fiscal year to the date of the most recent interim balance sheet.

Instructions to paragraph 305(c): 1. Information required under paragraph (c) of this Item 305 is not required until after the first fiscal year end in which this Item 305 is applicable.

(d) *Safe harbor.* (1) The safe harbor provided in Section 27A of the Securities Act of 1933 (15 U.S.C. 77z-2) and Section 21E of the Securities Exchange Act of 1934 (15 U.S.C. 78u-5) ("statutory safe harbors") shall apply, with respect to all types of issuers and transactions, to information provided pursuant to paragraphs (a), (b), and (c) of this Item 305, provided that the disclosure is made by: an issuer; a person acting on behalf of the issuer; an outside reviewer retained by the issuer making a statement on behalf of the issuer; or an underwriter, with respect to information provided by the issuer or information derived from information provided by the issuer.

(2) For purposes of paragraph (d) of this Item 305 only:

(i) All information required by paragraphs (a), (b)(1)(i), (b)(1)(iii), and (c) of this Item 305 is considered *forward looking statements* for purposes of the statutory safe harbors, except for historical facts such as the terms of particular contracts and the number of market risk sensitive instruments held during or at the end of the reporting period; and

(ii) With respect to paragraph (a) of this Item 305, the *meaningful cautionary statements* prong of the statutory safe harbors will be satisfied if a registrant satisfies all requirements of that same paragraph (a) of this Item 305.

(e) *Smaller reporting companies.* A smaller reporting company, as defined by §229.10(f)(1), is not required to provide the information required by this Item.

General Instructions to paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e): 1. Bank registrants, thrift registrants, and non-bank and non-thrift registrants with market capitalizations on January 28, 1997 in excess of $2.5 billion should provide Item 305 disclosures in filings with the Commission that include annual financial statements for fiscal years ending after June 15, 1997. Non-bank and non-thrift registrants with market capitalizations on January 28, 1997 of $2.5 billion or less should provide Item 305 disclosures in filings with the Commission that include financial statements for fiscal years ending after June 15, 1998.

2.A. For purposes of Instruction 1. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), *bank registrants and thrift registrants* include any registrant which has control over a depository institution.

B. For purposes of instruction 2.A. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), a registrant has control over a depository institution if:

i. The registrant directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25% or more of any class of voting securities of the depository institution;

ii. The registrant controls in any manner the election of a majority of the directors or trustees of the depository institution; or

iii. The Federal Reserve Board or Office of Thrift Supervision determines, after notice and opportunity for hearing, that the registrant directly or indirectly exercises a controlling influence over the management or policies of the depository institution.

C. For purposes of instruction 2.B. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d), and 305(e), a depository institution means any of the following:

i. An insured depository institution as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C.A. Sec. 1813 (c));

ii. An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Somoa, or the Virgin Islands, which both accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others and is engaged in the business of making commercial loans.

D. For purposes of instruction 1. of the General Instructions to Paragraphs 305(a), 305(b), 305(c), 305(d) and 305(e), *market capitalization* is the aggregate market value of common equity as set forth in General Instruction I.B.1. of Form S-3; provided however, that common equity held by affiliates is included in the calculation of market capitalization; and provided further that instead of using the 60 day period prior to filing referenced in General Instruction I.B.1. of Form S-3, the measurement date is January 28, 1997.

APPENDIX TO ITEM 305—TABULAR DISCLOSURES

The tables set forth below are illustrative of the format that might be used when a registrant elects to present the information required by paragraph (a)(1)(i)(A) of Item 305 regarding terms and information about derivative financial instruments, other financial instruments, and derivative commodity instruments. These examples are for illustrative purposes only. Registrants are not required to display the information in the specific format illustrated below. Alternative methods of display are permissible as long as the disclosure requirements of the section are satisfied. Furthermore, these examples were designed primarily to illustrate possible formats for presentation of the information required by the disclosure item and do not purport to illustrate the broad range of derivative financial instruments, other financial instruments, and derivative commodity instruments utilized by registrants.

INTEREST RATE SENSITIVITY

The table below provides information about the Company's derivative financial instruments and other financial instruments that are sensitive to changes in interest rates, including interest rate swaps and debt obligations. For debt obligations, the table presents principal cash flows and related weighted average interest rates by expected maturity dates. For interest rate swaps, the table presents notional amounts and weighted average interest rates by expected (contractual) maturity dates. Notional amounts are used to calculate the contractual payments to be exchanged under the contract. Weighted average variable rates are based on implied forward rates in the yield curve at the reporting date. The information is presented in U.S. dollar equivalents, which is the Company's reporting currency. The instrument's actual cash flows are denominated in both U.S. dollars ($US) and German deutschmarks (DM), as indicated in parentheses.

December 31, 19X1

	Expected maturity date							
	19X2	19X3	19X4	19X5	19X6	Thereafter	Total	Fair value
Liabilities	(US$ Equivalent in millions)							
Long-term Debt:								
Fixed Rate ($US)	$XXX	$XXX	$XXX	$XXX	$XXX	$XXX	$XXX	$XXX
Average interest rate	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	
Fixed Rate (DM)	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Average interest rate	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	
Variable Rate ($US)	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Average interest rate	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	
Interest Rate Derivatives	(In millions)							
Interest Rate Swaps:								
Variable to Fixed ($US)	$XXX	$XXX	$XXX	$XXX	$XXX	$XXX	$XXX	$XXX
Average pay rate	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	
Average receive rate	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	
Fixed to Variable ($US)	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX
Average pay rate	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	
Average receive rate	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	X.X%	

EXCHANGE RATE SENSITIVITY

The table below provides information about the Company's derivative financial instruments, other financial instruments, and firmly committed sales transactions by functional currency and presents such information in U.S. dollar equivalents.[1] The table summarizes information on instruments and transactions that are sensitive to foreign currency exchange rates, including foreign currency forward exchange agreements, deutschmark (DM)-denominated debt obligations, and firmly committed DM sales transactions. For debt obligations, the table presents principal cash flows and related weighted average interest rates by expected

maturity dates. For firmly committed DM-sales transactions, sales amounts are presented by the expected transaction date, which are not expected to exceed two years. For foreign currency forward exchange agreements, the table presents the notional amounts and weighted average exchange rates by expected (contractual) maturity dates. These notional amounts generally are used to calculate the contractual payments to be exchanged under the contract.

[1]The information is presented in U.S. dollars because that is the registrant's reporting currency.

December 31, 19X1

	Expected maturity date							
	19X2	19X3	19X4	19X5	19X6	Thereafter	Total	Fair value
On-Balance Sheet Financial Instruments	(US$ Equivalent in millions)							
$US Functional Currency[2]:								
Liabilities								
Long-Term Debt:								
Fixed Rate (DM)	$XXX	$XXX	$XXX	$XXX	$XXX	$XXX	$XXX	$XXX
Average interest rate	X.X	X.X	X.X	X.X	X.X	X.X	X.X	
	Expected maturity or transaction date							
Anticipated Transactions and Related Derivatives[3]	(US$ Equivalent in millions)							
$US Functional Currency:								
Firmly committed Sales Contracts (DM)	$XXX	$XXX					$XXX	$XXX
Forward Exchange Agreements								
(Receive $US/Pay DM):								
Contract Amount	XXX	XXX					XXX	XXX
Average Contractual Exchange Rate	X.X	X.X					X.X	

[2]Similar tabular information would be provided for other functional currencies.

[3]Pursuant to General Instruction 4. to Items 305(a) and 305(b) of Regulation S-K, registrants may include cash flows from anticipated transactions and operating cash flows resulting from non-financial and non-commodity instruments.

COMMODITY PRICE SENSITIVITY

The table below provides information about the Company's corn inventory and futures contracts that are sensitive to changes in commodity prices, specifically corn prices. For inventory, the table presents the carrying amount and fair value at December 31, 19x1. For the futures contracts the table presents the notional amounts in bushels, the weighted average contract prices, and the total dollar contract amount by expected maturity dates, the latest of which occurs one year from the reporting date. Contract amounts are used to calculate the contractual payments and quantity of corn to be exchanged under the futures contracts.

December 31, 19X1

	Carrying amount	Fair value
	(In millions)	
On Balance Sheet Commodity Position and Related Derivatives		
Corn Inventory[4]	$XXX	$XXX
	Expected	
	maturity	Fair
	1992	value
Related Derivatives		
Futures Contracts (Short):		
Contract Volumes (100,000 bushels)	XXX	
Weighted Average Price (Per 100,000 bushels)	$X.XX	
Contract Amount ($US in millions)	$XXX	$XXX

[4]Pursuant to General Instruction 4. to Items 305(a) and 305(b) of Regulation S-K, registrants may include information on commodity positions, such as corn inventory.

[62 FR 6064, Feb. 10, 1997, as amended at 73 FR 958, Jan. 4, 2008; 74 FR 18617, Apr. 23, 2009; 76 FR 50121, Aug. 12, 2011]

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§229.306 [Reserved]

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§229.307 (Item 307) Disclosure controls and procedures.

Disclose the conclusions of the registrant's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the registrant's disclosure controls and procedures (as defined in §240.13a-15(e) or §240.15d-15(e) of this chapter) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of §240.13a-15 or §240.15d-15 of this chapter.

[68 FR 36663, June 18, 2003]

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§229.308 (Item 308) Internal control over financial reporting.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the registrant's internal control over financial reporting (as defined in §240.13a-15(f) or §240.15d-15(f) of this chapter) that contains:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the registrant;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the registrant's internal control over financial reporting as required by paragraph (c) of §240.13a-15 or §240.15d-15 of this chapter;

(3) Management's assessment of the effectiveness of the registrant's internal control over financial reporting as of the end of the registrant's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the registrant's internal control over financial reporting identified by management. Management is not permitted to conclude that the registrant's internal control over financial reporting is effective if there are one or more material weaknesses in the registrant's internal control over financial reporting; and

(4) If the registrant is an accelerated filer or a large accelerated filer (as defined in §240.12b-2 of this chapter), or otherwise includes in its annual report a registered public accounting firm's attestation report on internal control over financial reporting, a statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on the registrant's internal control over financial reporting.

(b) *Attestation report of the registered public accounting firm.* If the registrant is an accelerated filer or a large accelerated filer (as defined in §240.12b-2 of this chapter), provide the registered public accounting firm's attestation report on the registrant's internal control over financial reporting in the registrant's annual report containing the disclosure required by this Item.

(c) *Changes in internal control over financial reporting.* Disclose any change in the registrant's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of §240.13a-15 or 240.15d-15 of this chapter that occurred during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

Instructions to Item 308: 1. A registrant need not comply with paragraphs (a) and (b) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. A registrant that does not comply shall include a statement in the first annual report that it files in substantially the following form: "This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies."

2. The registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the registrant's internal control over financial reporting.

[68 FR 36663, June 18, 2003, as amended at 70 FR 1594, Jan. 7, 2005; 71 FR 76595, Dec. 21, 2006; 72 FR 35321, June 27, 2007; 75 FR 57387, Sept. 21, 2010]

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Subpart 229.400—Management and Certain Security Holders

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§229.401 (Item 401) Directors, executive officers, promoters and control persons.

(a) *Identification of directors.* List the names and ages of all directors of the registrant and all persons nominated or chosen to become directors; indicate all positions and offices with the registrant held by each such person; state his term of office as director and any period(s) during which he has served as such; describe briefly any arrangement or understanding between him and any other person(s) (naming such person(s)) pursuant to which he was or is to be selected as a director or nominee.

Instructions to paragraph (a) of Item 401: 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No nominee or person chosen to become a director who has not consented to act as such shall be named in response to this Item. In this regard, with respect to proxy statements, see Rule 14a-4(d) under the Exchange Act (§240.14a-4(d) of this chapter).

3. If the information called for by this paragraph (a) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. With regard to proxy statements in connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

5. With regard to proxy statements in connection with action to be taken concerning the election of directors, if the solicitation is made by persons other than management, information shall be given as to nominees of the persons making the solicitation. In all other instances, information shall be given as to directors and persons nominated for election or chosen by management to become directors.

(b) *Identification of executive officers.* List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and describe briefly any arrangement or understanding between him and any other person(s) (naming such person) pursuant to which he was or is to be selected as an officer.

Instructions to paragraph (b) of Item 401: 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No person chosen to become an executive officer who has not consented to act as such shall be named in response to this Item.

3. The information regarding executive officers called for by this Item need not be furnished in proxy or information statements prepared in accordance with Schedule 14A under the Exchange Act (§240.14a-101 of this chapter) by registrants relying on General Instruction G of Form 10-K under the Exchange Act (§249.310 of this chapter); *Provided*, that such information is furnished in a separate item captioned "Executive officers of the registrant" and included in Part I of the registrant's annual report on Form 10-K.

(c) *Identification of certain significant employees.* Where the registrant employs persons such as production managers, sales managers, or research scientists who are not executive officers but who make or are expected to make significant contributions to the business of the registrant, such persons shall be identified and their background disclosed to the same extent as in the case of executive officers. Such disclosure need not be made if the registrant was subject to section 13(a) or 15(d) of the Exchange Act or was exempt from section 13(a) by section 12(g)(2)(G) of such Act immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable.

(d) *Family relationships.* State the nature of any family relationship between any director, executive officer, or person nominated or chosen by the registrant to become a director or executive officer.

Instruction to paragraph 401(d): The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(e) *Business experience*—(1) *Background.* Briefly describe the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of Item 401, including: each person's principal occupations and employment during the past five years; the name and principal business of any corporation or other organization in which such occupations and employment were carried on; and whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant. In addition, for each director or person nominated or chosen to become a director, briefly discuss the specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director for the registrant at the time that the disclosure is made, in light of the registrant's business and structure. If material, this disclosure should cover more than the past five years, including information about the person's particular areas of expertise or other relevant qualifications. When an executive officer or person named in response to paragraph (c) of Item 401 has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his or her prior business experience. What is required is information relating to the level of his or her professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(2) *Directorships.* Indicate any other directorships held, including any other directorships held during the past five years, held by each director or person nominated or chosen to become a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of such Act or any company registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.*, as amended, naming such company.

Instruction to Paragraph (e) of Item 401: For the purposes of paragraph (e)(2), where the other directorships of each director or person nominated or chosen to become a director include directorships of two or more registered investment companies that are part of a "fund complex" as that term is defined in Item 22(a) of Schedule 14A under the Exchange Act (§240.14a-101 of this chapter), the registrant may, rather than listing each such investment company, identify the fund complex and provide the number of investment company directorships held by the director or nominee in such fund complex.

(f) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past ten years and that are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the registrant:

(1) A petition under the Federal bankruptcy laws or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining him from, or otherwise limiting, the following activities:

(i) Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission, or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of Federal or State securities laws or Federal commodities laws;

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in paragraph (f)(3)(i) of this section, or to be associated with persons engaged in any such activity;

(5) Such person was found by a court of competent jurisdiction in a civil action or by the Commission to have violated any Federal or State securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended, or vacated;

(6) Such person was found by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any Federal commodities law, and the judgment in such civil action or finding by the Commodity Futures Trading Commission has not been subsequently reversed, suspended or vacated;

(7) Such person was the subject of, or a party to, any Federal or State judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of:

(i) Any Federal or State securities or commodities law or regulation; or

(ii) Any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(iii) Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity; or

(8) Such person was the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act (15 U.S.C. 78c(a)(26))), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act (7 U.S.C. 1(a)(29))), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member.

Instructions to paragraph (f) of Item 401: 1. For purposes of computing the ten-year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this paragraph (f) has occurred and information in regard thereto is omitted on the grounds that it is not material, the registrant may furnish to the Commission, at time of filing (or at the time preliminary materials are filed, or ten days before definitive materials are filed in preliminary filing is not required, pursuant to Rule 14a-6 or 14c-5 under the Exchange Act (§§240.14a-6 and 240-14c-5 of this chapter)), as supplemental information and not as part of the registration statement, report, or proxy or information statement, materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The registrant is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by this paragraph (f) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

5. This paragraph (f)(7) shall not apply to any settlement of a civil proceeding among private litigants.

(g) *Promoters and control persons.* (1) Registrants, which have not been subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the twelve months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable, and which had a promoter at any time during the past five fiscal years, shall describe with respect to any promoter, any of the events enumerated in paragraphs (f)(1) through (f)(6) of this Item that occurred during the past five years and that are material to a voting or investment decision.

(2) Registrants, which have not been subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act for the twelve months immediately prior to the filing of the registration statement, report, or statement to which this Item is applicable, shall describe with respect to any control person, any of the events enumerated in paragraphs (f)(1) through (f)(6) of this section that occurred during the past five years and that are material to a voting or investment decision.

Instructions to paragraph (g) of Item 401: 1. Instructions 1. through 3. to paragraph (f) shall apply to this paragraph (g).

2. Paragraph (g) shall not apply to any subsidiary of a registrant which has been reporting pursuant to Section 13(a) or 15(d) of the Exchange Act for the twelve months immediately prior to the filing of the registration statement, report or statement.

[47 FR 11401, Mar. 16, 1982, as amended at 47 FR 55665, Dec. 13, 1982; 48 FR 19874, May 3, 1983; 49 FR 32763, Aug. 16, 1984; 52 FR 48982, Dec. 29, 1987; 59 FR 52695, Oct. 19, 1994; 70 FR 1594, Jan. 7, 2005; 71 FR 53241, Sept. 8, 2006; 73 FR 958, Jan. 4, 2008; 74 FR 68362, Dec. 23, 2009]

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§229.402 (Item 402) Executive compensation.

(a) *General*—(1) *Treatment of foreign private issuers.* A foreign private issuer will be deemed to comply with this Item if it provides the information required by Items 6.B and 6.E.2 of Form 20-F (17 CFR 249.220f), with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

(2) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (a)(3) of this Item, and directors covered by paragraph (k) of this Item, by any person for all services rendered in all capacities to the registrant and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the registrant and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(3) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the "named executive officers"):

(i) All individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year ("PEO"), regardless of compensation level;

(ii) All individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year ("PFO"), regardless of compensation level;

(iii) The registrant's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year; and

(iv) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(3)(iii) of this Item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

Instructions to Item 402(a)(3). 1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (c)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (c)(2)(viii) of this Item, *provided, however,* that no disclosure need be provided for any executive officer, other than the PEO and PFO, whose total compensation, as so reduced, does not exceed $100,000.

2. *Inclusion of executive officer of subsidiary.* It may be appropriate for a registrant to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a registrant not to include in the disclosure required by this Item an individual, other than its PEO or PFO, who is one of the registrant's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(4) *Information for full fiscal year.* If the PEO or PFO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO or PFO) served as an executive officer of the registrant (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(5) *Omission of table or column.* A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(6) *Definitions.* For purposes of this Item:

(i) The term *stock* means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term *option* means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term *stock appreciation rights* ("*SARs*") refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the registrant or a named executive officer. The term *equity* is used to refer generally to stock and/or options.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Except with respect to the disclosure required by paragraph (t) of this Item, registrants may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the registrant and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the registrant or an affiliate, the registrant's stock price, or any other performance measure. An *equity incentive plan* is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of FASB ASC Topic 718, *Compensation—Stock Compensation.* A *non-equity incentive plan* is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term *incentive plan award* means an award provided under an incentive plan.

(iv) The terms *date of grant* or *grant date* refer to the grant date determined for financial statement reporting purposes pursuant to FASB ASC Topic 718.

(v) *Closing market price* is defined as the price at which the registrant's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(b) *Compensation discussion and analysis.* (1) Discuss the compensation awarded to, earned by, or paid to the named executive officers. The discussion shall explain all material elements of the registrant's compensation of the named executive officers. The discussion shall describe the following:

(i) The objectives of the registrant's compensation programs;

(ii) What the compensation program is designed to reward;

(iii) Each element of compensation;

(iv) Why the registrant chooses to pay each element;

(v) How the registrant determines the amount (and, where applicable, the formula) for each element to pay;

(vi) How each compensation element and the registrant's decisions regarding that element fit into the registrant's overall compensation objectives and affect decisions regarding other elements; and

(vii) Whether and, if so, how the registrant has considered the results of the most recent shareholder advisory vote on executive compensation required by section 14A of the Exchange Act (15 U.S.C. 78n-1) or §240.14a-20 of this chapter in determining compensation policies and decisions and, if so, how that consideration has affected the registrant's executive compensation decisions and policies.

(2) While the material information to be disclosed under Compensation Discussion and Analysis will vary depending upon the facts and circumstances, examples of such information may include, in a given case, among other things, the following:

(i) The policies for allocating between long-term and currently paid out compensation;

(ii) The policies for allocating between cash and non-cash compensation, and among different forms of non-cash compensation;

(iii) For long-term compensation, the basis for allocating compensation to each different form of award (such as relationship of the award to the achievement of the registrant's long-term goals, management's exposure to downside equity performance risk, correlation between cost to registrant and expected benefits to the registrant);

(iv) How the determination is made as to when awards are granted, including awards of equity-based compensation such as options;

(v) What specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions;

(vi) How specific forms of compensation are structured and implemented to reflect these items of the registrant's performance, including whether discretion can be or has been exercised (either to award compensation absent attainment of the relevant performance goal(s) or to reduce or increase the size of any award or payout), identifying any particular exercise of discretion, and stating whether it applied to one or more specified named executive officers or to all compensation subject to the relevant performance goal(s);

(vii) How specific forms of compensation are structured and implemented to reflect the named executive officer's individual performance and/or individual contribution to these items of the registrant's performance, describing the elements of individual performance and/or contribution that are taken into account;

(viii) Registrant policies and decisions regarding the adjustment or recovery of awards or payments if the relevant registrant performance measures upon which they are based are restated or otherwise adjusted in a manner that would reduce the size of an award or payment;

(ix) The factors considered in decisions to increase or decrease compensation materially;

(x) How compensation or amounts realizable from prior compensation are considered in setting other elements of compensation (e.g., how gains from prior option or stock awards are considered in setting retirement benefits);

(xi) With respect to any contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) at, following, or in connection with any termination or change-in-control, the basis for selecting particular events as triggering payment (e.g., the rationale for providing a single trigger for payment in the event of a change-in-control);

(xii) The impact of the accounting and tax treatments of the particular form of compensation;

(xiii) The registrant's equity or other security ownership requirements or guidelines (specifying applicable amounts and forms of ownership), and any registrant policies regarding hedging the economic risk of such ownership;

(xiv) Whether the registrant engaged in any benchmarking of total compensation, or any material element of compensation, identifying the benchmark and, if applicable, its components (including component companies); and

(xv) The role of executive officers in determining executive compensation.

Instructions to Item 402(b). 1. The purpose of the Compensation Discussion and Analysis is to provide to investors material information that is necessary to an understanding of the registrant's compensation policies and decisions regarding the named executive officers.

2. The Compensation Discussion and Analysis should be of the information contained in the tables and otherwise disclosed pursuant to this Item. The Compensation Discussion and Analysis should also cover actions regarding executive compensation that were taken after the registrant's last fiscal year's end. Actions that should be addressed might include, as examples only, the adoption or implementation of new or modified programs and policies or specific decisions that were made or steps that were taken that could affect a fair understanding of the named executive officer's compensation for the last fiscal year. Moreover, in some situations it may be necessary to discuss prior years in order to give context to the disclosure provided.

3. The Compensation Discussion and Analysis should focus on the material principles underlying the registrant's executive compensation policies and decisions and the most important factors relevant to analysis of those policies and decisions. The Compensation Discussion and Analysis shall reflect the individual circumstances of the registrant and shall avoid boilerplate language and repetition of the more detailed information set forth in the tables and narrative disclosures that follow.

4. Registrants are not required to disclose target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant. The standard to use when determining whether disclosure would cause competitive harm for the registrant is the same standard that would apply when a registrant requests confidential treatment of confidential trade secrets or confidential commercial or financial information pursuant to Securities Act Rule 406 (17 CFR 230.406) and Exchange Act Rule 24b-2 (17 CFR 240.24b-2), each of which incorporates the criteria for non-disclosure when relying upon Exemption 4 of the Freedom of Information Act (5

U.S.C. 552(b)(4)) and Rule 80(b)(4) (17 CFR 200.80(b)(4)) thereunder. A registrant is not required to seek confidential treatment under the procedures in Securities Act Rule 406 and Exchange Act Rule 24b-2 if it determines that the disclosure would cause competitive harm in reliance on this instruction; however, in that case, the registrant must discuss how difficult it will be for the executive or how likely it will be for the registrant to achieve the undisclosed target levels or other factors.

5. Disclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G (17 CFR 244.100—102) and Item 10(e) (§229.10(e)); however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements.

(c) *Summary compensation table*—(1) *General.* Provide the information specified in paragraph (c)(2) of this Item, concerning the compensation of the named executive officers for each of the registrant's last three completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Change in pension value and nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(c)(2)(iii) and (iv). 1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8-K (17 CFR 249.308).

2. Registrants shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the Grants of Plan-Based Awards Table (required by paragraph (d) of this Item) where the stock, option or non-equity incentive plan award elected by the named executive officer is reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (f));

Instruction 1 to Item 402(c)(2)(v) and (vi). For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

Instruction 2 to Item 402(c)(2)(v) and (vi). If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or

replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the registrant shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FASB ASC Topic 718, with respect to that repriced or modified award.

Instruction 3 to Item 402(c)(2)(v) and (vi). For any awards that are subject to performance conditions, report the value at the grant date based upon the probable outcome of such conditions. This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. In a footnote to the table, disclose the value of the award at the grant date assuming that the highest level of performance conditions will be achieved if an amount less than the maximum was included in the table.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(c)(2)(vii). 1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) The sum of the amounts specified in paragraphs (c)(2)(viii)(A) and (B) of this Item (column (h)) as follows:

(A) The aggregate change in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

Instructions to Item 402(c)(2)(viii). 1. The disclosure required pursuant to paragraph (c)(2)(viii)(A) of this Item applies to each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. For purposes of this disclosure, the registrant should use the same amounts required to be disclosed pursuant to paragraph (h)(2)(iv) of this Item for the covered fiscal year and the amounts that were or would have been required to be reported for the executive officer pursuant to paragraph (h)(2)(iv) of this Item for the prior completed fiscal year.

2. Regarding paragraph (c)(2)(viii)(B) of this Item, interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the registrant's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the registrant's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the registrant's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the registrant's criteria for determining any portion considered to be above-market.

3. The registrant shall identify and quantify by footnote the separate amounts attributable to each of paragraphs (c)(2)(viii)(A) and (B) of this Item. Where such amount pursuant to paragraph (c)(2)(viii)(A) is negative, it should be disclosed by footnote but should not be reflected in the sum reported in column (h).

(ix) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c) -(h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost, if any, computed in accordance with FASB ASC Topic 718;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(1) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the registrant and its subsidiaries; or

(2) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (e) or (f); and

Instructions to Item 402(c)(2)(ix). 1. Non-equity incentive plan awards and earnings and earnings on stock and options, except as specified in paragraph (c)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraphs (c)(2)(viii)(A) and (h) of this Item.

3. Any item reported for a named executive officer pursuant to paragraph (c)(2)(ix) of this Item that is not a perquisite or personal benefit and whose value exceeds $10,000 must be identified and quantified in a footnote to column (i). This requirement applies only to compensation for the last fiscal year. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

4. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a named executive officer is less than $10,000. If the total value of all perquisites and personal benefits is $10,000 or more for any named executive officer, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a named executive officer pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that officer must be quantified and disclosed in a footnote. The requirements for identification and quantification apply only to compensation for the last fiscal year. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in column (i) and are subject to separate quantification and identification as tax reimbursements (paragraph (c)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual named executive officer is less than $10,000 or are required to be identified but are not required to be separately quantified.

5. For purposes of paragraph (c)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(c). 1. Information with respect to fiscal years prior to the last completed fiscal year will not be required if the registrant was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year, except that the registrant will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (k) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(d) *Grants of plan-based awards table.* (1) Provide the information specified in paragraph (d)(2) of this Item, concerning each grant of an award made to a named executive officer in the last completed fiscal year under any plan, including awards that subsequently have been transferred, in the following tabular format:

GRANTS OF PLAN-BASED AWARDS

		Estimated future payouts under non-equity incentive plan awards			Estimated future payouts under equity incentive plan awards			All other stock awards: Number of shares of stock or units	All other option awards: Number of securities underlying options	Exercise or base price of option awards	Grant date fair value of stock and option awards
Name	Grant date	Threshold ($)	Target ($)	Maximum ($)	Threshold (#)	Target (#)	Maximum (#)	(#)	(#)	($/Sh)	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)

PEO											
PFO											
A											
B											
C											

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) The grant date for equity-based awards reported in the table (column (b)). If such grant date is different than the date on which the compensation committee (or a committee of the board of directors performing a similar function or the full board of directors) takes action or is deemed to take action to grant such awards, a separate, adjoining column shall be added between columns (b) and (c) showing such date;

(iii) The dollar value of the estimated future payout upon satisfaction of the conditions in question under non-equity incentive plan awards granted in the fiscal year, or the applicable range of estimated payouts denominated in dollars (threshold, target and maximum amount) (columns (c) through (e));

(iv) The number of shares of stock, or the number of shares underlying options to be paid out or vested upon satisfaction of the conditions in question under equity incentive plan awards granted in the fiscal year, or the applicable range of estimated payouts denominated in the number of shares of stock, or the number of shares underlying options under the award (threshold, target and maximum amount) (columns (f) through (h));

(v) The number of shares of stock granted in the fiscal year that are not required to be disclosed in columns (f) through (h) (column (i));

(vi) The number of securities underlying options granted in the fiscal year that are not required to be disclosed in columns (f) through (h) (column (j));

(vii) The per-share exercise or base price of the options granted in the fiscal year (column (k)). If such exercise or base price is less than the closing market price of the underlying security on the date of the grant, a separate, adjoining column showing the closing market price on the date of the grant shall be added after column (k) and

(viii) The grant date fair value of each equity award computed in accordance with FASB ASC Topic 718 (column (*l*)). If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise or base price of options, SARs or similar option-like instruments previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with FASB ASC Topic 718, with respect to that repriced or modified award, shall be reported.

Instructions to Item 402(d). 1. Disclosure on a separate line shall be provided in the Table for each grant of an award made to a named executive officer during the fiscal year. If grants of awards were made to a named executive officer during the fiscal year under more than one plan, identify the particular plan under which each such grant was made.

2. For grants of incentive plan awards, provide the information called for by columns (c), (d) and (e), or (f), (g) and (h), as applicable. For columns (c) and (f), *threshold* refers to the minimum amount payable for a certain level of performance under the plan. For columns (d) and (g), *target* refers to the amount payable if the specified performance target(s) are reached. For columns (e) and (h), *maximum* refers to the maximum payout possible under the plan. If the award provides only for a single estimated payout, that amount must be reported as the *target* in columns (d) and (g). In columns (d) and (g), registrants must provide a representative amount based on the previous fiscal year's performance if the target amount is not determinable.

3. In determining if the exercise or base price of an option is less than the closing market price of the underlying security on the date of the grant, the registrant may use either the closing market price as specified in paragraph (a)(6)(v) of this Item, or if no market exists, any other formula prescribed for the security. Whenever the exercise or base price reported in column (k) is not the closing market price, describe the methodology for determining the exercise or base price either by a footnote or accompanying textual narrative.

4. A tandem grant of two instruments, only one of which is granted under an incentive plan, such as an option granted in tandem with a performance share, need be reported only in column (i) or (j), as applicable. For example, an option granted in tandem with a performance share would be reported only as an option grant in column (j), with the tandem feature noted either by a footnote or accompanying textual narrative.

5. Disclose the dollar amount of consideration, if any, paid by the executive officer for the award in a footnote to the appropriate column.

6. If non-equity incentive plan awards are denominated in units or other rights, a separate, adjoining column between columns (b) and (c) shall be added quantifying the units or other rights awarded.

7. Options, SARs and similar option-like instruments granted in connection with a repricing transaction or other material modification shall be reported in this Table. However, the disclosure required by this Table does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR

exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

8. For any equity awards that are subject to performance conditions, report in column (i) the value at the grant date based upon the probable outcome of such conditions. This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures.

(e) *Narrative disclosure to summary compensation table and grants of plan-based awards table.* (1) Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the tables required by paragraphs (c) and (d) of this Item. Examples of such factors may include, in given cases, among other things:

(i) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(ii) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(iii) The material terms of any award reported in response to paragraph (d) of this Item, including a general description of the formula or criteria to be applied in determining the amounts payable, and the vesting schedule. For example, state where applicable that dividends will be paid on stock, and if so, the applicable dividend rate and whether that rate is preferential. Describe any performance-based conditions, and any other material conditions, that are applicable to the award. For purposes of the Table required by paragraph (d) of this Item and the narrative disclosure required by paragraph (e) of this Item, performance-based conditions include both performance conditions and market conditions, as those terms are defined in FASB ASC Topic 718; and

(iv) An explanation of the amount of salary and bonus in proportion to total compensation.

Instructions to Item 402(e)(1). 1. The disclosure required by paragraph (e)(1)(ii) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

2. Instructions 4 and 5 to Item 402(b) apply regarding disclosure pursuant to paragraph (e)(1) of this Item of target levels with respect to specific quantitative or qualitative performance-related factors considered by the compensation committee or the board of directors, or any other factors or criteria involving confidential trade secrets or confidential commercial or financial information, the disclosure of which would result in competitive harm for the registrant.

(2) [Reserved]

(f) *Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (f)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the registrant's last completed fiscal year in the following tabular format:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option awards					Stock awards			
Name	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards: number of securities underlying unexercised unearned options (#)	Option exercise price ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares or units of stock that have not vested (#)	Equity incentive plan awards: number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: market or payout value of unearned shares, units or other rights that have not vested ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
PFO									
A									
B									
C									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(f)(2). 1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the registrant's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in columns (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, registrants must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(g) *Option exercises and stock vested table.* (1) Provide the information specified in paragraph (g)(2) of this Item, concerning each exercise of stock options, SARs and similar instruments, and each vesting of stock, including restricted stock, restricted stock units and similar instruments, during the last completed fiscal year for each of the named executive officers on an aggregated basis in the following tabular format:

OPTION EXERCISES AND STOCK VESTED

	Option awards		Stock awards	
Name	Number of shares acquired on exercise (#)	Value realized on exercise ($)	Number of shares acquired on vesting (#)	Value realized on vesting ($)
(a)	(b)	(c)	(d)	(e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The number of securities for which the options were exercised (column (b));

(iii) The aggregate dollar value realized upon exercise of options, or upon the transfer of an award for value (column (c));

(iv) The number of shares of stock that have vested (column (d)); and

(v) The aggregate dollar value realized upon vesting of stock, or upon the transfer of an award for value (column (e)).

Instruction to Item 402(g)(2). Report in column (c) the aggregate dollar amount realized by the named executive officer upon exercise of the options or upon the transfer of such instruments for value. Compute the dollar amount realized upon exercise by determining the difference between the market price of the underlying securities at exercise and the exercise or base price of the options. Do not include the value of any related payment or other consideration provided (or to be provided) by the registrant to or on behalf of a named executive officer, whether in payment of the exercise price or related taxes. (Any such payment or other consideration provided by the registrant is required to be disclosed in accordance with paragraph (c)(2)(ix) of this Item.) Report in column (e) the aggregate dollar amount realized by the named executive officer upon the vesting of stock or the transfer of such instruments for value. Compute the aggregate dollar amount realized upon vesting by multiplying the number of shares of stock or units by the market value of the underlying shares on the vesting date. For any amount realized upon exercise or vesting for which receipt has been deferred, provide a footnote quantifying the amount and disclosing the terms of the deferral.

(h) *Pension benefits.* (1) Provide the information specified in paragraph (h)(2) of this Item with respect to each plan that provides for payments or other benefits at, following, or in connection with retirement, in the following tabular format:

PENSION BENEFITS

Name	Plan name	Number of years credited service (#)	Present value of accumulated benefit ($)	Payments during last fiscal year ($)
(a)	(b)	(c)	(d)	(e)
PEO				
PFO				
A				
B				
C				

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The name of the plan (column (b));

(iii) The number of years of service credited to the named executive officer under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the last completed fiscal year (column (c));

(iv) The actuarial present value of the named executive officer's accumulated benefit under the plan, computed as of the same pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the last completed fiscal year (column (d)); and

(v) The dollar amount of any payments and benefits paid to the named executive officer during the registrant's last completed fiscal year (column (e)).

Instructions to Item 402(h)(2). 1. The disclosure required pursuant to this Table applies to each plan that provides for specified retirement payments and benefits, or payments and benefits that will be provided primarily following retirement, including but not limited to tax-qualified defined benefit plans and supplemental executive retirement plans, but excluding tax-qualified defined contribution plans and nonqualified defined contribution plans. Provide a separate row for each such plan in which the named executive officer participates.

2. For purposes of the amount(s) reported in column (d), the registrant must use the same assumptions used for financial reporting purposes under generally accepted accounting principles, except that retirement age shall be assumed to be the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age. The registrant must disclose in the accompanying textual narrative the valuation method and all material assumptions applied in quantifying the present value of the current accrued benefit. A benefit specified in the plan document

or the executive's contract itself is not an assumption. Registrants may satisfy all or part of this disclosure by reference to a discussion of those assumptions in the registrant's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

3. For purposes of allocating the current accrued benefit between tax qualified defined benefit plans and related supplemental plans, apply the limitations applicable to tax qualified defined benefit plans established by the Internal Revenue Code and the regulations thereunder that applied as of the pension plan measurement date.

4. If a named executive officer's number of years of credited service with respect to any plan is different from the named executive officer's number of actual years of service with the registrant, provide footnote disclosure quantifying the difference and any resulting benefit augmentation.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by the tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The material terms and conditions of payments and benefits available under the plan, including the plan's normal retirement payment and benefit formula and eligibility standards, and the effect of the form of benefit elected on the amount of annual benefits. For this purpose, normal retirement means retirement at the normal retirement age as defined in the plan, or if not so defined, the earliest time at which a participant may retire under the plan without any benefit reduction due to age;

(ii) If any named executive officer is currently eligible for early retirement under any plan, identify that named executive officer and the plan, and describe the plan's early retirement payment and benefit formula and eligibility standards. For this purpose, early retirement means retirement at the early retirement age as defined in the plan, or otherwise available to the executive under the plan;

(iii) The specific elements of compensation (e.g., salary, bonus, etc.) included in applying the payment and benefit formula, identifying each such element;

(iv) With respect to named executive officers' participation in multiple plans, the different purposes for each plan; and

(v) Registrant policies with regard to such matters as granting extra years of credited service.

(i) *Nonqualified defined contribution and other nonqualified deferred compensation plans.* (1) Provide the information specified in paragraph (i)(2) of this Item with respect to each defined contribution or other plan that provides for the deferral of compensation on a basis that is not tax-qualified in the following tabular format:

NONQUALIFIED DEFERRED COMPENSATION

Name	Executive contributions in last FY ($)	Registrant contributions in last FY ($)	Aggregate earnings in last FY ($)	Aggregate withdrawals/distributions ($)	Aggregate balance at last FYE ($)
(a)	(b)	(c)	(d)	(e)	(f)
PEO					
PFO					
A					
B					
C					

(2) The Table shall include:

(i) The name of the executive officer (column (a));

(ii) The dollar amount of aggregate executive contributions during the registrant's last fiscal year (column (b));

(iii) The dollar amount of aggregate registrant contributions during the registrant's last fiscal year (column (c));

(iv) The dollar amount of aggregate interest or other earnings accrued during the registrant's last fiscal year (column (d));

(v) The aggregate dollar amount of all withdrawals by and distributions to the executive during the registrant's last fiscal year (column (e)); and

(vi) The dollar amount of total balance of the executive's account as of the end of the registrant's last fiscal year (column (f)).

Instruction to Item 402(l)(2). Provide a footnote quantifying the extent to which amounts reported in the contributions and earnings columns are reported as compensation in the last completed fiscal year in the registrant's Summary Compensation Table and amounts reported in the aggregate balance at last fiscal year end (column (f)) previously were reported as compensation to the named executive officer in the registrant's Summary Compensation Table for previous years.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each plan covered by tabular disclosure required by this paragraph. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) The type(s) of compensation permitted to be deferred, and any limitations (by percentage of compensation or otherwise) on the extent to which deferral is permitted;

(ii) The measures for calculating interest or other plan earnings (including whether such measure(s) are selected by the executive or the registrant and the frequency and manner in which selections may be changed), quantifying interest rates and other earnings measures applicable during the registrant's last fiscal year; and

(iii) Material terms with respect to payouts, withdrawals and other distributions.

(j) *Potential payments upon termination or change-in-control.* Regarding each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with any termination, including without limitation resignation, severance, retirement or a constructive termination of a named executive officer, or a change in control of the registrant or a change in the named executive officer's responsibilities, with respect to each named executive officer:

(1) Describe and explain the specific circumstances that would trigger payment(s) or the provision of other benefits, including perquisites and health care benefits;

(2) Describe and quantify the estimated payments and benefits that would be provided in each covered circumstance, whether they would or could be lump sum, or annual, disclosing the duration, and by whom they would be provided;

(3) Describe and explain how the appropriate payment and benefit levels are determined under the various circumstances that trigger payments or provision of benefits;

(4) Describe and explain any material conditions or obligations applicable to the receipt of payments or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality agreements, including the duration of such agreements and provisions regarding waiver of breach of such agreements; and

(5) Describe any other material factors regarding each such contract, agreement, plan or arrangement.

Instructions to Item 402(j). 1. The registrant must provide quantitative disclosure under these requirements, applying the assumptions that the triggering event took place on the last business day of the registrant's last completed fiscal year, and the price per share of the registrant's securities is the closing market price as of that date. In the event that uncertainties exist as to the provision of payments and benefits or the amounts involved, the registrant is required to make a reasonable estimate (or a reasonable estimated range of amounts) applicable to the payment or benefit and disclose material assumptions underlying such estimates or estimated ranges in its disclosure. In such event, the disclosure would require forward-looking information as appropriate.

2. Perquisites and other personal benefits or property may be excluded only if the aggregate amount of such compensation will be less than $10,000. Individual perquisites and personal benefits shall be identified and quantified as required by Instruction 4 to paragraph (c)(2)(ix) of this Item. For purposes of quantifying health care benefits, the registrant must use the assumptions used for financial reporting purposes under generally accepted accounting principles.

3. To the extent that the form and amount of any payment or benefit that would be provided in connection with any triggering event is fully disclosed pursuant to paragraph (h) or (i) of this Item, reference may be made to that disclosure. However, to the extent that the form or amount of any such payment or benefit would be enhanced or its vesting or other provisions accelerated in connection with any triggering event, such enhancement or acceleration must be disclosed pursuant to this paragraph.

4. Where a triggering event has actually occurred for a named executive officer and that individual was not serving as a named executive officer of the registrant at the end of the last completed fiscal year, the disclosure required by this paragraph for that named executive officer shall apply only to that triggering event.

5. The registrant need not provide information with respect to contracts, agreements, plans or arrangements to the extent they do not discriminate in scope, terms or operation, in favor of executive officers of the registrant and that are available generally to all salaried employees.

(k) *Compensation of directors.* (1) Provide the information specified in paragraph (k)(2) of this Item, concerning the compensation of the directors for the registrant's last completed fiscal year, in the following tabular format:

DIRECTOR COMPENSATION

Name					Change in pension value and nonqualified deferred compensation earnings		Total ($)

	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)		All other compensation ($)	
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (a) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (c) of this Item and otherwise as required pursuant to paragraphs (d) through (j) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (c));

(iv) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (d));

Instruction to Item 402(k)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column: the grant date fair value of each equity award computed in accordance with FASB ASC Topic 718; for each option, SAR or similar option like instrument for which the registrant has adjusted or amended the exercise or base price during the last completed fiscal year, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the incremental fair value, computed as of the repricing or modification date in accordance with FASB ASC Topic 718; and the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end. However, the disclosure required by this Instruction does not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (a)(6)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) The sum of the amounts specified in paragraphs (k)(2)(vi)(A) and (B) of this Item (column (f)) as follows:

(A) The aggregate change in the actuarial present value of the director's accumulated benefit under all defined benefit and actuarial pension plans (including supplemental plans) from the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the prior completed fiscal year to the pension plan measurement date used for financial statement reporting purposes with respect to the registrant's audited financial statements for the covered fiscal year; and

(B) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans;

(vii) All other compensation for the covered fiscal year that the registrant could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b) -(f), regardless of the amount of the compensation item, must be included in column (g). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the registrant or its subsidiaries purchased from the registrant or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the registrant, the compensation cost, if any, computed in accordance with FASB ASC Topic 718;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(1) The resignation, retirement or any other termination of such director; or

(2) A change in control of the registrant;

(E) Registrant contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the registrant and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the registrant during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

Instructions to Item 402(k)(2)(vii). 1. Programs in which registrants agree to make donations to one or more charitable institutions in a director's name, payable by the registrant currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (k)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

2. Any item reported for a director pursuant to paragraph (k)(2)(vii) of this Item that is not a perquisite or personal benefit and whose value exceeds $10,000 must be identified and quantified in a footnote to column (g). All items of compensation are required to be included in the Director Compensation Table without regard to whether such items are required to be identified other than as specifically noted in this Item.

3. Perquisites and personal benefits may be excluded as long as the total value of all perquisites and personal benefits for a director is less than $10,000. If the total value of all perquisites and personal benefits is $10,000 or more for any director, then each perquisite or personal benefit, regardless of its amount, must be identified by type. If perquisites and personal benefits are required to be reported for a director pursuant to this rule, then each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that director must be quantified and disclosed in a footnote. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the registrant. With respect to the perquisite or other personal benefit for which footnote quantification is required, the registrant shall describe in the footnote its methodology for computing the aggregate incremental cost. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in column (g) and are subject to separate quantification and identification as tax reimbursements (paragraph (k)(2)(vii)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the total amount of all perquisites or personal benefits for an individual director is less than $10,000 or are required to be identified but are not required to be separately quantified.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(k)(2). Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(k). In addition to the Instruction to paragraphs (k)(2)(iii) and (iv) and the Instructions to paragraph (k)(2)(vii) of this Item, the following apply equally to paragraph (k) of this Item: Instructions 2 and 4 to paragraph (c) of this Item; Instructions to paragraphs (c)(2)(iii) and (iv) of this Item; Instructions to paragraphs (c)(2)(v) and (vi) of this Item; Instructions to paragraph (c)(2)(vii) of this Item; Instructions to paragraph (c)(2)(viii) of this Item; and Instructions 1 and 5 to paragraph (c)(2)(ix) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (k) of this Item that correspond to analogous disclosures provided for in paragraph (c) of this Item to which they refer.

(l) *Smaller reporting companies.* A registrant that qualifies as a "smaller reporting company," as defined by Item 10(f) (§229.10(f)(1)), may provide the scaled disclosure in paragraphs (m) through (r) instead of paragraphs (a) through (k), (s), and (u) of this Item.

(m) *Smaller reporting companies—General*—(1) *All compensation covered.* This Item requires clear, concise and understandable disclosure of all plan and non-plan compensation awarded to, earned by, or paid to the named executive officers designated under paragraph (m)(2) of this Item, and directors covered by paragraph (r) of this Item, by any person

for all services rendered in all capacities to the smaller reporting company and its subsidiaries, unless otherwise specifically excluded from disclosure in this Item. All such compensation shall be reported pursuant to this Item, even if also called for by another requirement, including transactions between the smaller reporting company and a third party where a purpose of the transaction is to furnish compensation to any such named executive officer or director. No amount reported as compensation for one fiscal year need be reported in the same manner as compensation for a subsequent fiscal year; amounts reported as compensation for one fiscal year may be required to be reported in a different manner pursuant to this Item.

(2) *Persons covered.* Disclosure shall be provided pursuant to this Item for each of the following (the "named executive officers"):

(i) All individuals serving as the smaller reporting company's principal executive officer or acting in a similar capacity during the last completed fiscal year ("PEO"), regardless of compensation level;

(ii) The smaller reporting company's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (m)(2)(ii) of this Item but for the fact that the individual was not serving as an executive officer of the smaller reporting company at the end of the last completed fiscal year.

Instructions to Item 402(m)(2). 1. *Determination of most highly compensated executive officers.* The determination as to which executive officers are most highly compensated shall be made by reference to total compensation for the last completed fiscal year (as required to be disclosed pursuant to paragraph (n)(2)(x) of this Item) reduced by the amount required to be disclosed pursuant to paragraph (n)(2)(viii) of this Item, *provided, however*, that no disclosure need be provided for any executive officer, other than the PEO, whose total compensation, as so reduced, does not exceed $100,000.

2. *Inclusion of executive officer of a subsidiary.* It may be appropriate for a smaller reporting company to include as named executive officers one or more executive officers or other employees of subsidiaries in the disclosure required by this Item. See Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7).

3. *Exclusion of executive officer due to overseas compensation.* It may be appropriate in limited circumstances for a smaller reporting company not to include in the disclosure required by this Item an individual, other than its PEO, who is one of the smaller reporting company's most highly compensated executive officers due to the payment of amounts of cash compensation relating to overseas assignments attributed predominantly to such assignments.

(3) *Information for full fiscal year.* If the PEO served in that capacity during any part of a fiscal year with respect to which information is required, information should be provided as to all of his or her compensation for the full fiscal year. If a named executive officer (other than the PEO) served as an executive officer of the smaller reporting company (whether or not in the same position) during any part of the fiscal year with respect to which information is required, information shall be provided as to all compensation of that individual for the full fiscal year.

(4) *Omission of table or column.* A table or column may be omitted if there has been no compensation awarded to, earned by, or paid to any of the named executive officers or directors required to be reported in that table or column in any fiscal year covered by that table.

(5) *Definitions.* For purposes of this Item:

(i) The term *stock* means instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any similar instruments that do not have option-like features, and the term *option* means instruments such as stock options, stock appreciation rights and similar instruments with option-like features. The term *stock appreciation rights* ("*SARs*") refers to SARs payable in cash or stock, including SARs payable in cash or stock at the election of the smaller reporting company or a named executive officer. The term *equity* is used to refer generally to stock and/or options.

(ii) The term *plan* includes, but is not limited to, the following: Any plan, contract, authorization or arrangement, whether or not set forth in any formal document, pursuant to which cash, securities, similar instruments, or any other property may be received. A plan may be applicable to one person. Except with respect to disclosure required by paragraph (t) of this Item, smaller reporting companies may omit information regarding group life, health, hospitalization, or medical reimbursement plans that do not discriminate in scope, terms or operation, in favor of executive officers or directors of the smaller reporting company and that are available generally to all salaried employees.

(iii) The term *incentive plan* means any plan providing compensation intended to serve as incentive for performance to occur over a specified period, whether such performance is measured by reference to financial performance of the smaller reporting company or an affiliate, the smaller reporting company's stock price, or any other performance measure. An equity incentive plan is an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of FASB ASC Topic 718. A *non-equity incentive plan* is an incentive plan or portion of an incentive plan that is not an equity incentive plan. The term *incentive plan award* means an award provided under an incentive plan.

(iv) The terms *date of grant* or *grant date* refer to the grant date determined for financial statement reporting purposes pursuant to FASB ASC Topic 718.

(v) *Closing market price* is defined as the price at which the smaller reporting company's security was last sold in the principal United States market for such security as of the date for which the closing market price is determined.

(n) *Smaller reporting companies—Summary compensation table*—(1) *General.* Provide the information specified in paragraph (n)(2) of this Item, concerning the compensation of the named executive officers for each of the smaller reporting company's last two completed fiscal years, in a Summary Compensation Table in the tabular format specified below.

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Salary ($)	Bonus ($)	Stock awards ($)	Option awards ($)	Nonequity incentive plan compensation ($)	Nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
PEO									
A									
B									

(2) The Table shall include:

(i) The name and principal position of the named executive officer (column (a));

(ii) The fiscal year covered (column (b));

(iii) The dollar value of base salary (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (c));

(iv) The dollar value of bonus (cash and non-cash) earned by the named executive officer during the fiscal year covered (column (d));

Instructions to Item 402(n)(2)(iii) and (iv). 1. If the amount of salary or bonus earned in a given fiscal year is not calculable through the latest practicable date, a footnote shall be included disclosing that the amount of salary or bonus is not calculable through the latest practicable date and providing the date that the amount of salary or bonus is expected to be determined, and such amount must then be disclosed in a filing under Item 5.02(f) of Form 8-K (17 CFR 249.308).

2. Smaller reporting companies shall include in the salary column (column (c)) or bonus column (column (d)) any amount of salary or bonus forgone at the election of a named executive officer under which stock, equity-based or other forms of non-cash compensation instead have been received by the named executive officer. However, the receipt of any such form of non-cash compensation instead of salary or bonus must be disclosed in a footnote added to the salary or bonus column and, where applicable, referring to the narrative disclosure to the Summary Compensation Table (required by paragraph (o) of this Item) where the material terms of the stock, option or non-equity incentive plan award elected by the named executive officer are reported.

(v) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (e));

(vi) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (f));

Instruction 1 to Item 402(n)(2)(v) and (n)(2)(vi). For awards reported in columns (e) and (f), include a footnote disclosing all assumptions made in the valuation by reference to a discussion of those assumptions in the smaller reporting company's financial statements, footnotes to the financial statements, or discussion in the Management's Discussion and Analysis. The sections so referenced are deemed part of the disclosure provided pursuant to this Item.

Instruction 2 to Item 402(n)(2)(v) and (n)(2)(vi). If at any time during the last completed fiscal year, the smaller reporting company has adjusted or amended the exercise price of options or SARs previously awarded to a named executive officer, whether through amendment, cancellation or replacement grants, or any other means ("repriced"), or otherwise has materially modified such awards, the smaller reporting company shall include, as awards required to be reported in column (f), the incremental fair value, computed as of the repricing or modification date in accordance with FASB ASC Topic 718, with respect to that repriced or modified award.

Instruction 3 to Item 402(n)(2)(v) and (vi). For any awards that are subject to performance conditions, report the value at the grant date based upon the probable outcome of such conditions. This amount should be consistent with the estimate of aggregate compensation cost to be recognized over the service period determined as of the grant date under FASB ASC Topic 718, excluding the effect of estimated forfeitures. In a footnote to the table, disclose the value of the award at the grant date assuming that the highest level of performance conditions will be achieved if an amount less than the maximum was included in the table.

(vii) The dollar value of all earnings for services performed during the fiscal year pursuant to awards under non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (g));

Instructions to Item 402(n)(2)(vii). 1. If the relevant performance measure is satisfied during the fiscal year (including for a single year in a plan with a multi-year performance measure), the earnings are reportable for that fiscal year, even if not payable until a later date, and are not reportable again in the fiscal year when amounts are paid to the named executive officer.

2. All earnings on non-equity incentive plan compensation must be identified and quantified in a footnote to column (g), whether the earnings were paid during the fiscal year, payable during the period but deferred at the election of the named executive officer, or payable by their terms at a later date.

(viii) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (h));

Instruction to Item 402(n)(2)(viii). Interest on deferred compensation is above-market only if the rate of interest exceeds 120% of the applicable federal long-term rate, with compounding (as prescribed under section 1274(d) of the Internal Revenue Code, (26 U.S.C. 1274(d))) at the rate that corresponds most closely to the rate under the smaller reporting company's plan at the time the interest rate or formula is set. In the event of a discretionary reset of the interest rate, the requisite calculation must be made on the basis of the interest rate at the time of such reset, rather than when originally established. Only the above-market portion of the interest must be included. If the applicable interest rates vary depending upon conditions such as a minimum period of continued service, the reported amount should be calculated assuming satisfaction of all conditions to receiving interest at the highest rate. Dividends (and dividend equivalents) on deferred compensation denominated in the smaller reporting company's stock ("deferred stock") are preferential only if earned at a rate higher than dividends on the smaller reporting company's common stock. Only the preferential portion of the dividends or equivalents must be included. Footnote or narrative disclosure may be provided explaining the smaller reporting company's criteria for determining any portion considered to be above-market.

(ix) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Summary Compensation Table (column (i)). Each compensation item that is not properly reportable in columns (c) through (h), regardless of the amount of the compensation item, must be included in column (i). Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FASB ASC Topic 718;

(D) The amount paid or accrued to any named executive officer pursuant to a plan or arrangement in connection with:

(*1*) Any termination, including without limitation through retirement, resignation, severance or constructive termination (including a change in responsibilities) of such executive officer's employment with the smaller reporting company and its subsidiaries; or

(2) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a named executive officer; and

(G) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (e) or (f); and

Instructions to Item 402(n)(2)(ix). 1. Non-equity incentive plan awards and earnings and earnings on stock or options, except as specified in paragraph (n)(2)(ix)(G) of this Item, are required to be reported elsewhere as provided in this Item and are not reportable as All Other Compensation in column (i).

2. Benefits paid pursuant to defined benefit and actuarial plans are not reportable as All Other Compensation in column (i) unless accelerated pursuant to a change in control; information concerning these plans is reportable pursuant to paragraph (q)(1) of this Item.

3. Reimbursements of taxes owed with respect to perquisites or other personal benefits must be included in the columns as tax reimbursements (paragraph (n)(2)(ix)(B) of this Item) even if the associated perquisites or other personal benefits are not required to be included because the aggregate amount of such compensation is less than $10,000.

4. Perquisites and other personal benefits shall be valued on the basis of the aggregate incremental cost to the smaller reporting company.

5. For purposes of paragraph (n)(2)(ix)(D) of this Item, an accrued amount is an amount for which payment has become due.

(x) The dollar value of total compensation for the covered fiscal year (column (j)). With respect to each named executive officer, disclose the sum of all amounts reported in columns (c) through (i).

Instructions to Item 402(n). 1. Information with respect to the fiscal year prior to the last completed fiscal year will not be required if the smaller reporting company was not a reporting company pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m

(a) or 78o(d)) at any time during that year, except that the smaller reporting company will be required to provide information for any such year if that information previously was required to be provided in response to a Commission filing requirement.

2. All compensation values reported in the Summary Compensation Table must be reported in dollars and rounded to the nearest dollar. Reported compensation values must be reported numerically, providing a single numerical value for each grid in the table. Where compensation was paid to or received by a named executive officer in a different currency, a footnote must be provided to identify that currency and describe the rate and methodology used to convert the payment amounts to dollars.

3. If a named executive officer is also a director who receives compensation for his or her services as a director, reflect that compensation in the Summary Compensation Table and provide a footnote identifying and itemizing such compensation and amounts. Use the categories in the Director Compensation Table required pursuant to paragraph (r) of this Item.

4. Any amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned.

(o) *Smaller reporting companies—Narrative disclosure to summary compensation table.* Provide a narrative description of any material factors necessary to an understanding of the information disclosed in the Table required by paragraph (n) of this Item. Examples of such factors may include, in given cases, among other things:

(1) The material terms of each named executive officer's employment agreement or arrangement, whether written or unwritten;

(2) If at any time during the last fiscal year, any outstanding option or other equity-based award was repriced or otherwise materially modified (such as by extension of exercise periods, the change of vesting or forfeiture conditions, the change or elimination of applicable performance criteria, or the change of the bases upon which returns are determined), a description of each such repricing or other material modification;

(3) The waiver or modification of any specified performance tarfget, goal or condition to payout with respect to any amount included in non-stock incentive plan compensation or payouts reported in column (g) to the Summary Compensation Table required by paragraph (n) of this Item, stating whether the waiver or modification applied to one or more specified named executive officers or to all compensation subject to the target, goal or condition;

(4) The material terms of each grant, including but not limited to the date of exercisability, any conditions to exercisability, any tandem feature, any reload feature, any tax-reimbursement feature, and any provision that could cause the exercise price to be lowered;

(5) The material terms of any non-equity incentive plan award made to a named executive officer during the last completed fiscal year, including a general description of the formula or criteria to be applied in determining the amounts payable and vesting schedule;

(6) The method of calculating earnings on nonqualified deferred compensation plans including nonqualified defined contribution plans; and

(7) An identification to the extent material of any item included under All Other Compensation (column (i)) in the Summary Compensation Table. Identification of an item shall not be considered material if it does not exceed the greater of $25,000 or 10% of all items included in the specified category in question set forth in paragraph (n)(2)(ix) of this Item. All items of compensation are required to be included in the Summary Compensation Table without regard to whether such items are required to be identified.

Instruction to Item 402(o). The disclosure required by paragraph (o)(2) of this Item would not apply to any repricing that occurs through a pre-existing formula or mechanism in the plan or award that results in the periodic adjustment of the option or SAR exercise or base price, an antidilution provision in a plan or award, or a recapitalization or similar transaction equally affecting all holders of the class of securities underlying the options or SARs.

(p) *Smaller reporting companies—Outstanding equity awards at fiscal year-end table.* (1) Provide the information specified in paragraph (p)(2) of this Item, concerning unexercised options; stock that has not vested; and equity incentive plan awards for each named executive officer outstanding as of the end of the smaller reporting company's last completed fiscal year in the following tabular format:

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

	Option awards					Stock awards			
Name	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned options (#)	Option exercise price ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares of units of stock that have not vested ($)	Equity incentive plan awards: Number of unearned shares, units or other rights that have not vested (#)	Equity incentive plan awards: Market or payout value of unearned shares, units or other rights that have not vested ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)

PEO									
A									
B									

(2) The Table shall include:

(i) The name of the named executive officer (column (a));

(ii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are exercisable and that are not reported in column (d) (column (b));

(iii) On an award-by-award basis, the number of securities underlying unexercised options, including awards that have been transferred other than for value, that are unexercisable and that are not reported in column (d) (column (c));

(iv) On an award-by-award basis, the total number of shares underlying unexercised options awarded under any equity incentive plan that have not been earned (column (d));

(v) For each instrument reported in columns (b), (c) and (d), as applicable, the exercise or base price (column (e));

(vi) For each instrument reported in columns (b), (c) and (d), as applicable, the expiration date (column (f));

(vii) The total number of shares of stock that have not vested and that are not reported in column (i) (column (g));

(viii) The aggregate market value of shares of stock that have not vested and that are not reported in column (j) (column (h));

(ix) The total number of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned, and, if applicable the number of shares underlying any such unit or right (column (i)); and

(x) The aggregate market or payout value of shares of stock, units or other rights awarded under any equity incentive plan that have not vested and that have not been earned (column (j)).

Instructions to Item 402(p)(2). 1. Identify by footnote any award that has been transferred other than for value, disclosing the nature of the transfer.

2. The vesting dates of options, shares of stock and equity incentive plan awards held at fiscal-year end must be disclosed by footnote to the applicable column where the outstanding award is reported.

3. Compute the market value of stock reported in column (h) and equity incentive plan awards of stock reported in column (j) by multiplying the closing market price of the smaller reporting company's stock at the end of the last completed fiscal year by the number of shares or units of stock or the amount of equity incentive plan awards, respectively. The number of shares or units reported in column (d) or (i), and the payout value reported in column (j), shall be based on achieving threshold performance goals, except that if the previous fiscal year's performance has exceeded the threshold, the disclosure shall be based on the next higher performance measure (target or maximum) that exceeds the previous fiscal year's performance. If the award provides only for a single estimated payout, that amount should be reported. If the target amount is not determinable, smaller reporting companies must provide a representative amount based on the previous fiscal year's performance.

4. Multiple awards may be aggregated where the expiration date and the exercise and/or base price of the instruments is identical. A single award consisting of a combination of options, SARs and/or similar option-like instruments shall be reported as separate awards with respect to each tranche with a different exercise and/or base price or expiration date.

5. Options or stock awarded under an equity incentive plan are reported in columns (d) or (i) and (j), respectively, until the relevant performance condition has been satisfied. Once the relevant performance condition has been satisfied, even if the option or stock award is subject to forfeiture conditions, options are reported in column (b) or (c), as appropriate, until they are exercised or expire, or stock is reported in columns (g) and (h) until it vests.

(q) *Smaller reporting companies—Additional narrative disclosure.* Provide a narrative description of the following to the extent material:

(1) The material terms of each plan that provides for the payment of retirement benefits, or benefits that will be paid primarily following retirement, including but not limited to tax-qualified defined benefit plans, supplemental executive retirement plans, tax-qualified defined contribution plans and nonqualified defined contribution plans.

(2) The material terms of each contract, agreement, plan or arrangement, whether written or unwritten, that provides for payment(s) to a named executive officer at, following, or in connection with the resignation, retirement or other termination of a named executive officer, or a change in control of the smaller reporting company or a change in the named executive officer's responsibilities following a change in control, with respect to each named executive officer.

(r) *Smaller reporting companies—Compensation of directors.* (1) Provide the information specified in paragraph (r)(2) of this Item, concerning the compensation of the directors for the smaller reporting company's last completed fiscal year, in the following tabular format:

DIRECTOR COMPENSATION

Name	Fees earned or paid in cash ($)	Stock awards ($)	Option awards ($)	Non-equity incentive plan compensation ($)	Nonqualified deferred compensation earnings ($)	All other compensation ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
A							
B							
C							
D							
E							

(2) The Table shall include:

(i) The name of each director unless such director is also a named executive officer under paragraph (m) of this Item and his or her compensation for service as a director is fully reflected in the Summary Compensation Table pursuant to paragraph (n) of this Item and otherwise as required pursuant to paragraphs (o) through (q) of this Item (column (a));

(ii) The aggregate dollar amount of all fees earned or paid in cash for services as a director, including annual retainer fees, committee and/or chairmanship fees, and meeting fees (column (b));

(iii) For awards of stock, the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (c));

(iv) For awards of options, with or without tandem SARs (including awards that subsequently have been transferred), the aggregate grant date fair value computed in accordance with FASB ASC Topic 718 (column (d));

Instruction to Item 402(r)(2)(iii) and (iv). For each director, disclose by footnote to the appropriate column, the aggregate number of stock awards and the aggregate number of option awards outstanding at fiscal year end.

(v) The dollar value of all earnings for services performed during the fiscal year pursuant to non-equity incentive plans as defined in paragraph (m)(5)(iii) of this Item, and all earnings on any outstanding awards (column (e));

(vi) Above-market or preferential earnings on compensation that is deferred on a basis that is not tax-qualified, including such earnings on nonqualified defined contribution plans (column (f));

(vii) All other compensation for the covered fiscal year that the smaller reporting company could not properly report in any other column of the Director Compensation Table (column (g)). Each compensation item that is not properly reportable in columns (b) through (f), regardless of the amount of the compensation item, must be included in column (g) and must be identified and quantified in a footnote if it is deemed material in accordance with paragraph (o)(7) of this Item. Such compensation must include, but is not limited to:

(A) Perquisites and other personal benefits, or property, unless the aggregate amount of such compensation is less than $10,000;

(B) All "gross-ups" or other amounts reimbursed during the fiscal year for the payment of taxes;

(C) For any security of the smaller reporting company or its subsidiaries purchased from the smaller reporting company or its subsidiaries (through deferral of salary or bonus, or otherwise) at a discount from the market price of such security at the date of purchase, unless that discount is available generally, either to all security holders or to all salaried employees of the smaller reporting company, the compensation cost, if any, computed in accordance with FASB ASC Topic 718;

(D) The amount paid or accrued to any director pursuant to a plan or arrangement in connection with:

(*1*) The resignation, retirement or any other termination of such director; or

(*2*) A change in control of the smaller reporting company;

(E) Smaller reporting company contributions or other allocations to vested and unvested defined contribution plans;

(F) Consulting fees earned from, or paid or payable by the smaller reporting company and/or its subsidiaries (including joint ventures);

(G) The annual costs of payments and promises of payments pursuant to director legacy programs and similar charitable award programs;

(H) The dollar value of any insurance premiums paid by, or on behalf of, the smaller reporting company during the covered fiscal year with respect to life insurance for the benefit of a director; and

(I) The dollar value of any dividends or other earnings paid on stock or option awards, when those amounts were not factored into the grant date fair value required to be reported for the stock or option award in column (c) or (d); and

Instruction to Item 402(r)(2)(vii). Programs in which smaller reporting companies agree to make donations to one or more charitable institutions in a director's name, payable by the smaller reporting company currently or upon a designated event, such as the retirement or death of the director, are charitable awards programs or director legacy programs for purposes of the disclosure required by paragraph (r)(2)(vii)(G) of this Item. Provide footnote disclosure of the total dollar amount payable under the program and other material terms of each such program for which tabular disclosure is provided.

(viii) The dollar value of total compensation for the covered fiscal year (column (h)). With respect to each director, disclose the sum of all amounts reported in columns (b) through (g).

Instruction to Item 402(r)(2). Two or more directors may be grouped in a single row in the Table if all elements of their compensation are identical. The names of the directors for whom disclosure is presented on a group basis should be clear from the Table.

(3) *Narrative to director compensation table.* Provide a narrative description of any material factors necessary to an understanding of the director compensation disclosed in this Table. While material factors will vary depending upon the facts, examples of such factors may include, in given cases, among other things:

(i) A description of standard compensation arrangements (such as fees for retainer, committee service, service as chairman of the board or a committee, and meeting attendance); and

(ii) Whether any director has a different compensation arrangement, identifying that director and describing the terms of that arrangement.

Instruction to Item 402(r). In addition to the Instruction to paragraph (r)(2)(vii) of this Item, the following apply equally to paragraph (r) of this Item: Instructions 2 and 4 to paragraph (n) of this Item; the Instructions to paragraphs (n)(2)(iii) and (iv) of this Item; the Instructions to paragraphs (n)(2)(v) and (vi) of this Item; the Instructions to paragraph (n)(2)(vii) of this Item; the Instruction to paragraph (n)(2)(viii) of this Item; the Instructions to paragraph (n)(2)(ix) of this Item; and paragraph (o)(7) of this Item. These Instructions apply to the columns in the Director Compensation Table that are analogous to the columns in the Summary Compensation Table to which they refer and to disclosures under paragraph (r) of this Item that correspond to analogous disclosures provided for in paragraph (n) of this Item to which they refer.

(s) *Narrative disclosure of the registrant's compensation policies and practices as they relate to the registrant's risk management.* To the extent that risks arising from the registrant's compensation policies and practices for its employees are reasonably likely to have a material adverse effect on the registrant, discuss the registrant's policies and practices of compensating its employees, including non-executive officers, as they relate to risk management practices and risk-taking incentives. While the situations requiring disclosure will vary depending on the particular registrant and compensation policies and practices, situations that may trigger disclosure include, among others, compensation policies and practices: at a business unit of the company that carries a significant portion of the registrant's risk profile; at a business unit with compensation structured significantly differently than other units within the registrant; at a business unit that is significantly more profitable than others within the registrant; at a business unit where compensation expense is a significant percentage of the unit's revenues; and that vary significantly from the overall risk and reward structure of the registrant, such as when bonuses are awarded upon accomplishment of a task, while the income and risk to the registrant from the task extend over a significantly longer period of time. The purpose of this paragraph(s) is to provide investors material information concerning how the registrant compensates and incentivizes its employees that may create risks that are reasonably likely to have a material adverse effect on the registrant. While the information to be disclosed pursuant to this paragraph(s) will vary depending upon the nature of the registrant's business and the compensation approach, the following are examples of the issues that the registrant may need to address for the business units or employees discussed:

(1) The general design philosophy of the registrant's compensation policies and practices for employees whose behavior would be most affected by the incentives established by the policies and practices, as such policies and practices relate to or affect risk taking by employees on behalf of the registrant, and the manner of their implementation;

(2) The registrant's risk assessment or incentive considerations, if any, in structuring its compensation policies and practices or in awarding and paying compensation;

(3) How the registrant's compensation policies and practices relate to the realization of risks resulting from the actions of employees in both the short term and the long term, such as through policies requiring claw backs or imposing holding periods;

(4) The registrant's policies regarding adjustments to its compensation policies and practices to address changes in its risk profile;

(5) Material adjustments the registrant has made to its compensation policies and practices as a result of changes in its risk profile; and

(6) The extent to which the registrant monitors its compensation policies and practices to determine whether its risk management objectives are being met with respect to incentivizing its employees.

(t) *Golden parachute compensation.* (1) In connection with any proxy or consent solicitation material providing the disclosure required by section 14A(b)(1) of the Exchange Act (15 U.S.C. 78n-1(b)(1)) or any proxy or consent solicitation that includes disclosure under Item 14 of Schedule 14A (§240.14a-101) pursuant to Note A of Schedule 14A, with respect to each named executive officer of the acquiring company and the target company, provide the information specified in paragraphs (t)(2) and (3) of this section regarding any agreement or understanding, whether written or unwritten, between such named executive officer and the acquiring company or target company, concerning any type of compensation, whether present, deferred or contingent, that is based on or otherwise relates to an acquisition, merger, consolidation, sale or other disposition of all or substantially all assets of the issuer, as follows:

GOLDEN PARACHUTE COMPENSATION

Name	Cash ($)	Equity ($)	Pension/ NQDC ($)	Perquisites/ benefits ($)	Tax reimbursement ($)	Other ($)	Total ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
PEO							
PFO							
A							
B							
C							

(2) The table shall include, for each named executive officer:

(i) The name of the named executive officer (column (a));

(ii) The aggregate dollar value of any cash severance payments, including but not limited to payments of base salary, bonus, and pro-rated non-equity incentive compensation plan payments (column (b));

(iii) The aggregate dollar value of:

(A) Stock awards for which vesting would be accelerated;

(B) In-the-money option awards for which vesting would be accelerated; and

(C) Payments in cancellation of stock and option awards (column (c));

(iv) The aggregate dollar value of pension and nonqualified deferred compensation benefit enhancements (column (d));

(v) The aggregate dollar value of perquisites and other personal benefits or property, and health care and welfare benefits (column (e));

(vi) The aggregate dollar value of any tax reimbursements (column (f));

(vii) The aggregate dollar value of any other compensation that is based on or otherwise relates to the transaction not properly reported in columns (b) through (f) (column (g)); and

(viii) The aggregate dollar value of the sum of all amounts reported in columns (b) through (g) (column (h)).

INSTRUCTIONS TO ITEM 402(t)(2). 1. If this disclosure is included in a proxy or consent solicitation seeking approval of an acquisition, merger, consolidation, or proposed sale or other disposition of all or substantially all the assets of the registrant, or in a proxy or consent solicitation that includes disclosure under Item 14 of Schedule 14A (§240.14a-101) pursuant to Note A of Schedule 14A, the disclosure provided by this table shall be quantified assuming that the triggering event took place on the latest practicable date, and that the price per share of the registrant's securities shall be determined as follows: If the shareholders are to receive a fixed dollar amount, the price per share shall be that fixed dollar amount, and if such value is not a fixed dollar amount, the price per share shall be the average closing market price of the registrant's securities over the first five business days following the first public announcement of the transaction. Compute the dollar value of in-the-money option awards for which vesting would be accelerated by determining the difference between this price and the exercise or base price of the options. Include only compensation that is based on or otherwise relates to the subject transaction. Apply Instruction 1 to Item 402(t) with respect to those executive officers for whom disclosure was required in the issuer's most recent filing with the Commission under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*) that required disclosure pursuant to Item 402(c).

2. If this disclosure is included in a proxy solicitation for the annual meeting at which directors are elected for purposes of subjecting the disclosed agreements or understandings to a shareholder vote under section 14A(a)(1) of the Exchange Act (15 U.S.C. 78n-1(a)(1)), the disclosure provided by this table shall be quantified assuming that the triggering event took place on the last business day of the registrant's last completed fiscal year, and the price per share of the registrant's securities is the closing market price as of that date. Compute the dollar value of in-the-money option awards for which vesting would be accelerated by determining the difference between this price and the exercise or base price of the options.

3. In the event that uncertainties exist as to the provision of payments and benefits or the amounts involved, the registrant is required to make a reasonable estimate applicable to the payment or benefit and disclose material assumptions underlying such estimates in its disclosure. In such event, the disclosure would require forward-looking information as appropriate.

4. For each of columns (b) through (g), include a footnote quantifying each separate form of compensation included in the aggregate total reported. Include the value of all perquisites and other personal benefits or property. Individual perquisites and personal benefits shall be identified and quantified as required by Instruction 4 to Item 402(c)(2)(ix) of this section. For purposes of quantifying health care benefits, the registrant must use the assumptions used for financial reporting purposes under generally accepted accounting principles.

5. For each of columns (b) through (h), include a footnote quantifying the amount payable attributable to a double-trigger arrangement (*i.e.*, amounts triggered by a change-in-control for which payment is conditioned upon the executive officer's termination without cause or resignation for good reason within a limited time period following the change-in-control), specifying the time-frame in which such termination or resignation must occur in order for the amount to become payable, and the amount payable attributable to a single-trigger arrangement (*i.e.*, amounts triggered by a change-in-control for which payment is not conditioned upon such a termination or resignation of the executive officer).

6. A registrant conducting a shareholder advisory vote pursuant to §240.14a-21(c) of this chapter to cover new arrangements and understandings, and/or revised terms of agreements and understandings that were previously subject to a shareholder advisory vote pursuant to §240.14a-21(a) of this chapter, shall provide two separate tables. One table shall disclose all golden parachute compensation, including both the arrangements and amounts previously disclosed and subject to a shareholder advisory vote under section 14A(a)(1) of the Exchange Act (15 U.S.C. 78n-1(a)(1)) and §240.14a-21(a) of this chapter and the new arrangements and understandings and/or revised terms of agreements and understandings that were previously subject to a shareholder advisory vote. The second table shall disclose only the new arrangements and/or revised terms subject to the separate shareholder vote under section 14A(b)(2) of the Exchange Act and §240.14a-21(c) of this chapter.

7. In cases where this Item 402(t)(2) requires disclosure of arrangements between an acquiring company and the named executive officers of the soliciting target company, the registrant shall clarify whether these agreements are included in the separate shareholder advisory vote pursuant to §240.14a-21(c) of this chapter by providing a separate table of all agreements and understandings subject to the shareholder advisory vote required by section 14A(b)(2) of the Exchange Act (15 U.S.C. 78n-1(b)(2)) and §240.14a-21(c) of this chapter, if different from the full scope of golden parachute compensation subject to Item 402(t) disclosure.

(3) Provide a succinct narrative description of any material factors necessary to an understanding of each such contract, agreement, plan or arrangement and the payments quantified in the tabular disclosure required by this paragraph. Such factors shall include, but not be limited to a description of:

(i) The specific circumstances that would trigger payment(s);

(ii) Whether the payments would or could be lump sum, or annual, disclosing the duration, and by whom they would be provided; and

(iii) Any material conditions or obligations applicable to the receipt of payment or benefits, including but not limited to non-compete, non-solicitation, non-disparagement or confidentiality agreements, including the duration of such agreements and provisions regarding waiver or breach of such agreements.

INSTRUCTIONS TO ITEM 402(t). 1. A registrant that does not qualify as a "smaller reporting company," as defined by §229.10(f)(1) of this chapter, must provide the information required by this Item 402(t) with respect to the individuals covered by Items 402(a)(3)(i), (ii) and (iii) of this section. A registrant that qualifies as a "smaller reporting company," as defined by §229.10(f)(1) of this chapter, must provide the information required by this Item 402(t) with respect to the individuals covered by Items 402(m)(2)(i) and (ii) of this section.

2. The obligation to provide the information in this Item 402(t) shall not apply to agreements and understandings described in paragraph (t)(1) of this section with senior management of foreign private issuers, as defined in §240.3b-4 of this chapter.

(u) *Pay ratio disclosure*—(1) *Disclose.* (i) The median of the annual total compensation of all employees of the registrant, except the PEO of the registrant;

(ii) The annual total compensation of the PEO of the registrant; and

(iii) The ratio of the amount in paragraph (u)(1)(i) of this Item to the amount in paragraph (u)(1)(ii) of this Item. For purposes of the ratio required by this paragraph (u)(1)(iii), the amount in paragraph (u)(1)(i) of this Item shall equal one, or, alternatively, the ratio may be expressed narratively as the multiple that the amount in paragraph (u)(1)(ii) of this Item bears to the amount in paragraph (u)(1)(i) of this Item.

(2) For purposes of this paragraph (u):

(i) *Total compensation* for the median of annual total compensation of all employees of the registrant and the PEO of the registrant shall be determined in accordance with paragraph (c)(2)(x) of this Item. In determining the total compensation, all references to "named executive officer" in this Item and the instructions thereto may be deemed to refer instead, as applicable, to "employee" and, for non-salaried employees, references to "base salary" and "salary" in this Item and the instructions thereto may be deemed to refer instead, as applicable, to "wages plus overtime";

(ii) *Annual total compensation* means total compensation for the registrant's last completed fiscal year; and

(iii) *Registrant* means the registrant and its consolidated subsidiaries.

(3) For purposes of this paragraph (u), *employee* or *employee of the registrant* means an individual employed by the registrant or any of its consolidated subsidiaries, whether as a full-time, part-time, seasonal, or temporary worker, as of a date chosen by the registrant within the last three months of the registrant's last completed fiscal year. The definition of employee or employee of the registrant does not include those workers who are employed, and whose compensation is determined, by an unaffiliated third party but who provide services to the registrant or its consolidated subsidiaries as independent contractors or "leased" workers.

(4) For purposes of this paragraph (u), an employee located in a jurisdiction outside the United States (a "non-U.S. employee") may be exempt from the definition of employee or employee of the registrant under either of the following conditions:

(i) The employee is employed in a foreign jurisdiction in which the laws or regulations governing data privacy are such that, despite its reasonable efforts to obtain or process the information necessary for compliance with this paragraph (u), the registrant is unable to do so without violating such data privacy laws or regulations. The registrant's reasonable efforts shall include, at a minimum, using or seeking an exemption or other relief under any governing data privacy laws or regulations. If the registrant chooses to exclude any employees using this exemption, it shall list the excluded jurisdictions, identify the specific data privacy law or regulation, explain how complying with this paragraph (u) violates such data privacy law or regulation (including the efforts made by the registrant to use or seek an exemption or other relief under such law or regulation), and provide the approximate number of employees exempted from each jurisdiction based on this exemption. In addition, if a registrant excludes any non-U.S. employees in a particular jurisdiction under this exemption, it must exclude all non-U.S. employees in that jurisdiction. Further, the registrant shall obtain a legal opinion from counsel that opines on the inability of the registrant to obtain or process the information necessary for compliance with this paragraph (u) without violating the jurisdiction's laws or regulations governing data privacy, including the registrant's inability to obtain an exemption or other relief under any governing laws or regulations. The registrant shall file the legal opinion as an exhibit to the filing in which the pay ratio disclosure is included.

(ii) The registrant's non-U.S. employees account for 5% or less of the registrant's total employees. In that circumstance, if the registrant chooses to exclude any non-U.S. employees under this exemption, it must exclude all non-U.S. employees. Additionally, if a registrant's non-U.S. employees exceed 5% of the registrant's total U.S. and non-U.S. employees, it may exclude up to 5% of its total employees who are non-U.S. employees; *provided, however,* if a registrant excludes any non-U.S. employees in a particular jurisdiction, it must exclude all non-U.S. employees in that jurisdiction. If more than 5% of a registrant's employees are located in any one non-U.S. jurisdiction, the registrant may not exclude any employees in that jurisdiction under this exemption.

(A) In calculating the number of non-U.S. employees that may be excluded under this Item 402(u)(4)(ii) ("*de minimis*" exemption), a registrant shall count against the total any non-U.S. employee exempted under the data privacy law exemption under Item 402(u)(4)(i) ("data privacy" exemption). A registrant may exclude any non-U.S. employee from a jurisdiction that meets the data privacy exemption, even if the number of excluded employees exceeds 5% of the registrant's total employees. If, however, the number of employees excluded under the data privacy exemption equals or exceeds 5% of the registrant's total employees, the registrant may not use the *de minimis* exemption. Additionally, if the number of employees excluded under the data privacy exemption is less than 5% of the registrant's total employees, the registrant may use the *de minimis* exemption to exclude no more than the number of non-U.S. employees that, combined with the data privacy exemption, does not exceed 5% of the registrant's total employees.

(B) If a registrant excludes non-U.S. employees under the *de minimis* exemption, it must disclose the jurisdiction or jurisdictions from which those employees are being excluded, the approximate number of employees excluded from each jurisdiction under the *de minimis* exemption, the total number of its U.S. and non-U.S. employees irrespective of any exemption (data privacy or *de minimis*), and the total number of its U.S. and non-U.S. employees used for its *de minimis* calculation.

Instruction 1 to Item 402(u)—Disclosing the date chosen for identifying the median employee. A registrant shall disclose the date within the last three months of its last completed fiscal year that it selected pursuant to paragraph (u)(3) of this Item to identify its median employee. If the registrant changes the date it uses to identify the median employee from the prior year, the registrant shall disclose this change and provide a brief explanation about the reason or reasons for the change.

Instruction 2 to Item 402(u)—Identifying the median employee. A registrant is required to identify its median employee only once every three years and calculate total compensation for that employee each year; *provided that,* during a registrant's last completed fiscal year there has been no change in its employee population or employee compensation

arrangements that it reasonably believes would result in a significant change to its pay ratio disclosure. If there have been no changes that the registrant reasonably believes would significantly affect its pay ratio disclosure, the registrant shall disclose that it is using the same median employee in its pay ratio calculation and describe briefly the basis for its reasonable belief. For example, the registrant could disclose that there has been no change in its employee population or employee compensation arrangements that it believes would significantly impact the pay ratio disclosure. If there has been a change in the registrant's employee population or employee compensation arrangements that the registrant reasonably believes would result in a significant change in its pay ratio disclosure, the registrant shall re-identify the median employee for that fiscal year. If it is no longer appropriate for the registrant to use the median employee identified in year one as the median employee in years two or three because of a change in the original median employee's circumstances that the registrant reasonably believes would result in a significant change in its pay ratio disclosure, the registrant may use another employee whose compensation is substantially similar to the original median employee based on the compensation measure used to select the original median employee.

Instruction 3 to Item 402(u)—Updating for the last completed fiscal year. Pay ratio information (*i.e.*, the disclosure called for by paragraph (u)(1) of this Item) with respect to the registrant's last completed fiscal year is not required to be disclosed until the filing of its annual report on Form 10-K for that last completed fiscal year or, if later, the filing of a definitive proxy or information statement relating to its next annual meeting of shareholders (or written consents in lieu of such a meeting) following the end of such fiscal year; *provided that*, the required pay ratio information must, in any event, be filed as provided in General Instruction G(3) of Form 10-K (17 CFR 249.310) not later than 120 days after the end of such fiscal year.

Instruction 4 to Item 402(u)—Methodology and use of estimates. 1. Registrants may use reasonable estimates both in the methodology used to identify the median employee and in calculating the annual total compensation or any elements of total compensation for employees other than the PEO.

2. In determining the employees from which the median employee is identified, a registrant may use its employee population or statistical sampling and/or other reasonable methods.

3. A registrant may identify the median employee using annual total compensation or any other compensation measure that is consistently applied to all employees included in the calculation, such as information derived from the registrant's tax and/or payroll records. In using a compensation measure other than annual total compensation to identify the median employee, if that measure is recorded on a basis other than the registrant's fiscal year (such as information derived from tax and/or payroll records), the registrant may use the same annual period that is used to derive those amounts. Where a compensation measure other than annual total compensation is used to identify the median employee, the registrant must disclose the compensation measure used.

4. In identifying the median employee, whether using annual total compensation or any other compensation measure that is consistently applied to all employees included in the calculation, the registrant may make cost-of-living adjustments to the compensation of employees in jurisdictions other than the jurisdiction in which the PEO resides so that the compensation is adjusted to the cost of living in the jurisdiction in which the PEO resides. If the registrant uses a cost-of-living adjustment to identify the median employee, and the median employee identified is an employee in a jurisdiction other than the jurisdiction in which the PEO resides, the registrant must use the same cost-of-living adjustment in calculating the median employee's annual total compensation and disclose the median employee's jurisdiction. The registrant also shall briefly describe the cost-of-living adjustments it used to identify the median employee and briefly describe the cost-of-living adjustments it used to calculate the median employee's annual total compensation, including the measure used as the basis for the cost-of-living adjustment. A registrant electing to present the pay ratio in this manner also shall disclose the median employee's annual total compensation and pay ratio without the cost-of-living adjustment. To calculate this pay ratio, the registrant will need to identify the median employee without using any cost-of-living adjustments.

5. The registrant shall briefly describe the methodology it used to identify the median employee. It shall also briefly describe any material assumptions, adjustments (including any cost-of-living adjustments), or estimates it used to identify the median employee or to determine total compensation or any elements of total compensation, which shall be consistently applied. The registrant shall clearly identify any estimates used. The required descriptions should be a brief overview; it is not necessary for the registrant to provide technical analyses or formulas. If a registrant changes its methodology or its material assumptions, adjustments, or estimates from those used in its pay ratio disclosure for the prior fiscal year, and if the effects of any such change are significant, the registrant shall briefly describe the change and the reasons for the change. Registrants must also disclose if they changed from using the cost-of-living adjustment to not using that adjustment and if they changed from not using the cost-of-living adjustment to using it.

6. Registrants may, at their discretion, include personal benefits that aggregate less than $10,000 and compensation under non-discriminatory benefit plans in calculating the annual total compensation of the median employee as long as these items are also included in calculating the PEO's annual total compensation. The registrant shall also explain any difference between the PEO's annual total compensation used in the pay ratio disclosure and the total compensation amounts reflected in the Summary Compensation Table, if material.

Instruction 5 to Item 402(u)—Permitted annualizing adjustments. A registrant may annualize the total compensation for all permanent employees (full-time or part-time) that were employed by the registrant for less than the full fiscal year (such as newly hired employees or permanent employees on an unpaid leave of absence during the period). A registrant

may not annualize the total compensation for employees in temporary or seasonal positions. A registrant may not make a full-time equivalent adjustment for any employee.

Instruction 6 to Item 402(u)—PEO compensation not available. A registrant that is relying on Instruction 1 to Item 402 (c)(2)(iii) and (iv) in connection with the salary or bonus of the PEO for the last completed fiscal year, shall disclose that the pay ratio required by paragraph (u) of this Item is not calculable until the PEO salary or bonus, as applicable, is determined and shall disclose the date that the PEO's actual total compensation is expected to be determined. The disclosure required by paragraph (u) of this Item shall then be disclosed in the filing under Item 5.02(f) of Form 8-K (17 CFR 249.308) that discloses the PEO's salary or bonus in accordance with Instruction 1 to Item 402(c)(2)(iii) and (iv).

Instruction 7 to Item 402(u)—Transition periods for registrants. 1. Upon becoming subject to the requirements of Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)), a registrant shall comply with paragraph (u) of this Item with respect to compensation for the first fiscal year following the year in which it became subject to such requirements, but not for any fiscal year commencing before January 1, 2017. The registrant may omit the disclosure required by paragraph (u) of this Item from any filing until the filing of its annual report on Form 10-K (17 CFR 249.310) for such fiscal year or, if later, the filing of a proxy or information statement relating to its next annual meeting of shareholders (or written consents in lieu of such a meeting) following the end of such year; *provided that,* such disclosure shall, in any event, be filed as provided in General Instruction G(3) of Form 10-K not later than 120 days after the end of such fiscal year.

2. A registrant may omit any employees that became its employees as the result of the business combination or acquisition of a business for the fiscal year in which the transaction becomes effective, but the registrant must disclose the approximate number of employees it is omitting. Those employees shall be included in the total employee count for the triennial calculations of the median employee in the year following the transaction for purposes of evaluating whether a significant change had occurred. The registrant shall identify the acquired business excluded for the fiscal year in which the business combination or acquisition becomes effective.

3. A registrant shall comply with paragraph (u) of this Item with respect to compensation for the first fiscal year commencing on or after the date the registrant ceases to be a smaller reporting company, but not for any fiscal year commencing before January 1, 2017.

Instruction 8 to Item 402(u)—Emerging growth companies. A registrant is not required to comply with paragraph (u) of this Item if it is an emerging growth company as defined in Section 2(a)(19) of the Securities Act (15 U.S.C. 77(b)(a)(19)) or Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). A registrant shall comply with paragraph (u) of this Item with respect to compensation for the first fiscal year commencing on or after the date the registrant ceases to be an emerging growth company, but not for any fiscal year commencing before January 1, 2017.

Instruction 9 to Item 402(u)—Additional information. Registrants may present additional information, including additional ratios, to supplement the required ratio, but are not required to do so. Any additional information shall be clearly identified, not misleading, and not presented with greater prominence than the required ratio.

Instruction 10 to Item 402(u)—Multiple PEOs during the year. A registrant with more than one non-concurrent PEO serving during its fiscal year may calculate the annual total compensation for its PEO in either of the following manners:

1. The registrant may calculate the compensation provided to each person who served as PEO during the year for the time he or she served as PEO and combine those figures; or

2. The registrant may look to the PEO serving in that position on the date it selects to identify the median employee and annualize that PEO's compensation.

Regardless of the alternative selected, the registrant shall disclose which option it chose and how it calculated its PEO's annual total compensation.

Instruction 11 to Item 402(u)—Employees' personally identifiable information. Registrants are not required to, and should not, disclose any personally identifiable information about that employee other than his or her compensation. Registrants may choose to generally identify an employee's position to put the employee's compensation in context, but registrants are not required to provide this information and should not do so if providing the information could identify any specific individual.

INSTRUCTION TO ITEM 402. Specify the applicable fiscal year in the title to each table required under this Item which calls for disclosure as of or for a completed fiscal year.

[71 FR 53241, Sept. 8, 2006; 71 FR 56225, Sept. 26, 2006, as amended at 71 FR 78350, Dec. 29, 2006; 73 FR 958, Jan. 4, 2008; 74 FR 68362, Dec. 23, 2009; 76 FR 6043, Feb. 2, 2011; 76 FR 50121, Aug. 12, 2011; 80 FR 50184, Aug. 18, 2015]

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§229.403 (Item 403) Security ownership of certain beneficial owners and management.

(a) *Security ownership of certain beneficial owners.* Furnish the following information, as of the most recent practicable date, substantially in the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Exchange Act) who is known to the registrant to be the beneficial owner of more than five percent of any class of the registrant's voting securities. The address given in column (2) may be a business, mailing or residence address. Show in column (3) the total number of shares beneficially owned and in column (4) the percentage of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in Rule 13d-3(d)(1) under the Exchange Act (§240.13d-3(d)(1) of this chapter).

(1) Title of class	(2) Name and address of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of class

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries, including directors' qualifying shares, beneficially owned by all directors and nominees, naming them, each of the named executive officers as defined in Item 402(a)(3) (§229.402(a)(3)), and directors and executive officers of the registrant as a group, without naming them. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of the class so owned. Of the number of shares shown in column (3), indicate, by footnote or otherwise, the amount of shares that are pledged as security and the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in §240.13d-3(d)(1) of this chapter.

(1) Title of class	(2) Name of beneficial owner	(3) Amount and nature of beneficial ownership	(4) Percent of class

(c) *Changes in control.* Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

Instructions to Item 403: 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries, plus securities deemed outstanding pursuant to Rule 13d-3 (d)(1) under the Exchange Act 17 (CFR 240.13d-3(d)(1)). For purposes of paragraph (b), if the percentage of shares beneficially owned by any director or nominee, or by all directors and officers of the registrant as a group, does not exceed one percent of the class so owned, the registrant may, in lieu of furnishing a precise percentage, indicate this fact by means of an asterisk and explanatory footnote or other similar means.

2. For the purposes of this Item, beneficial ownership shall be determined in accordance with Rule 13d-3 under the Exchange Act (§240.13d-3 of this chapter). Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (A) sole voting power, (B) shared voting power, (C) sole investment power, or (D) shared investment power.

3. The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to section 13(d) or 13(g) of the Exchange Act. When applicable, a registrant may rely upon information set forth in such statements unless the registrant knows or has reason to believe that such information is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (a) of this Item, the registrant may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion. For purposes of paragraph (b), in computing the aggregate number of shares owned by directors and officers of the registrant as a group, the same shares shall not be counted more than once.

6. Paragraph (c) of this Item does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

7. Where the holder(s) of voting securities reported pursuant to paragraph (a) hold more than five percent of any class of voting securities of the registrant pursuant to any voting trust or similar agreement, state the title of such securities, the amount held or to be held pursuant to the trust or agreement (if not clear from the table) and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the trust or agreement.

[47 FR 11401, Mar. 16, 1982, as amended at 47 FR 55665, Dec. 13, 1982; 51 FR 42056, Nov. 20, 1986; 57 FR 48158, Oct. 21, 1992; 71 FR 53252, Sept. 8, 2006]

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§229.404 (Item 404) Transactions with related persons, promoters and certain control persons.

(a) *Transactions with related persons.* Describe any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds $120,000, and in which any related person had or will have a direct or indirect material interest. Disclose the following information regarding the transaction:

(1) The name of the related person and the basis on which the person is a related person.

(2) The related person's interest in the transaction with the registrant, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in the transaction.

(4) The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.

(5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount thereof outstanding as of the latest practicable date, the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided, and the rate or amount of interest payable on the indebtedness.

(6) Any other information regarding the transaction or the related person in the context of the transaction that is material to investors in light of the circumstances of the particular transaction.

Instructions to Item 404(a). 1. For the purposes of paragraph (a) of this Item, the term related person means:

a. Any person who was in any of the following categories at any time during the specified period for which disclosure under paragraph (a) of this Item is required:

i. Any director or executive officer of the registrant;

ii. Any nominee for director, when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director; or

iii. Any immediate family member of a director or executive officer of the registrant, or of any nominee for director when the information called for by paragraph (a) of this Item is being presented in a proxy or information statement relating to the election of that nominee for director, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director, executive officer or nominee for director, and any person (other than a tenant or employee) sharing the household of such director, executive officer or nominee for director; and

b. Any person who was in any of the following categories when a transaction in which such person had a direct or indirect material interest occurred or existed:

i. A security holder covered by Item 403(a) (§229.403(a)); or

ii. Any immediate family member of any such security holder, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such security holder, and any person (other than a tenant or employee) sharing the household of such security holder.

2. For purposes of paragraph (a) of this Item, a transaction includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

3. The amount involved in the transaction shall be computed by determining the dollar value of the amount involved in the transaction in question, which shall include:

a. In the case of any lease or other transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments due on or after the beginning of the registrant's last fiscal year, including any required or optional payments due during or at the conclusion of the lease or other transaction providing for periodic payments or installments; and

b. In the case of indebtedness, the largest aggregate amount of all indebtedness outstanding at any time since the beginning of the registrant's last fiscal year and all amounts of interest payable on it during the last fiscal year.

4. In the case of a transaction involving indebtedness:

a. The following items of indebtedness may be excluded from the calculation of the amount of indebtedness and need not be disclosed: Amounts due from the related person for purchases of goods and services subject to usual trade terms, for ordinary business travel and expense payments and for other transactions in the ordinary course of business;

b. Disclosure need not be provided of any indebtedness transaction for the related persons specified in Instruction 1.b. to paragraph (a) of this Item; and

c. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR part 220) and the loans are not disclosed as nonaccrual, past due, restructured or potential problems (see Item III.C.1. and 2. of Industry Guide 3, Statistical Disclosure by Bank Holding Companies (17 CFR 229.802(c))), disclosure under paragraph (a) of this Item may consist of a statement, if such is the case, that the loans to such persons:

i. Were made in the ordinary course of business;

ii. Were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable loans with persons not related to the lender; and

iii. Did not involve more than the normal risk of collectibility or present other unfavorable features.

5.a. Disclosure of an employment relationship or transaction involving an executive officer and any related compensation solely resulting from that employment relationship or transaction need not be provided pursuant to paragraph (a) of this Item if:

i. The compensation arising from the relationship or transaction is reported pursuant to Item 402 (§229.402); or

ii. The executive officer is not an immediate family member (as specified in Instruction 1 to paragraph (a) of this Item) and such compensation would have been reported under Item 402 (§229.402) as compensation earned for services to the registrant if the executive officer was a named executive officer as that term is defined in Item 402(a)(3) (§229.402(a)(3)), and such compensation had been approved, or recommended to the board of directors of the registrant for approval, by the compensation committee of the board of directors (or group of independent directors performing a similar function) of the registrant.

b. Disclosure of compensation to a director need not be provided pursuant to paragraph (a) of this Item if the compensation is reported pursuant to Item 402(k) (§229.402(k)).

6. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant shall not be deemed to have an indirect material interest within the meaning of paragraph (a) of this Item where:

a. The interest arises only:

i. From such person's position as a director of another corporation or organization that is a party to the transaction; or

ii. From the direct or indirect ownership by such person and all other persons specified in Instruction 1 to paragraph (a) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or

iii. From both such position and ownership; or

b. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in Instruction 1 to paragraph (a) of this Item, have an interest of less than ten percent, and the person is not a general partner of and does not hold another position in the partnership.

7. Disclosure need not be provided pursuant to paragraph (a) of this Item if:

a. The transaction is one where the rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

b. The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services; or

c. The interest of the related person arises solely from the ownership of a class of equity securities of the registrant and all holders of that class of equity securities of the registrant received the same benefit on a pro rata basis.

(b) *Review, approval or ratification of transactions with related persons.* (1) Describe the registrant's policies and procedures for the review, approval, or ratification of any transaction required to be reported under paragraph (a) of this Item. While the material features of such policies and procedures will vary depending on the particular circumstances, examples of such features may include, in given cases, among other things:

(i) The types of transactions that are covered by such policies and procedures;

(ii) The standards to be applied pursuant to such policies and procedures;

(iii) The persons or groups of persons on the board of directors or otherwise who are responsible for applying such policies and procedures; and

(iv) A statement of whether such policies and procedures are in writing and, if not, how such policies and procedures are evidenced.

(2) Identify any transaction required to be reported under paragraph (a) of this Item since the beginning of the registrant's last fiscal year where such policies and procedures did not require review, approval or ratification or where such policies and procedures were not followed.

Instruction to Item 404(b). Disclosure need not be provided pursuant to this paragraph regarding any transaction that occurred at a time before the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a) if such transaction did not continue after the related person became one of the enumerated persons in Instruction 1.a.i., ii., or iii. to Item 404(a).

(c) *Promoters and certain control persons.* (1) Registrants that are filing a registration statement on Form S-1 under the Securities Act (§239.11 of this chapter) or on Form 10 under the Exchange Act (§249.210 of this chapter) and that had a promoter at any time during the past five fiscal years shall:

(i) State the names of the promoter(s), the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant; and

(ii) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principle followed or to be followed in determining such amount, and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, also state the cost thereof to the promoter.

(2) Registrants shall provide the disclosure required by paragraphs (c)(1)(i) and (c)(1)(ii) of this Item as to any person who acquired control of a registrant that is a shell company, or any person that is part of a group, consisting of two or more persons that agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a registrant, that acquired control of a registrant that is a shell company. For purposes of this Item, *shell company* has the same meaning as in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 12b-2 under the Exchange Act (17 CFR 240.12b-2).

(d) *Smaller reporting companies.* A registrant that qualifies as a "smaller reporting company," as defined by §229.10(f)(1), must provide the following information in order to comply with this Item:

(1) The information required by paragraph (a) of this Item for the period specified there for a transaction in which the amount involved exceeds the lesser of $120,000 or one percent of the average of the smaller reporting company's total assets at year end for the last two completed fiscal years;

(2) The information required by paragraph (c) of this Item; and

(3) A list of all parents of the smaller reporting company showing the basis of control and as to each parent, the percentage of voting securities owned or other basis of control by its immediate parent, if any.

Instruction to Item 404(d). 1. Include information for any material underwriting discounts and commissions upon the sale of securities by the smaller reporting company where any of the persons specified in paragraph (a) of this Item was or is to be a principal underwriter or is a controlling person or member of a firm that was or is to be a principal underwriter.

2. For smaller reporting companies information shall be given for the period specified in paragraph (a) of this Item and, in addition, for the fiscal year preceding the small reporting company's last fiscal year.

Instructions to Item 404. 1. If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, information shall be given for the periods specified in the Item and, in addition, for the two fiscal years preceding the registrant's last fiscal year, unless the information is being incorporated by reference into a registration statement on Form S-4 (17 CFR 239.25), in which case, information shall be given for the periods specified in the Item.

2. A foreign private issuer will be deemed to comply with this Item if it provides the information required by Item 7.B. of Form 20-F (17 CFR 249.220f) with more detailed information provided if otherwise made publicly available or required to be disclosed by the issuer's home jurisdiction or a market in which its securities are listed or traded.

[71 FR 53252, Sept. 8, 2006, as amended at 73 FR 964, Jan. 4, 2008]

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§229.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

Every registrant having a class of equity securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*) and every closed-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) shall:

(a) Based solely upon a review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto furnished to the registrant under 17 CFR 240.16a-3(e) during its most recent fiscal year and Forms 5 and amendments thereto (17 CFR 249.105) furnished to the registrant with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(1) of this section.

(1) Under the caption "Section 16(a) Beneficial Ownership Reporting Compliance," identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of equity securities of the registrant registered pursuant to section 12 of the Exchange Act, or any other person subject to section 16 of the Exchange Act with respect to the registrant because of the requirements of section 30 of the Investment Company Act ("reporting person") that failed to file on a timely basis, as disclosed in the above Forms, reports required by section 16 (a) of the Exchange Act during the most recent fiscal year or prior fiscal years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written

representation referred to in paragraph (b)(1) of this section, unless the registrant otherwise knows that no Form 5 is required.

NOTE: The disclosure requirement is based on a review of the forms submitted to the registrant during and with respect to its most recent fiscal year, as specified above. Accordingly, a failure to file timely need only be disclosed once. For example, if in the most recently concluded fiscal year a reporting person filed a Form 4 disclosing a transaction that took place in the prior fiscal year, and should have been reported in that year, the registrant should disclose that late filing and transaction pursuant to this Item 405 with respect to the most recently concluded fiscal year, but not in material filed with respect to subsequent years.

(b) With respect to the disclosure required by paragraph (a) of this section, if the registrant:

(1) Receives a written representation from the reporting person that no Form 5 is required; and

(2) Maintains the representation for two years, making a copy available to the Commission or its staff upon request, the registrant need not identify such reporting person pursuant to paragraph (a) of this section as having failed to file a Form 5 with respect to that fiscal year.

[56 FR 7265, Feb. 21, 1991, as amended at 61 FR 30391, June 14, 1996; 70 FR 46088, Aug. 9, 2005; 76 FR 71875, Nov. 21, 2011]

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§229.406 (Item 406) Code of ethics.

(a) Disclose whether the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this Item 406, the term *code of ethics* means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must:

(1) File with the Commission a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet website and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet Web site; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) If the registrant intends to satisfy the disclosure requirement under Item 10 of Form 8-K regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting such information on its Internet website, disclose the registrant's Internet address and such intention.

Instructions to Item 406. 1. A registrant may have separate codes of ethics for different types of officers. Furthermore, a *code of ethics* within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (c), a registrant need only file, post or provide the portions of a broader document that constitutes a *code of ethics* as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

2. If a registrant elects to satisfy paragraph (c) of this Item by posting its code of ethics on its website pursuant to paragraph (c)(2), the code of ethics must remain accessible on its Web site for as long as the registrant remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its Web site pursuant to paragraph (c)(2).

[68 FR 5127, Jan. 31, 2003, as amended at 70 FR 1594, Jan. 7, 2005]

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§229.407 (Item 407) Corporate governance.

(a) *Director independence.* Identify each director and, when the disclosure called for by this paragraph is being presented in a proxy or information statement relating to the election of directors, each nominee for director, that is independent under the independence standards applicable to the registrant under paragraph (a)(1) of this Item. In addition, if such independence standards contain independence requirements for committees of the board of directors, identify each director that is a member of the compensation, nominating or audit committee that is not independent under such committee independence standards. If the registrant does not have a separately designated audit, nominating or compensation committee or committee performing similar functions, the registrant must provide the disclosure of directors that are not independent with respect to all members of the board of directors applying such committee independence standards.

(1) In determining whether or not the director or nominee for director is independent for the purposes of paragraph (a) of this Item, the registrant shall use the applicable definition of independence, as follows:

(i) If the registrant is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, the registrant's definition of independence that it uses for determining if a majority of the board of directors is independent in compliance with the listing standards applicable to the registrant. When determining whether the members of a committee of the board of directors are independent, the registrant's definition of independence that it uses for determining if the members of that specific committee are independent in compliance with the independence standards applicable for the members of the specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent. If the registrant does not have independence standards for a committee, the independence standards for that specific committee in the listing standards of the national securities exchange or inter-dealer quotation system that the registrant uses for determining if a majority of the board of directors are independent.

(ii) If the registrant is not a listed issuer, a definition of independence of a national securities exchange or of an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and state which definition is used. Whatever such definition the registrant chooses, it must use the same definition with respect to all directors and nominees for director. When determining whether the members of a specific committee of the board of directors are independent, if the national securities exchange or national securities association whose standards are used has independence standards for the members of a specific committee, use those committee specific standards.

(iii) If the information called for by paragraph (a) of this Item is being presented in a registration statement on Form S-1 (§239.11 of this chapter) under the Securities Act or on a Form 10 (§249.210 of this chapter) under the Exchange Act where the registrant has applied for listing with a national securities exchange or in an inter-dealer quotation system that has requirements that a majority of the board of directors be independent, the definition of independence that the registrant uses for determining if a majority of the board of directors is independent, and the definition of independence that the registrant uses for determining if members of the specific committee of the board of directors are independent, that is in compliance with the independence listing standards of the national securities exchange or inter-dealer quotation system on which it has applied for listing, or if the registrant has not adopted such definitions, the independence standards for determining if the majority of the board of directors is independent and if members of the committee of the board of directors are independent of that national securities exchange or inter-dealer quotation system.

(2) If the registrant uses its own definitions for determining whether its directors and nominees for director, and members of specific committees of the board of directors, are independent, disclose whether these definitions are available to security holders on the registrant's Web site. If so, provide the registrant's Web site address. If not, include a copy of these policies in an appendix to the registrant's proxy statement or information statement that is provided to security holders at least once every three fiscal years or if the policies have been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the policies is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy statement or information statement, identify the most recent fiscal year in which the policies were so included in satisfaction of this requirement.

(3) For each director and nominee for director that is identified as independent, describe, by specific category or type, any transactions, relationships or arrangements not disclosed pursuant to Item 404(a) (§229.404(a)), or for investment companies, Item 22(b) of Schedule 14A (§240.14a-101 of this chapter), that were considered by the board of directors under the applicable independence definitions in determining that the director is independent.

Instructions to Item 407(a). 1. If the registrant is a listed issuer whose securities are listed on a national securities exchange or in an inter-dealer quotation system which has requirements that a majority of the board of directors be independent, and also has exemptions to those requirements (for independence of a majority of the board of directors or committee member independence) upon which the registrant relied, disclose the exemption relied upon and explain the basis for the registrant's conclusion that such exemption is applicable. The same disclosure should be provided if the registrant is not a listed issuer and the national securities exchange or inter-dealer quotation system selected by the registrant has exemptions that are applicable to the registrant. Any national securities exchange or inter-dealer quotation system which has requirements that at least 50 percent of the members of a small business issuer's board of directors must be independent shall be considered a national securities exchange or inter-dealer

quotation system which has requirements that a majority of the board of directors be independent for the purposes of the disclosure required by paragraph (a) of this Item.

2. Registrants shall provide the disclosure required by paragraph (a) of this Item for any person who served as a director during any part of the last completed fiscal year, except that no information called for by paragraph (a) of this Item need be given in a registration statement filed at a time when the registrant is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) respecting any director who is no longer a director at the time of effectiveness of the registration statement.

3. The description of the specific categories or types of transactions, relationships or arrangements required by paragraph (a)(3) of this Item must be provided in such detail as is necessary to fully describe the nature of the transactions, relationships or arrangements.

(b) *Board meetings and committees; annual meeting attendance.* (1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of:

(i) The total number of meetings of the board of directors (held during the period for which he has been a director); and

(ii) The total number of meetings held by all committees of the board on which he served (during the periods that he served).

(2) Describe the registrant's policy, if any, with regard to board members' attendance at annual meetings of security holders and state the number of board members who attended the prior year's annual meeting.

Instruction to Item 407(b)(2). In lieu of providing the information required by paragraph (b)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

(3) State whether or not the registrant has standing audit, nominating and compensation committees of the board of directors, or committees performing similar functions. If the registrant has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by each such committee. Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with paragraph (c), (d) or (e) of this Item.

(c) *Nominating committee.* (1) If the registrant does not have a standing nominating committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a committee and identify each director who participates in the consideration of director nominees.

(2) Provide the following information regarding the registrant's director nomination process:

(i) State whether or not the nominating committee has a charter. If the nominating committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the nominating committee charter;

(ii) If the nominating committee has a policy with regard to the consideration of any director candidates recommended by security holders, provide a description of the material elements of that policy, which shall include, but need not be limited to, a statement as to whether the committee will consider director candidates recommended by security holders;

(iii) If the nominating committee does not have a policy with regard to the consideration of any director candidates recommended by security holders, state that fact and state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a policy;

(iv) If the nominating committee will consider candidates recommended by security holders, describe the procedures to be followed by security holders in submitting such recommendations;

(v) Describe any specific minimum qualifications that the nominating committee believes must be met by a nominating committee-recommended nominee for a position on the registrant's board of directors, and describe any specific qualities or skills that the nominating committee believes are necessary for one or more of the registrant's directors to possess;

(vi) Describe the nominating committee's process for identifying and evaluating nominees for director, including nominees recommended by security holders, and any differences in the manner in which the nominating committee evaluates nominees for director based on whether the nominee is recommended by a security holder, and whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director. If the nominating committee (or the board) has a policy with regard to the consideration of diversity in identifying director nominees, describe how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy;

(vii) With regard to each nominee approved by the nominating committee for inclusion on the registrant's proxy card (other than nominees who are executive officers or who are directors standing for re-election), state which one or more of the following categories of persons or entities recommended that nominee: Security holder, non-management director, chief executive officer, other executive officer, third-party search firm, or other specified source. With regard to each such

nominee approved by a nominating committee of an investment company, state which one or more of the following additional categories of persons or entities recommended that nominee: Security holder, director, chief executive officer, other executive officer, or employee of the investment company's investment adviser, principal underwriter, or any affiliated person of the investment adviser or principal underwriter;

(viii) If the registrant pays a fee to any third party or parties to identify or evaluate or assist in identifying or evaluating potential nominees, disclose the function performed by each such third party; and

(ix) If the registrant's nominating committee received, by a date not later than the 120th calendar day before the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting, a recommended nominee from a security holder that beneficially owned more than 5% of the registrant's voting common stock for at least one year as of the date the recommendation was made, or from a group of security holders that beneficially owned, in the aggregate, more than 5% of the registrant's voting common stock, with each of the securities used to calculate that ownership held for at least one year as of the date the recommendation was made, identify the candidate and the security holder or security holder group that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate, *provided, however,* that no such identification or disclosure is required without the written consent of both the security holder or security holder group and the candidate to be so identified.

Instructions to Item 407(c)(2)(ix). 1. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a nominating security holder may be determined using information set forth in the registrant's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act (or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940, the registrant's most recent report on Form N-CSR (§§249.331 and 274.128 of this chapter)), unless the party relying on such report knows or has reason to believe that the information contained therein is inaccurate.

2. For purposes of the registrant's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, where the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, the obligation under that Item will arise where the registrant receives the security holder recommendation a reasonable time before the registrant begins to print and mail its proxy materials.

3. For purposes of paragraph (c)(2)(ix) of this Item, the percentage of securities held by a recommending security holder, as well as the holding period of those securities, may be determined by the registrant if the security holder is the registered holder of the securities. If the security holder is not the registered owner of the securities, he or she can submit one of the following to the registrant to evidence the required ownership percentage and holding period:

a. A written statement from the "record" holder of the securities (usually a broker or bank) verifying that, at the time the security holder made the recommendation, he or she had held the required securities for at least one year; or

b. If the security holder has filed a Schedule 13D (§240.13d-101 of this chapter), Schedule 13G (§240.13d-102 of this chapter), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting ownership of the securities as of or before the date of the recommendation, a copy of the schedule and/or form, and any subsequent amendments reporting a change in ownership level, as well as a written statement that the security holder continuously held the securities for the one-year period as of the date of the recommendation.

4. For purposes of the registrant's obligation to provide the disclosure specified in paragraph (c)(2)(ix) of this Item, the security holder or group must have provided to the registrant, at the time of the recommendation, the written consent of all parties to be identified and, where the security holder or group members are not registered holders, proof that the security holder or group satisfied the required ownership percentage and holding period as of the date of the recommendation.

Instruction to Item 407(c)(2). For purposes of paragraph (c)(2) of this Item, the term *nominating committee* refers not only to nominating committees and committees performing similar functions, but also to groups of directors fulfilling the role of a nominating committee, including the entire board of directors.

(3) Describe any material changes to the procedures by which security holders may recommend nominees to the registrant's board of directors, where those changes were implemented after the registrant last provided disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item.

Instructions to Item 407(c)(3). 1. The disclosure required in paragraph (c)(3) of this Item need only be provided in a registrant's quarterly or annual reports.

2. For purposes of paragraph (c)(3) of this Item, adoption of procedures by which security holders may recommend nominees to the registrant's board of directors, where the registrant's most recent disclosure in response to the requirements of paragraph (c)(2)(iv) of this Item, or paragraph (c)(3) of this Item, indicated that the registrant did not have in place such procedures, will constitute a material change.

(d) *Audit committee.* (1) State whether or not the audit committee has a charter. If the audit committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the audit committee charter.

(2) If a listed issuer's board of directors determines, in accordance with the listing standards applicable to the issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in §240.10A-3 of this chapter), including as a result of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.

(3)(i) The audit committee must state whether:

(A) The audit committee has reviewed and discussed the audited financial statements with management;

(B) The audit committee has discussed with the independent auditors the matters required to be discussed by the statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1. AU section 380),[1] as adopted by the Public Company Accounting Oversight Board in Rule 3200T;

[1]Available at *http://www.pcaobus.org/standards/interim_standards/auditing_standards/index_au.asp?series=300&section=300.*

(C) The audit committee has received the written disclosures and the letter from the independent accountant required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant's communications with the audit committee concerning independence, and has discussed with the independent accountant the independent accountant's independence; and

(D) Based on the review and discussions referred to in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this Item, the audit committee recommended to the board of directors that the audited financial statements be included in the company's annual report on Form 10-K (17 CFR 249.310) (or, for closed-end investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), the annual report to shareholders required by section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(e)) and Rule 30d-1 (17 CFR 270.30d-1) thereunder) for the last fiscal year for filing with the Commission.

(ii) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by paragraph (d)(3)(i) of this Item.

(4)(i) If the registrant meets the following requirements, provide the disclosure in paragraph (d)(4)(ii) of this Item:

(A) The registrant is a listed issuer, as defined in §240.10A-3 of this chapter;

(B) The registrant is filing an annual report on Form 10-K (§249.310 of this chapter) or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(C) The registrant is neither:

(*1*) A subsidiary of another listed issuer that is relying on the exemption in §240.10A-3(c)(2) of this chapter; nor

(*2*) Relying on any of the exemptions in §240.10A-3(c)(4) through (c)(7) of this chapter.

(ii)(A) State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(B) If applicable, provide the disclosure required by §240.10A-3(d) of this chapter regarding an exemption from the listing standards for audit committees.

(5) *Audit committee financial expert.* (i)(A) Disclose that the registrant's board of directors has determined that the registrant either:

(*1*) Has at least one audit committee financial expert serving on its audit committee; or

(*2*) Does not have an audit committee financial expert serving on its audit committee.

(B) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(*1*) of this Item, it must disclose the name of the audit committee financial expert and whether that person is independent, as *independence* for audit committee members is defined in the listing standards applicable to the listed issuer.

(C) If the registrant provides the disclosure required by paragraph (d)(5)(i)(A)(*2*) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to Item 407(d)(5)(i). If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (d)(5)(i)(B) of this Item.

(ii) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(A) An understanding of generally accepted accounting principles and financial statements;

(B) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(C) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(D) An understanding of internal control over financial reporting; and

(E) An understanding of audit committee functions.

(iii) A person shall have acquired such attributes through:

(A) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(B) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(C) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(D) Other relevant experience.

(iv) *Safe harbor.* (A) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 407.

(B) The designation or identification of a person as an audit committee financial expert pursuant to this Item 407 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(C) The designation or identification of a person as an audit committee financial expert pursuant to this Item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 407(d)(5). 1. The disclosure under paragraph (d)(5) of this Item is required only in a registrant's annual report. The registrant need not provide the disclosure required by paragraph (d)(5) of this Item in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to General Instruction G(3) to Form 10-K (17 CFR 249.310).

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (d)(5)(iii)(D) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 401(e) (§229.401(e)).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of §240.10A-3(c)(3) of this chapter, for purposes of paragraph (d)(5) of this Item, the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (d)(5)(ii)(A) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in §229.1101) is not required to disclose the information required by paragraph (d)(5) of this Item.

Instructions to Item 407(d). 1. The information required by paragraphs (d)(1)-(3) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 through 240.14b-2 or 240.14c-1 through 240.14c-101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

2. The disclosure required by paragraphs (d)(1)-(3) of this Item need only be provided one time during any fiscal year.

3. The disclosure required by paragraph (d)(3) of this Item need not be provided in any filings other than a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting).

(e) *Compensation committee.* (1) If the registrant does not have a standing compensation committee or committee performing similar functions, state the basis for the view of the board of directors that it is appropriate for the registrant not

to have such a committee and identify each director who participates in the consideration of executive officer and director compensation.

(2) State whether or not the compensation committee has a charter. If the compensation committee has a charter, provide the disclosure required by Instruction 2 to this Item regarding the compensation committee charter.

(3) Provide a narrative description of the registrant's processes and procedures for the consideration and determination of executive and director compensation, including:

(i)(A) The scope of authority of the compensation committee (or persons performing the equivalent functions); and

(B) The extent to which the compensation committee (or persons performing the equivalent functions) may delegate any authority described in paragraph (e)(3)(i)(A) of this Item to other persons, specifying what authority may be so delegated and to whom;

(ii) Any role of executive officers in determining or recommending the amount or form of executive and director compensation; and

(iii) Any role of compensation consultants in determining or recommending the amount or form of executive and director compensation (other than any role *limited* to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) during the registrant's last completed fiscal year, identifying such consultants, stating whether such consultants were engaged directly by the compensation committee (or persons performing the equivalent functions) or any other person, describing the nature and scope of their assignment, and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement:

(A) If such compensation consultant was engaged by the compensation committee (or persons performing the equivalent functions) to provide advice or recommendations on the amount or form of executive and director compensation (other than any role *limited* to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) and the compensation consultant or its affiliates also provided additional services to the registrant or its affiliates in an amount in excess of $120,000 during the registrant's last completed fiscal year, then disclose the aggregate fees for determining or recommending the amount or form of executive and director compensation and the aggregate fees for such additional services. Disclose whether the decision to engage the compensation consultant or its affiliates for these other services was made, or recommended, by management, and whether the compensation committee or the board approved such other services of the compensation consultant or its affiliates.

(B) If the compensation committee (or persons performing the equivalent functions) has not engaged a compensation consultant, but management has engaged a compensation consultant to provide advice or recommendations on the amount or form of executive and director compensation (other than any role *limited* to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) and such compensation consultant or its affiliates has provided additional services to the registrant in an amount in excess of $120,000 during the registrant's last completed fiscal year, then disclose the aggregate fees for determining or recommending the amount or form of executive and director compensation and the aggregate fees for any additional services provided by the compensation consultant or its affiliates.

(iv) With regard to any compensation consultant identified in response to Item 407(e)(3)(iii) whose work has raised any conflict of interest, disclose the nature of the conflict and how the conflict is being addressed.

Instruction to Item 407(e)(3)(iv). For purposes of this paragraph (e)(3)(iv), the factors listed in §240.10C-1(b)(4)(i) through (vi) of this chapter are among the factors that should be considered in determining whether a conflict of interest exists.

(4) Under the caption "Compensation Committee Interlocks and Insider Participation":

(i) Identify each person who served as a member of the compensation committee of the registrant's board of directors (or board committee performing equivalent functions) during the last completed fiscal year, indicating each committee member who:

(A) Was, during the fiscal year, an officer or employee of the registrant;

(B) Was formerly an officer of the registrant; or

(C) Had any relationship requiring disclosure by the registrant under any paragraph of Item 404 (§229.404). In this event, the disclosure required by Item 404 (§229.404) shall accompany such identification.

(ii) If the registrant has no compensation committee (or other board committee performing equivalent functions), the registrant shall identify each officer and employee of the registrant, and any former officer of the registrant, who, during the last completed fiscal year, participated in deliberations of the registrant's board of directors concerning executive officer compensation.

(iii) Describe any of the following relationships that existed during the last completed fiscal year:

(A) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant;

(B) An executive officer of the registrant served as a director of another entity, one of whose executive officers served on the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of the registrant; and

(C) An executive officer of the registrant served as a member of the compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) of another entity, one of whose executive officers served as a director of the registrant.

(iv) Disclosure required under paragraph (e)(4)(iii) of this Item regarding a compensation committee member or other director of the registrant who also served as an executive officer of another entity shall be accompanied by the disclosure called for by Item 404 with respect to that person.

Instruction to Item 407(e)(4). For purposes of paragraph (e)(4) of this Item, the term *entity* shall not include an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)).

(5) Under the caption "Compensation Committee Report:"

(i) The compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) must state whether:

(A) The compensation committee has reviewed and discussed the Compensation Discussion and Analysis required by Item 402(b) (§229.402(b)) with management; and

(B) Based on the review and discussions referred to in paragraph (e)(5)(i)(A) of this Item, the compensation committee recommended to the board of directors that the Compensation Discussion and Analysis be included in the registrant's annual report on Form 10-K (§249.310 of this chapter), proxy statement on Schedule 14A (§240.14a-101 of this chapter) or information statement on Schedule 14C (§240.14c-101 of this chapter).

(ii) The name of each member of the registrant's compensation committee (or other board committee performing equivalent functions or, in the absence of any such committee, the entire board of directors) must appear below the disclosure required by paragraph (e)(5)(i) of this Item.

Instructions to Item 407(e)(5). 1. The information required by paragraph (e)(5) of this Item shall not be deemed to be "soliciting material," or to be "filed" with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a-1 through 240.14b-2 or 240.14c-1 through 240.14c-101), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

2. The disclosure required by paragraph (e)(5) of this Item need not be provided in any filings other than an annual report on Form 10-K (§249.310 of this chapter), a proxy statement on Schedule 14A (§240.14a-101 of this chapter) or an information statement on Schedule 14C (§240.14c-101 of this chapter). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference. If the registrant elects to incorporate this information by reference from the proxy or information statement into its annual report on Form 10-K pursuant to General Instruction G(3) to Form 10-K, the disclosure required by paragraph (e)(5) of this Item will be deemed furnished in the annual report on Form 10-K and will not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act as a result as a result of furnishing the disclosure in this manner.

3. The disclosure required by paragraph (e)(5) of this Item need only be provided one time during any fiscal year.

(f) *Shareholder communications.* (1) State whether or not the registrant's board of directors provides a process for security holders to send communications to the board of directors and, if the registrant does not have such a process for security holders to send communications to the board of directors, state the basis for the view of the board of directors that it is appropriate for the registrant not to have such a process.

(2) If the registrant has a process for security holders to send communications to the board of directors:

(i) Describe the manner in which security holders can send communications to the board and, if applicable, to specified individual directors; and

(ii) If all security holder communications are not sent directly to board members, describe the registrant's process for determining which communications will be relayed to board members.

Instructions to Item 407(f). 1. In lieu of providing the information required by paragraph (f)(2) of this Item in the proxy statement, the registrant may instead provide the registrant's Web site address where such information appears.

2. For purposes of the disclosure required by paragraph (f)(2)(ii) of this Item, a registrant's process for collecting and organizing security holder communications, as well as similar or related activities, need not be disclosed provided that the registrant's process is approved by a majority of the independent directors or, in the case of a registrant that is an investment company, a majority of the directors who are not "interested persons" 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)).

3. For purposes of this paragraph, communications from an officer or director of the registrant will not be viewed as "security holder communications." Communications from an employee or agent of the registrant will be viewed as "security holder communications" for purposes of this paragraph only if those communications are made solely in such employee's or agent's capacity as a security holder.

4. For purposes of this paragraph, security holder proposals submitted pursuant to §240.14a-8 of this chapter, and communications made in connection with such proposals, will not be viewed as "security holder communications."

(g) *Smaller reporting companies.* A registrant that qualifies as a "smaller reporting company," as defined by §229.10(f)(1), is not required to provide:

(1) The disclosure required in paragraph (d)(5) of this Item in its first annual report filed pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) following the effective date of its first registration statement filed under the Securities Act (15 U.S.C. 77a *et seq.*) or Exchange Act (15 U.S.C. 78a *et seq.*); and

(2) Need not provide the disclosures required by paragraphs (e)(4) and (e)(5) of this Item.

(h) *Board leadership structure and role in risk oversight.* Briefly describe the leadership structure of the registrant's board, such as whether the same person serves as both principal executive officer and chairman of the board, or whether two individuals serve in those positions, and, in the case of a registrant that is an investment company, whether the chairman of the board is an "interested person" of the registrant as defined in section 2(a)(19) of the Investment Company Act (15 U.S.C. 80a-2(a)(19)). If one person serves as both principal executive officer and chairman of the board, or if the chairman of the board of a registrant that is an investment company is an "interested person" of the registrant, disclose whether the registrant has a lead independent director and what specific role the lead independent director plays in the leadership of the board. This disclosure should indicate why the registrant has determined that its leadership structure is appropriate given the specific characteristics or circumstances of the registrant. In addition, disclose the extent of the board's role in the risk oversight of the registrant, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure.

Instructions to Item 407. 1. For purposes of this Item:

a. *Listed issuer* means a listed issuer as defined in §240.10A-3 of this chapter;

b. *National securities exchange* means a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a));

c. *Inter-dealer quotation system* means an automated 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)); and

d. *National securities association* means a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o-3(a)) that has been approved by the Commission (as that definition may be modified or supplemented).

2. With respect to paragraphs (c)(2)(i), (d)(1) and (e)(2) of this Item, disclose whether a current copy of the applicable committee charter is available to security holders on the registrant's Web site, and if so, provide the registrant's Web site address. If a current copy of the charter is not available to security holders on the registrant's Web site, include a copy of the charter in an appendix to the registrant's proxy or information statement that is provided to security holders at least once every three fiscal years, or if the charter has been materially amended since the beginning of the registrant's last fiscal year. If a current copy of the charter is not available to security holders on the registrant's Web site, and is not included as an appendix to the registrant's proxy or information statement, identify in which of the prior fiscal years the charter was so included in satisfaction of this requirement.

[71 FR 53254, Sept. 8, 2006, as amended at 73 FR 964, Jan. 4, 2008; 73 FR 57238, Oct. 2, 2008; 74 FR 68364, Dec. 23, 2009; 77 FR 38453, July 27, 2012]

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Subpart 229.500—Registration Statement and Prospectus Provisions

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§229.501 (Item 501) Forepart of Registration Statement and Outside Front Cover Page of Prospectus.

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

(a) *Front cover page of the registration statement.* Where appropriate, include the delaying amendment legend from §230.473 of Regulation C of this chapter.

(b) *Outside front cover page of the prospectus.* Limit the outside cover page to one page. If the following information applies to your offering, disclose it on the outside cover page of the prospectus.

(1) *Name.* The registrant's name. A foreign registrant must give the English translation of its name.

Instruction to paragraph 501(b)(1): If your name is the same as that of a company that is well known, include information to eliminate any possible confusion with the other company. If your name indicates a line of business in which you are not engaged or you are engaged only to a limited extent, include information to eliminate any misleading inference as to your business. In some circumstances, disclosure may not be sufficient and you may be required to change your name. You will not be required to change your name if you are an established company, the character of your business has changed, and the investing public is generally aware of the change and the character of your current business.

(2) *Title and amount of securities.* The title and amount of securities offered. Separately state the amount of securities offered by selling security holders, if any. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement. Give a brief description of the securities except where the information is clear from the title of the security. For example, you are not required to describe common stock that has full voting, dividend and liquidation rights usually associated with common stock.

(3) *Offering price of the securities.* Where you offer securities for cash, the price to the public of the securities, the underwriter's discounts and commissions, the net proceeds you receive, and any selling shareholder's net proceeds. Show this information on both a per share or unit basis and for the total amount of the offering. If you make the offering on a minimum/maximum basis, show this information based on the total minimum and total maximum amount of the offering. You may present the information in a table, term sheet format, or other clear presentation. You may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading:

Instructions to paragraph 501(b)(3): 1. If a preliminary prospectus is circulated and you are not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, provide, as applicable:

(A) A bona fide estimate of the range of the maximum offering price and the maximum number of securities offered; or

(B) A bona fide estimate of the principal amount of the debt securities offered.

2. If it is impracticable to state the price to the public, explain the method by which the price is to be determined. If the securities are to be offered at the market price, or if the offering price is to be determined by a formula related to the market price, indicate the market and market price of the securities as of the latest practicable date.

3. If you file a registration statement on Form S-8, you are not required to comply with this paragraph (b)(3).

(4) *Market for the securities.* Whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identifying the trading symbol(s) for those securities;

(5) *Risk factors.* A cross-reference to the risk factors section, including the page number where it appears in the prospectus. Highlight this cross-reference by prominent type or in another manner;

(6) *State legend.* Any legend or statement required by the law of any state in which the securities are to be offered. You may combine this with any legend required by the SEC, if appropriate;

(7) *Commission legend.* A legend that indicates that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosures in the prospectus and that any contrary representation is a criminal offense. You may use one of the following or other clear, plain language:

Example A: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(8) *Underwriting.* (i) Name(s) of the lead or managing underwriter(s) and an identification of the nature of the underwriting arrangements;

(ii) If the offering is not made on a firm commitment basis, a brief description of the underwriting arrangements. You may use any clear, concise, and accurate description of the underwriting arrangements. You may use the following descriptions of underwriting arrangements where appropriate:

Example A: Best efforts offering. The underwriters are not required to sell any specific number or dollar amount of securities but will use their best efforts to sell the securities offered.

Example B: Best efforts, minimum-maximum offering. The underwriters must sell the minimum number of securities offered (*insert number*) if any are sold. The underwriters are required to use only their best efforts to sell the maximum number of securities offered (*insert number*).

(iii) If you offer the securities on a best efforts or best efforts minimum/maximum basis, the date the offering will end, any minimum purchase requirements, and any arrangements to place the funds in an escrow, trust, or similar account. If you have not made any of these arrangements, state this fact and describe the effect on investors;

(9) *Date of prospectus.* The date of the prospectus;

(10) *Prospectus "Subject to Completion" legend.* If you use the prospectus before the effective date of the registration statement, a prominent statement that:

(i) The information in the prospectus will be amended or completed;

(ii) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(iii) The securities may not be sold until the registration statement becomes effective; and

(iv) The prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted. The legend may be in the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(11) If you use §230.430A of this chapter to omit pricing information and the prospectus is used before you determine the public offering price, the information and legend in paragraph (b)(10) of this section.

Instruction to Item 501: For asset-backed securities, see also Item 1102 of Regulation AB (§229.1102).

[63 FR 6381, Feb. 6, 1998, as amended at 70 FR 1594, Jan. 7, 2005]

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§229.502 (Item 502) Inside front and outside back cover pages of prospectus.

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

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

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

DEALER PROSPECTUS DELIVERY OBLIGATION

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

[63 FR 6383, Feb. 6, 1998]

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

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

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

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

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

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

(1) Your lack of an operating history;

(2) Your lack of profitable operations in recent periods;

(3) Your financial position;

(4) Your business or proposed business; or

(5) The lack of a market for your common equity securities or securities convertible into or exercisable for common equity securities.

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

Instructions to paragraph 503(d): 1. *Definitions.* In calculating the ratio of earnings to fixed charges, you must use the following definitions:

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

(B) *Preference security dividend.* The term "preference security dividend" is the amount of pre-tax earnings that is required to pay the dividends on outstanding preference securities. The dividend requirement must be computed as the amount of the dividend divided by (1 minus the effective income tax rate applicable to continuing operations).

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

2. *Disclosure.* Disclose the following information when showing the ratio of earnings to fixed charges:

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

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

(C) *Foreign private issuers.* A foreign private issuer must show the ratio based on the figures in the primary financial statement. A foreign private issuer must show the ratio based on the figures resulting from the reconciliation to U.S. generally accepted accounting principles if this ratio is materially different.

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

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

(e) *Smaller reporting companies.* A registrant that qualifies as a smaller reporting company, as defined by §229.10(f), need not comply with paragraph (d) of this Item.

Instruction to Item 503: For asset-backed securities, see also Item 1103 of Regulation AB (§229.1103).

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

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§229.504 (Item 504) Use of proceeds.

State the principal purposes for which the net proceeds to the registrant from the securities to be offered are intended to be used and the approximate amount intended to be used for each such purpose. Where registrant has no current specific plan for the proceeds, or a significant portion thereof, the registrant shall so state and discuss the principal reasons for the offering.

Instructions to Item 504: 1. Where less than all the securities to be offered may be sold and more than one use is listed for the proceeds, indicate the order of priority of such purposes and discuss the registrant's plans if substantially less than the maximum proceeds are obtained. Such discussion need not be included if underwriting arrangements with respect to such securities are such that, if any securities are sold to the public, it reasonably can be expected that the actual proceeds will not be substantially less than the aggregate proceeds to the registrant shown pursuant to Item 501 of Regulation S-K (§229.501).

2. Details of proposed expenditures need not be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment. Consideration should be given as to the need to include a discussion of certain matters addressed in the discussion and analysis of registrant's financial condition and results of operations, such as liquidity and capital expenditures.

3. If any material amounts of other funds are necessary to accomplish the specified purposes for which the proceeds are to be obtained, state the amounts and sources of such other funds needed for each such specified purpose and the sources thereof.

4. If any material part of the proceeds is to be used to discharge indebtedness, set forth the interest rate and maturity of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness other than short-term borrowings used for working capital.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, describe briefly and state the cost of the assets and, where such assets are to be acquired from affiliates of the registrant or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the registrant.

6. Where the registrant indicates that the proceeds may, or will, be used to finance acquisitions of other businesses, the identity of such businesses, if known, or, if not known, the nature of the businesses to be sought, the status of any negotiations with respect to the acquisition, and a brief description of such business shall be included. Where, however, pro forma financial statements reflecting such acquisition are not required by Regulation S-X (17 CFR 210.01 through 210.12-29), including Rule 8-05 for smaller reporting companies, to be included in the registration statement, the possible terms of any transaction, the identification of the parties thereto or the nature of the business sought need not be disclosed, to the extent that the registrant reasonably determines that public disclosure of such information would jeopardize the acquisition. Where Regulation S-X, including Rule 8-04 for smaller reporting companies, as applicable, would require financial statements of the business to be acquired to be included, the description of the business to be acquired shall be more detailed.

7. The registrant may reserve the right to change the use of proceeds, provided that such reservation is due to certain contingencies that are discussed specifically and the alternatives to such use in that event are indicated.

[47 FR 11401, Mar. 16, 1982, as amended at 73 FR 964, Jan. 4, 2008]

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§229.505 (Item 505) Determination of offering price.

(a) *Common equity.* Where common equity is being registered for which there is no established public trading market for purposes of paragraph (a) of Item 201 of Regulation S-K (§229.201(a)) or where there is a material disparity between the offering price of the common equity being registered and the market price of outstanding shares of the same class, describe the various factors considered in determining such offering price.

(b) *Warrants, rights and convertible securities.* Where warrants, rights or convertible securities exercisable for common equity for which there is no established public trading market for purposes of paragraph (a) of Item 201 of Regulation S-K (§229.201(a)) are being registered, describe the various factors considered in determining their exercise or conversion price.

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§229.506 (Item 506) Dilution.

Where common equity securities are being registered and there is substantial disparity between the public offering price and the effective cash cost to officers, directors, promoters and affiliated persons of common equity acquired by them in transactions during the past five years, or which they have the right to acquire, and the registrant is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act immediately prior to filing of the registration statement, there shall be included a comparison of the public contribution under the proposed public offering and the effective cash contribution of such persons. In such cases, and in other instances where common equity securities are being registered by a registrant that has had losses in each of its last three fiscal years and there is a material dilution of the purchasers' equity interest, the following shall be disclosed:

(a) The net tangible book value per share before and after the distribution;

(b) The amount of the increase in such net tangible book value per share attributable to the cash payments made by purchasers of the shares being offered; and

(c) The amount of the immediate dilution from the public offering price which will be absorbed by such purchasers.

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§229.507 (Item 507) Selling security holders.

If any of the securities to be registered are to be offered for the account of security holders, name each such security holder, indicate the nature of any position, office, or other material relationship which the selling security holder has had within the past three years with the registrant or any of its predecessors or affiliates, and state the amount of securities of the class owned by such security holder prior to the offering, the amount to be offered for the security holder's account, the amount and (if one percent or more) the percentage of the class to be owned by such security holder after completion of the offering.

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§229.508 (Item 508) Plan of distribution.

(a) *Underwriters and underwriting obligation.* If the securities are to be offered through underwriters, name the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship with the registrant and state the nature of the relationship. State briefly the nature of the obligation of the underwriter(s) to take the securities.

Instruction to paragraph 508(a): All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or the type of *best efforts* arrangement under which the underwriters are required to take and to pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities, including *market-outs,* need not be described except in the case of an agency or *best efforts* arrangement.

(b) *New underwriters.* Where securities being registered are those of a registrant that has not previously been required to file reports pursuant to section 13(a) or 15(d) of the Exchange Act, or where a prospectus is required to include reference on its cover page to material risks pursuant to Item 501 of Regulation S-K (§229.501), and any one or more of the managing underwriter(s) (or where there are no managing underwriters, a majority of the principal underwriters) has been organized, reactivated, or first registered as a broker-dealer within the past three years, these facts concerning such underwriter(s) shall be disclosed in the prospectus together with, where applicable, the disclosures that the principal business function of such underwriter(s) will be to sell the securities to be registered, or that the promoters of the registrant have a material relationship with such underwriter(s). Sufficient details shall be given to allow full appreciation of such underwriter(s) experience and its relationship with the registrant, promoters and their controlling persons.

(c) *Other distributions.* Outline briefly the plan of distribution of any securities to be registered that are to be offered otherwise than through underwriters.

(1) If any securities are to be offered pursuant to a dividend or interest reinvestment plan the terms of which provide for the purchase of some securities on the market, state whether the registrant or the participant pays fees, commissions, and expenses incurred in connection with the plan. If the participant will pay such fees, commissions and expenses, state the anticipated cost to participants by transaction or other convenient reference.

(2) If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement and the conditions under which the agreement may be terminated. If known, identify the broker(s) or dealer(s) which will participate in the offering and state the amount to be offered through each.

(3) If any of the securities being registered are to be offered otherwise than for cash, state briefly the general purposes of the distribution, the basis upon which the securities are to be offered, the amount of compensation and other expenses of distribution, and by whom they are to be borne. If the distribution is to be made pursuant to a plan of acquisition, reorganization, readjustment or succession, describe briefly the general effect of the plan and state when it became or is to become operative. As to any material amount of assets to be acquired under the plan, furnish information corresponding to that required by Instruction 5 of Item 504 of Regulation S-K (§229.504).

(d) *Offerings on exchange.* If the securities are to be offered on an exchange, indicate the exchange. If the registered securities are to be offered in connection with the writing of exchange-traded call options, describe briefly such transactions.

(e) *Underwriter's compensation.* Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.

Instructions to paragraph 508(e): 1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Show separately in the table the cash commissions paid by the registrant and selling security holders. Also show in the table commissions paid by other persons. Disclose any finder's fee or similar payments in the table.

2. Disclose the offering expenses specified in Item 511 of Regulation S-K (17 CFR 229.511).

3. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement. Where the underwriter has such an arrangement, present maximum-minimum information in a separate column to the table, based on the purchase of all or none of the shares subject to the arrangement. Describe the key terms of the arrangement in the narrative.

(f) *Underwriter's representative on board of directors.* Describe any arrangement whereby the underwriter has the right to designate or nominate a member or members of the board of directors of the registrant. The registrant shall disclose the identity of any director so designated or nominated, and indicate whether or not a person so designated or nominated, or allowed to be designated or nominated by the underwriter is or may be a director, officer, partner, employee or affiliate of the underwriter.

(g) *Indemnification of underwriters.* If the underwriting agreement provides for indemnification by the registrant of the underwriters or their controlling persons against any liability arising under the Securities Act, furnish a brief description of such indemnification provisions.

(h) *Dealers' compensation.* State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other considerations to be received by any dealer in connection with the sale of the securities. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice without giving the additional amounts to be sold.

(i) *Finders.* Identify any finder and, if applicable, describe the nature of any material relationship between such finder and the registrant, its officers, directors, principal stockholders, finders or promoters or the principal underwriter(s), or if there is a managing underwriter(s), the managing underwriter(s), (including, in each case, affiliates or associates thereof).

(j) *Discretionary accounts.* If the registrant was not, immediately prior to the filing of the registration statement, subject to the requirements of section 13(a) or 15(d) of the Exchange Act, identify any principal underwriter that intends to sell to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be sold. The response to this paragraph shall be contained in a pre-effective amendment which shall be circulated if the information is not available when the registration statement is filed.

(k) *Passive market making.* If the underwriters or any selling group members intend to engage in passive market making transactions as permitted by Rule 103 of Regulation M (§242.103 of this chapter), indicate such intention and briefly describe passive market making.

(l) *Stabilization and other transactions.* (1) Briefly describe any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transaction that affects the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose the amount of securities bought, the prices at which they were bought and the period within which they were bought. If you use §230.430A of this chapter, the prospectus you file under §230.424(b) of this chapter or include in a post-effective amendment must contain information on the stabilizing transactions that took place before the determination of the public offering price; and

(3) If you are making a warrants or rights offering of securities to existing security holders and any securities not purchased by existing security holders are to be reoffered to the public, disclose in a supplement to the prospectus or in the prospectus used in connection with the reoffering:

(i) The amount of securities bought in stabilization activities during the offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the offered securities subscribed for during the offering period;

(iii) The amount of the offered securities subscribed for by the underwriter during the offering period;

(iv) The amount of the offered securities sold during the offering period by the underwriter and the price or price ranges at which the securities were sold; and

(v) The amount of the offered securities that will be reoffered to the public and the public offering price.

[47 FR 11401, Mar. 16, 1982, as amended at 58 FR 19606, Apr. 15, 1993; 62 FR 543, Jan. 3, 1997; 62 FR 11323, Mar. 12, 1997; 63 FR 6384, Feb. 6, 1998]

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§229.509 (Item 509) Interests of named experts and counsel.

If (a) any expert named in the registration statement as having prepared or certified any part thereof (or is named as having prepared or certified a report or valuation for use in connection with the registration statement), or (b) counsel for the registrant, underwriters or selling security holders named in the prospectus as having given an opinion upon the validity of the securities being registered or upon other legal matters in connection with the registration or offering of such securities, was employed for such purpose on a contingent basis, or at the time of such preparation, certification or opinion or at any time thereafter, through the date of effectiveness of the registration statement or that part of the registration statement to which such preparation, certification or opinion relates, had, or is to receive in connection with the offering, a substantial interest, direct or indirect, in the registrant or any of its parents or subsidiaries or was connected with the registrant or any of its parents or subsidiaries as a promoter, managing underwriter (or any principal underwriter, if there are no managing underwriters) voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

Instructions to Item 509: 1. The interest of an expert (other than an accountant) or counsel will not be deemed substantial and need not be disclosed if the interest, including the fair market value of all securities of the registrant owned, received and to be received, or subject to options, warrants or rights received or to be received by the expert or counsel does not exceed $50,000. For the purpose of this Instruction, the term *expert* or counsel includes the firm, corporation, partnership or other entity, if any, by which such expert or counsel is employed or of which he is a member or of counsel to and all attorneys in the case of counsel, and all nonclerical personnel in the case of named experts, participating in such matter on behalf of such firm, corporation, partnership or entity.

2. Accountants, providing a report on the financial statements, presented or incorporated by reference in the registration statement, should note §210.2-01 of Regulation S-X (17 CFR 210) for the Commission's requirements regarding "Qualification of Accountants" which discusses disqualifying interests.

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§229.510 (Item 510) Disclosure of Commission position on indemnification for Securities Act liabilities.

In addition to the disclosure prescribed by Item 702 of Regulation S-K (§229.702), if the undertaking required by paragraph (h) of Item 512 of Regulation S-K (§229.512) is not required to be included in the registration statement because acceleration of the effective date of the registration statement is not being requested, and if waivers have not been obtained comparable to those specified in paragraph (h), a brief description of the indemnification provisions relating to directors, officers and controlling persons of the registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the registrant against such liabilities where a director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter) shall be included in the prospectus, together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

[47 FR 11401, Mar. 16, 1982, as amended at 56 FR 48103, Sept. 24, 1991]

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§229.511 (Item 511) Other expenses of issuance and distribution.

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities to be registered, other than underwriting discounts and commissions. If any of the securities to be registered are to be offered for the account of security holders, indicate the portion of such expenses to be borne by such security holder.

Instruction to Item 511: Insofar as practicable, registration fees, Federal taxes, States taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, and legal, accounting, and engineering fees shall be itemized separately. Include as a separate item any premium paid by the registrant or any selling security holder on any policy obtained in connection with the offering and sale of the securities being registered which insures or indemnifies directors or officers against any liabilities they may incur in connection with the registration, offering, or sale of such securities. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, identified as such, shall be given.

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§229.512 (Item 512) Undertakings.

Include each of the following undertakings that is applicable to the offering being registered.

(a) *Rule 415 Offering.*[1] Include the following if the securities are registered pursuant to Rule 415 under the Securities Act (§230.415 of this chapter):

[1]Paragraph (a) reflects proposals made in Securities Act Release No. 6334 (Aug. 6, 1981).

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, That:

(A) Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8 (§239.16b of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in the registration statement; and

(B) Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S-3 (§239.13 of this chapter), Form SF-3 (§239.45 of this chapter) or Form F-3 (§239.33 of this chapter) and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424 (b) (§230.424(b) of this chapter) that is part of the registration statement.

(C) *Provided further, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is for an offering of asset-backed securities on Form SF-1 (§239.44 of this chapter) or Form SF-3 (§239.45 of this chapter), and the information required to be included in a post-effective amendment is provided pursuant to Item 1100(c) of Regulation AB (§229.1100(c)).

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by "Item 8.A. of Form 20-F (17 CFR 249.220f)" at the start of any delayed

offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Act need not be furnished, *provided* that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F-3 (§239.33 of this chapter), a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Act or §210.3-19 of this chapter if such financial statements and information are contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Form F-3.

(5) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(i) If the registrant is relying on Rule 430B (§230.430B of this chapter):

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) (§230.424(b)(3) of this chapter) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) (§230.424(b)(2), (b)(5), or (b)(7) of this chapter) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) (§230.415(a)(1)(i), (vii), or (x) of this chapter) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(ii) If the registrant is subject to Rule 430C (§230.430C of this chapter), each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A (§230.430A of this chapter), shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(iii) If the registrant is relying on §230.430D of this chapter:

(A) Each prospectus filed by the registrant pursuant to §230.424(b)(3) and (h) of this chapter shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to §230.424(b)(2), (b)(5), or (b)(7) of this chapter as part of a registration statement in reliance on §230.430D of this chapter relating to an offering made pursuant to §230.415(a)(1)(vii) or (a)(1)(xii) of this chapter for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)) shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in §230.430D of this chapter, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(6) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered

or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424 (§230.424 of this chapter);

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(7) If the registrant is relying on §230.430D of this chapter, with respect to any offering of securities registered on Form SF-3 (§239.45 of this chapter), to file the information previously omitted from the prospectus filed as part of an effective registration statement in accordance with §§230.424(h) and 230.430D of this chapter.

(b) *Filings incorporating subsequent Exchange Act documents by reference.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement:

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) *Warrants and rights offerings.* Include the following, with appropriate modifications to suit the particular case, if the securities to be registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public:

The undersigned registrant hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

(d) *Competitive bids.* Include the following, with appropriate modifications to suit the particular case, if the securities to be registered are to be offered at competitive bidding:

The undersigned registrant hereby undertakes (1) to use its best efforts to distribute prior to the opening of bids, to prospective bidders, underwriters, and dealers, a reasonable number of copies of a prospectus which at that time meets the requirements of section 10(a) of the Act, and relating to the securities offered at competitive bidding, as contained in the registration statement, together with any supplements thereto, and (2) to file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters to the extent required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless no further public offering of such securities by the issuer and no reoffering of such securities by the purchasers is proposed to be made.

(e) *Incorporated annual and quarterly reports.* Include the following if the registration statement specifically incorporates by reference (other than by indirect incorporation by reference through a Form 10-K (§249.310 of this chapter) report) in the prospectus all or any part of the annual report to security holders meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Exchange Act (§240.14a-3 or §240.14c-3 of this chapter):

The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X are not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

(f) *Equity offerings of nonreporting registrants.* Include the following if equity securities of a registrant that prior to the offering had no obligation to file reports with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act are being registered for sale in an underwritten offering:

The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(g) *Registration on Form S-4 or F-4 of securities offered for resale.* Include the following if the securities are being registered on Form S-4 or F-4 (§239.25, or 34 of this chapter) in connection with a transaction specified in paragraph (a) of Rule 145 (§230.145 of this chapter).

(1) The undersigned registrant hereby undertakes as follows: That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other Items of the applicable form.

(2) The registrant undertakes that every prospectus (i) that is filed pursuant to paragraph (h)(1) immediately preceding, or (ii) that purports to meet the requirements of section 10(a)(3) of the Act and is used in connection with an offering of securities subject to Rule 415 (§230.415 of this chapter), will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) *Request for acceleration of effective date or filing of registration statement becoming effective upon filing.* Include the following if acceleration is requested of the effective date of the registration statement pursuant to Rule 461 under the Securities Act (§230.461 of this chapter), if a Form S-3 or Form F-3 will become effective upon filing with the Commission pursuant to Rule 462 (e) or (f) under the Securities Act (§230.462 (e) or (f) of this chapter), or if the registration statement is filed on Form S-8, and:

(1) Any provision or arrangement exists whereby the registrant may indemnify a director, officer or controlling person of the registrant against liabilities arising under the Securities Act, or

(2) The underwriting agreement contains a provision whereby the registrant indemnifies the underwriter or controlling persons of the underwriter against such liabilities and a director, officer or controlling person of the registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter, and

(3) The benefits of such indemnification are not waived by such persons:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(i) Include the following in a registration statement permitted by Rule 430A under the Securities Act of 1933 (§230.430A of this chapter):

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b) (1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(j) *Qualification of trust indentures under the Trust Indenture Act of 1939 for delayed offerings.* Include the following if the registrant intends to rely on section 305(b)(2) of the Trust Indenture Act of 1939 for determining the eligibility of the trustee under indentures for securities to be issued, offered, or sold on a delayed basis by or on behalf of the registrant:

The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of section 310 of the Trust Indenture Act ("Act") in accordance with the rules and regulations prescribed by the Commission under section 305(b)(2) of the Act.

(k) *Filings regarding asset-backed securities incorporating by reference subsequent Exchange Act documents by third parties.* Include the following if the registration statement incorporates by reference any Exchange Act document filed subsequent to the effective date of the registration statement pursuant to Item 1100(c) of Regulation AB (§229.1100(c)):

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 of a third party that is incorporated by reference in the registration statement in accordance with Item 1100(c)(1) of Regulation AB (17 CFR 229.1100(c)(1)) shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

[47 FR 11401, Mar. 16, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §229.512, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

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Subpart 229.600—Exhibits

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§229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* (1) Subject to Rule 411(c) (§230.411(c) of this chapter) under the Securities Act and Rule 12b-32 (§240.12b-32 of this chapter) under the Exchange Act regarding incorporation of exhibits by reference, the exhibits required in the exhibit table shall be filed as indicated, as part of the registration statement or report.

(2) Each registration statement or report shall contain an exhibit index, which shall precede immediately the exhibits filed with such registration statement. For convenient reference, each exhibit shall be listed in the exhibit index according to the number assigned to it in the exhibit table. The exhibit index shall indicate, by handwritten, typed, printed, or other legible form of notation in the manually signed original registration statement or report, the page number in the sequential numbering system where such exhibit can be found. Where exhibits are incorporated by reference, this fact shall be noted in the exhibit index referred to in the preceding sentence. Further, the first page of the manually signed registration statement shall list the page in the filing where the exhibit index is located. For a description of each of the exhibits included in the exhibit table, see paragraph (b) of this section.

(3) This Item applies only to the forms specified in the exhibit table. With regard to forms not listed in that table, reference shall be made to the appropriate form for the specific exhibit filing requirements applicable thereto.

(4) If a material contract or plan of acquisition, reorganization, arrangement, liquidation or succession is executed or becomes effective during the reporting period reflected by a Form 10-Q or Form 10-K, it shall be filed as an exhibit to the Form 10-Q or Form 10-K filed for the corresponding period. Any amendment or modification to a previously filed exhibit to a Form 10, 10-K or 10-Q document shall be filed as an exhibit to a Form 10-Q and Form 10-K. Such amendment or modification need not be filed where such previously filed exhibit would not be currently required.

Instructions to Item 601: 1. If an exhibit to a registration statement (other than an opinion or consent), filed in preliminary form, has been changed only (A) to insert information as to interest, dividend or conversion rates, redemption or conversion prices, purchase or offering prices, underwriters' or dealers' commissions, names, addresses or participation of underwriters or similar matters, which information appears elsewhere in an amendment to the registration statement or a prospectus filed pursuant to Rule 424(b) under the Securities Act (§230.424(b) of this chapter), or (B) to correct typographical errors, insert signatures or make other similar immaterial changes, then, notwithstanding any contrary requirement of any rule or form, the registrant need not refile such exhibit as so amended. Any such incomplete exhibit may not, however, be incorporated by reference in any subsequent filing under any Act administered by the Commission.

2. In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the registrant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document a copy of which is filed. The Commission may at any time in its discretion require filing of copies of any documents so omitted.

3. Only copies, rather than originals, need be filed of each exhibit required except as otherwise specifically noted.

4. *Electronic filings.* Whenever an exhibit is filed in paper pursuant to a hardship exemption (§§232.201 and 232.202 of this chapter), the letter "P" (paper) shall be placed next to the exhibit in the list of exhibits required by Item 601(a)(2) of this Rule. Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§232.201 or §232.202(d) of this chapter), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation "CE" (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

EXHIBIT TABLE

Instructions to the Exhibit Table.

1. The exhibit table indicates those documents that must be filed as exhibits to the respective forms listed.

2. The "X" designation indicates the documents which are required to be filed with each form even if filed previously with another document, *Provided, However,* that such previously filed documents may be incorporated by reference to satisfy the filing requirements.

3. The number used in the far left column of the table refers to the appropriate subsection in paragraph (b) where a description of the exhibit can be found. Whenever necessary, alphabetical or numerical subparts may be used.

EXHIBIT TABLE

	Securities act forms										Exchange act forms				
	S-1	S-3	SF-1	SF-3	S-4[1]	S-8	S-11	F-1	F-3	F-4[1]	10	8-K[2]	10-D	10-Q	10-K

																ABS-EE
(1) Underwriting agreement	X	X	X	X	X		X	X	X	X		X				
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	X		X	X	X	X	X	X		X	X	
(3) (i) Articles of incorporation	X		X	X	X		X	X		X	X	X	X	X	X	
(ii) Bylaws	X		X	X	X		X	X		X	X	X	X	X	X	
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X						
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review												X				
(8) Opinion re tax matters	X	X	X	X	X		X	X	X	X						
(9) Voting trust agreement	X				X		X	X		X	X				X	
(10) Material contracts	X		X	X	X		X	X		X	X		X	X	X	
(11) Statement re computation of per share earnings	X				X		X	X		X	X			X	X	
(12) Statements re computation of ratios	X	X			X		X	X		X	X				X	
(13) Annual report to security holders, Form 10-Q or quarterly report to security holders[3]					X										X	
(14) Code of Ethics												X			X	
(15) Letter re unaudited interim financial information	X	X			X	X	X	X	X	X				X		
(16) Letter re change in certifying accountant[4]	X				X		X				X	X			X	
(17) Correspondence on departure of director												X				
(18) Letter re change in accounting principles														X	X	
(19) Report furnished to security holders														X		
(20) Other documents or statements to security holders												X				
(21) Subsidiaries of the registrant	X		X	X	X		X	X		X	X				X	
(22) Published report regarding matters submitted to vote of security holders													X	X	X	
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X		[5]X	[5]X	[5]X	[5]X	
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X		X	X	
(25) Statement of eligibility of trustee	X	X	X	X	X			X	X	X						
(26) Invitation for competitive bids	X	X	X	X	X			X	X	X						
(27) through (30) [Reserved]																
(31) (i) Rule 13a-14(a)/15d-14(a) Certifications														X	X	
(ii) Rule 13a-14/15d-14 Certifications															X	
(32) Section 1350 Certifications[6]														X	X	
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers															X	
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities															X	
(35) Servicer compliance statement															X	
(36) Depositor Certification for shelf offerings of asset-backed securities				X												
(37) through (94) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(95) Mine Safety Disclosure Exhibit														X	X	
(96) through (98) [Reserved]																
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
(100) XBRL-Related Documents											X	X		X	X	
(101) Interactive Data File	X	X			X		X	X	X	X		X		X	X	
(102) Asset Data File			X	X									X			X
(103) Asset Related Documents			X	X									X			X
(104) [Reserved]																
(105) [Reserved]																
(106) Static Pool PDF			X	X								X				

[1]An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Form S-3 or F-3; and (2) the form, the level of which has been elected under Form S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

[2]A Form 8-K exhibit is required only if relevant to the subject matter reported on the Form 8-K report. For example, if the Form 8-K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

[3]Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10-K, where the annual report to security holders is incorporated by reference into the text of the Form 10-K.

[4]If required pursuant to Item 304 of Regulation S-K.

[5]Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

[6]Pursuant to §§240.13a-13(b)(3) and 240.15d-13(b)(3) of this chapter, asset-backed issuers are not required to file reports on Form 10-Q.

(b) *Description of exhibits.* Set forth below is a description of each document listed in the exhibit tables.

(1) *Underwriting agreement.* Each underwriting contract or agreement with a principal underwriter pursuant to which the securities being registered are to be distributed; if the terms of such documents have not been determined, the proposed forms thereof. Such agreement may be filed as an exhibit to a report on Form 8-K (§249.308 of this chapter) which is incorporated by reference into a registration statement subsequent to its effectiveness.

(2) *Plan of acquisition, reorganization, arrangement, liquidation or succession.* Any material plan of acquisition, disposition, reorganization, readjustment, succession, liquidation or arrangement and any amendments thereto described in the statement or report. Schedules (or similar attachments) to these exhibits shall not be filed unless such schedules contain information which is material to an investment decision and which is not otherwise disclosed in the agreement or the disclosure document. The plan filed shall contain a list briefly identifying the contents of all omitted schedules, together with an agreement to furnish supplementally a copy of any omitted schedule to the Commission upon request.

(3)(i) *Articles of incorporation.* The articles of incorporation of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever the registrant files an amendment to its articles of incorporation, it must file a complete copy of the articles as amended. However, if such amendment is being reported on Form 8-K (§249.308 of this chapter), the registrant is required to file only the text of the amendment as a Form 8-K exhibit. In such case, a complete copy of the articles of incorporation as amended must be filed as an exhibit to the next Securities Act registration statement or periodic report filed by the registrant to which this exhibit requirement applies. Where it is impracticable for the registrant to file a charter amendment authorizing new securities with the appropriate state authority prior to the effective date of the registration statement registering such securities, the registrant may file as an exhibit to the registration statement the form of amendment to be filed with the state authority. In such a case, if material changes are made after the copy is filed, the registrant must also file the changed copy.

(ii) *Bylaws.* The bylaws of the registrant or instruments corresponding thereto as currently in effect and any amendments thereto. Whenever the registrant files an amendment to the bylaws, it must file a complete copy of the amended bylaws. However, if such amendment is being reported on Form 8-K (§249.308 of this chapter), the registrant is required to file only the text of the amendment as a Form 8-K exhibit. In such case, a complete copy of the bylaws as amended must be filed as an exhibit to the next Securities Act registration statement or periodic report filed by the registrant to which this exhibit requirement applies.

(4) *Instruments defining the rights of security holders, including indentures.* (i) All instruments defining the rights of holders of the equity or debt securities being registered including, where applicable, the relevant portion of the articles of incorporation or by-laws of the registrant.

(ii) Except as set forth in paragraph (b)(4)(iii) of this item for filings on Forms S-1, S-4, S-11, N-14, and F-4 under the Securities Act (§239.11, 239.25, 239.18, 239.23 and 239.34 of this chapter) and Forms 10 and 10-K under the Exchange Act (§§249.210 and 249.310 of this chapter) all instruments defining the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

(iii) Where the instrument defines the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed, there need not be filed:

(A) Any instrument with respect to long-term debt not being registered if the total amount of securities authorized thereunder does not exceed 10 percent of the total assets of the registrant and its subsidiaries on a consolidated basis and if there is filed an agreement to furnish a copy of such agreement to the Commission upon request;

(B) Any instrument with respect to any class of securities if appropriate steps to assure the redemption or retirement of such class will be taken prior to or upon delivery by the registrant of the securities being registered; or

(C) Copies of instruments evidencing scrip certificates for fractions of shares.

(iv) If any of the securities being registered are, or will be, issued under an indenture to be qualified under the Trust Indenture Act, the copy of such indenture which is filed as an exhibit shall include or be accompanied by:

(A) A reasonably itemized and informative table of contents; and

(B) A cross-reference sheet showing the location in the indenture of the provisions inserted pursuant to sections 310 through 318(a) inclusive of the Trust Indenture Act of 1939.

(v) With respect to Forms 8-K and 10-Q under the Exchange Act that are filed and that disclose, in the text of the Form 10-Q, the interim financial statements, or the footnotes thereto the creation of a new class of securities or indebtedness or the modification of existing rights of security holders, file all instruments defining the rights of holders of

these securities or indebtedness. However, there need not be filed any instrument with respect to long-term debt not being registered which meets the exclusion set forth in paragraph (b)(4)(iii)(A) of this Item.

Instruction 1 to paragraph (b)(4): There need not be filed any instrument which defines the rights of participants (not as security holders) pursuant to an employee benefit plan.

Instruction 2 to paragraph (b)(4) (for electronic filings): If the instrument defining the rights of security holders is in the form of a certificate, the text appearing on the certificate shall be reproduced in an electronic filing together with a description of any other graphic and image material appearing on the certificate, as provided in Rule 304 of Regulation S-T (§232.304 of this chapter).

(5) *Opinion re legality.* (i) An opinion of counsel as to the legality of the securities being registered, indicating whether they will, when sold, be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant.

(ii) If the securities being registered are issued under a plan and the plan is subject to the requirements of ERISA furnish either:

(A) An opinion of counsel which confirms compliance of the provisions of the written documents constituting the plan with the requirements of ERISA pertaining to such provisions; or

(B) A copy of the Internal Revenue Service determination letter that the plan is qualified under section 401 of the Internal Revenue Code; or

(iii) If the securities being registered are issued under a plan which is subject to the requirements of ERISA and the plan has been amended subsequent to the filing of paragraph (b)(5)(ii) (A) or (B) above, furnish either:

(A) An opinion of counsel which confirms compliance of the amended provisions of the plan with the requirements of ERISA pertaining to such provisions; or

(B) A copy of the Internal Revenue Service determination letter that the amended plan is qualified under section 401 of the Internal Revenue Code.

NOTE: Attention is directed to Item 8 of Form S-8 for exemptions to this exhibit requirement applicable to that Form.

(6) [Reserved]

(7) *Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review.* Any written notice from the registrant's current or previously engaged independent accountant that the independent accountant is withdrawing a previously issued audit report or that a previously issued audit report or completed interim review, covering one or more years or interim periods for which the registrant is required to provide financial statements under Regulation S-X (part 210 of this chapter), should no longer be relied upon. In addition, any letter, pursuant to Item 4.02(c) of Form 8-K (§249.308 of this chapter), from the independent accountant to the Commission stating whether the independent accountant agrees with the statements made by the registrant describing the events giving rise to the notice.

(8) *Opinion re tax matters.* For filings on Form S-11 under the Securities Act (§239.18) or those to which Securities Act Industry Guide 5 applies, an opinion of counsel or of an independent public or certified public accountant or, in lieu thereof, a revenue ruling from the Internal Revenue Service, supporting the tax matters and consequences to the shareholders as described in the filing when such tax matters are material to the transaction for which the registration statement is being filed. This exhibit otherwise need only be filed with the other applicable registration forms where the tax consequences are material to an investor and a representation as to tax consequences is set forth in the filing. If a tax opinion is set forth in full in the filing, an indication that such is the case may be made in lieu of filing the otherwise required exhibit. Such tax opinions may be conditioned or may be qualified, so long as such conditions and qualifications are adequately described in the filing.

(9) *Voting trust agreement.* Any voting trust agreements and amendments thereto.

(10) *Material contracts.* (i) Every contract not made in the ordinary course of business which is material to the registrant and is to be performed in whole or in part at or after the filing of the registration statement or report or was entered into not more than two years before such filing. Only contracts need be filed as to which the registrant or subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

(ii) If the contract is such as ordinarily accompanies the kind of business conducted by the registrant and its subsidiaries, it will be deemed to have been made in the ordinary course of business and need not be filed unless it falls within one or more of the following categories, in which case it shall be filed except where immaterial in amount or significance:

(A) Any contract to which directors, officers, promoters, voting trustees, security holders named in the registration statement or report, or underwriters are parties other than contracts involving only the purchase or sale of current assets having a determinable market price, at such market price;

(B) Any contract upon which the registrant's business is substantially dependent, as in the case of continuing contracts to sell the major part of registrant's products or services or to purchase the major part of registrant's requirements of goods, services or raw materials or any franchise or license or other agreement to use a patent, formula, trade secret, process or trade name upon which registrant's business depends to a material extent;

(C) Any contract calling for the acquisition or sale of any property, plant or equipment for a consideration exceeding 15 percent of such fixed assets of the registrant on a consolidated basis; or

(D) Any material lease under which a part of the property described in the registration statement or report is held by the registrant.

(iii)(A) Any management contract or any compensatory plan, contract or arrangement, including but not limited to plans relating to options, warrants or rights, pension, retirement or deferred compensation or bonus, incentive or profit sharing (or if not set forth in any formal document, a written description thereof) in which any director or any of the named executive officers of the registrant, as defined by Item 402(a)(3) (§229.402(a)(3)), participates shall be deemed material and shall be filed; and any other management contract or any other compensatory plan, contract, or arrangement in which any other executive officer of the registrant participates shall be filed unless immaterial in amount or significance.

(B) Any compensatory plan, contract or arrangement adopted without the approval of security holders pursuant to which equity may be awarded, including, but not limited to, options, warrants or rights (or if not set forth in any formal document, a written description thereof), in which any employee (whether or not an executive officer of the registrant) participates shall be filed unless immaterial in amount or significance. A compensation plan assumed by a registrant in connection with a merger, consolidation or other acquisition transaction pursuant to which the registrant may make further grants or awards of its equity securities shall be considered a compensation plan of the registrant for purposes of the preceding sentence.

(C) Notwithstanding paragraph (b)(10)(iii)(A) above, the following management contracts or compensatory plans, contracts or arrangements need not be filed:

(*1*) Ordinary purchase and sales agency agreements.

(2) Agreements with managers of stores in a chain organization or similar organization.

(*3*) Contracts providing for labor or salesmen's bonuses or payments to a class of security holders, as such.

(*4*) Any compensatory plan, contract or arrangement which pursuant to its terms is available to employees, officers or directors generally and which in operation provides for the same method of allocation of benefits between management and nonmanagement participants.

(*5*) Any compensatory plan, contract or arrangement if the registrant is a foreign private issuer that furnishes compensatory information under Item 402(a)(1) (§229.402(a)(1)) and the public filing of the plan, contract or arrangement, or portion thereof, is not required in the registrant's home country and is not otherwise publicly disclosed by the registrant.

(*6*) Any compensatory plan, contract, or arrangement if the registrant is a wholly owned subsidiary of a company that has a class of securities registered pursuant to section 12 or files reports pursuant to section 15(d) of the Exchange Act and is filing a report on Form 10-K or registering debt instruments or preferred stock that are not voting securities on Form S-1.

Instruction 1 to paragraph (b)(10): With the exception of management contracts, in order to comply with paragraph (iii) above, registrants need only file copies of the various compensatory plans and need not file each individual director's or executive officer's personal agreement under the plans unless there are particular provisions in such personal agreements whose disclosure in an exhibit is necessary to an investor's understanding of that individual's compensation under the plan.

Instruction 2 to paragraph (b)(10): If a material contract is executed or becomes effective during the reporting period reflected by a Form 10-Q or Form 10-K, it shall be filed as an exhibit to the Form 10-Q or Form 10-K filed for the corresponding period. *See* paragraph (a)(4) of this Item. With respect to quarterly reports on Form 10-Q, only those contracts executed or becoming effective during the most recent period reflected in the report shall be filed.

(11) *Statement re computation of per share earnings.* A statement setting forth in reasonable detail the computation of per share earnings, unless the computation can be clearly determined from the material contained in the registration statement or report. The information with respect to the computation of per share earnings, presented by exhibit or otherwise, must be furnished on both a basic and diluted basis.

(12) *Statements re computation of ratios.* A statement setting forth in reasonable detail the computation of any ratio of earnings to fixed charges, any ratio of earnings to combined fixed charges and preferred stock dividends or any other ratios which appear in the registration statement or report. See Item 503(d) of Regulation S-K (§229.503(d)).

(13) *Annual report to security holders, Form 10-Q or quarterly report to security holders.* (i) The registrant's annual report to security holders for its last fiscal year, its Form 10-Q (if specifically incorporated by reference in the prospectus) or its quarterly report to security holders, if all or a portion thereof is incorporated by reference in the filing. Such report, except for those portions thereof that are expressly incorporated by reference in the filing, is to be furnished for the

information of the Commission and is not to be deemed "filed" as part of the filing. If the financial statements in the report have been incorporated by reference in the filing, the accountant's certificate shall be manually signed in one copy. *See* Rule 411(b) (§230.411(b) of this chapter).

(ii) Electronic filings. If all, or any portion, of the annual or quarterly report to security holders is incorporated by reference into any electronic filing, all, or such portion of the annual or quarterly report to security holders so incorporated, shall be filed in electronic format as an exhibit to the filing.

(14) *Code of ethics.* Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 406 of Regulation S-K (§229.406) or Item 10 of Form 8-K (§249.308 of this chapter), to the extent that the registrant intends to satisfy the Item 406 or Item 10 requirements through filing of an exhibit.

(15) *Letter re unaudited interim financial information.* A letter, where applicable, from the independent accountant that acknowledges awareness of the use in a registration statement of a report on unaudited interim financial information that pursuant to Rule 436(c) under the Securities Act (§230.436(c) of this chapter) is not considered a part of a registration statement prepared or certified by an accountant or a report prepared or certified by an accountant within the meaning of sections 7 and 11 of that Act. Such letter may be filed with the registration statement, an amendment thereto, or a report on Form 10-Q which is incorporated by reference into the registration statement.

(16) *Letter re change in certifying accountant.* A letter from the registrant's former independent accountant regarding its concurrence or disagreement with the statements made by the registrant in the current report concerning the resignation or dismissal as the registrant's principal accountant.

(17) *Correspondence on departure of director.* Any written correspondence from a former director concerning the circumstances surrounding the former director's retirement, resignation, refusal to stand for re-election or removal, including any letter from the former director to the registrant stating whether the former director agrees with statements made by the registrant describing the former director's departure.

(18) *Letter re change in accounting principles.* Unless previously filed, a letter from the registrant's independent accountant indicating whether any change in accounting principles or practices followed by the registrant, or any change in the method of applying any such accounting principles or practices, which affected the financial statements being filed with the Commission in the report or which is reasonably certain to affect the financial statements of future fiscal years is to an alternative principle which in his judgment is preferable under the circumstances. No such letter need be filed when such change is made in response to a standard adopted by the Financial Accounting Standards Board that creates a new accounting principle, that expresses a preference for an accounting principle, or that rejects a specific accounting principle.

(19) *Report furnished to security holders.* If the registrant makes available to its security holders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of Part I of Form 10-Q, the information called for may be incorporated by reference to such published document or statement, provided copies thereof are included as an exhibit to the registration statement or to Part I of the Form 10-Q report.

(20) *Other documents or statements to security holders.* If the registrant makes available to its stockholders or otherwise publishes, within the period prescribed for filing the report, a document or statement containing information meeting some or all of the requirements of this form the information called for may be incorporated by reference to such published document or statement provided copies thereof are filed as an exhibit to the report on this form.

(21) *Subsidiaries of the registrant.* (i) List all subsidiaries of the registrant, the state or other jurisdiction of incorporation or organization of each, and the names under which such subsidiaries do business. This list may be incorporated by reference from a document which includes a complete and accurate list.

(ii) The names of particular subsidiaries may be omitted if the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as of the end of the year covered by this report. (See the definition of "significant subsidiary" in Rule 1-02(w) (17 CFR 210.1-02(w)) of Regulation S-X.) The names of consolidated wholly-owned multiple subsidiaries carrying on the same line of business, such as chain stores or small loan companies, may be omitted, provided the name of the immediate parent, the line of business, the number of omitted subsidiaries operating in the United States and the number operating in foreign countries are given. This instruction shall not apply, however, to banks, insurance companies, savings and loan associations or to any subsidiary subject to regulation by another Federal agency.

(22) *Published report regarding matters submitted to vote of security holders.* Published reports containing all of the information called for by Item 4 of Part II of Form 10-Q or Item 4 of Part I of Form 10-K that is referred to therein in lieu of providing disclosure in Form 10-Q or 10-K, that are required to be filed as exhibits by Rule 12b-23(a)(3) under the Exchange Act (§240.12b-23(a)(3) of this chapter).

(23) *Consents of experts and counsel*—(i) *Securities Act filings.* All written consents required to be filed shall be dated and manually signed. Where the consent of an expert or counsel is contained in his report or opinion or elsewhere in the

registration statement or document filed therewith, a reference shall be made in the index to the report, the part of the registration statement or document or opinion, containing the consent.

(ii) *Exchange Act reports.* Where the filing of a written consent is required with respect to material incorporated by reference in a previously filed registration statement under the Securities Act, such consent may be filed as exhibit to the material incorporated by reference. Such consents shall be dated and manually signed.

(24) *Power of attorney.* If any name is signed to the registration statement or report pursuant to a power of attorney, manually signed copies of such power of attorney shall be filed. Where the power of attorney is contained elsewhere in the registration statement or documents filed therewith a reference shall be made in the index to the part of the registration statement or document containing such power of attorney. In addition, if the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed. A power of attorney that is filed with the Commission shall relate to a specific filing or an amendment thereto, provided, however, that a power of attorney relating to a registration statement under the Securities Act or an amendment thereto also may relate to any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§230.462(b) of this chapter). A power of attorney that confers general authority shall not be filed with the Commission.

(25) *Statement of eligibility of trustee.* (i) A statement of eligibility and qualification of each person designated to act as trustee under an indenture to be qualified under the Trust Indenture Act of 1939. Such statement of eligibility shall be bound separately from the other exhibits.

(ii) *Electronic filings.* The requirement to bind separately the statement of eligibility and qualification of each person designated to act as a trustee under the Trust Indenture Act of 1939 from other exhibits shall not apply to statements submitted in electronic format. Rather, such statements must be submitted as exhibits in the same electronic submission as the registration statement to which they relate, or in an amendment thereto, except that electronic filers that rely on Trust Indenture Act Section 305(b)(2) for determining the eligibility of the trustee under indentures for securities to be issued, offered or sold on a delayed basis by or on behalf of the registrant shall file such statements separately in the manner prescribed by §260.5b-1 through §260.5b-3 of this chapter and by the EDGAR Filer Manual.

(26) *Invitations for competitive bids.* If the registration statement covers securities to be offered at competitive bidding, any form of communication which is an invitation for competitive bid which will be sent or given to any person shall be filed.

(27)-(30) [Reserved]

(31)(i) *Rule 13a-14(a)/15d-14(a) Certifications.* The certifications required by Rule 13a-14(a) (17 CFR 240.13a-14(a)) or Rule 15d-14(a) (17 CFR 240.15d-14(a)) exactly as set forth below:

*Certifications** I, [identify the certifying individual], certify that:

1. I have reviewed this [specify report] of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:

_____

_____

_____

[Signature]

_____

[Title]

*Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a-14(a) and 15d-14(a).

(ii) *Rule 13a-14(d)/15d-14(d) Certifications.* If an asset-backed issuer (as defined in §229.1101), the certifications required by Rule 13a-14(d) (17 CFR 240.13a-14(d)) or Rule 15d-14(d) (17 CFR 240.15d-14(d)) exactly as set forth below:

Certifications.[1] I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form 10-K and all reports on Form 10-D required to be filed in respect of the period covered by this report on Form 10-K of [identify the issuing entity] (the "Exchange Act periodic reports");

2. Based on my knowledge, the Exchange Act periodic reports, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, all of the distribution, servicing and other information required to be provided under Form 10-D for the period covered by this report is included in the Exchange Act periodic reports;

4. [I am responsible for reviewing the activities performed by the servicer(s) and based on my knowledge and the compliance review(s) conducted in preparing the servicer compliance statement(s) required in this report under Item 1123 of Regulation AB, and except as disclosed in the Exchange Act periodic reports, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s) in all material respects; and]

[Based on my knowledge and the servicer compliance statement(s) required in this report under Item 1123 of Regulation AB, and except as disclosed in the Exchange Act periodic reports, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s) in all material respects; and][2]

5. All of the reports on assessment of compliance with servicing criteria for asset-backed securities and their related attestation reports on assessment of compliance with servicing criteria for asset-backed securities required to be included in this report in accordance with Item 1122 of Regulation AB and Exchange Act Rules 13a-18 and 15d-18 have been included as an exhibit to this report, except as otherwise disclosed in this report. Any material instances of noncompliance described in such reports have been disclosed in this report on Form 10-K.[3]

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties [name of servicer, sub-servicer, co-servicer, depositor or trustee].][4]

Date: _____

_____

[Signature]

[Title]

[1]With respect to asset-backed issuers, the certification must be signed by either: (1) The senior officer in charge of securitization of the depositor if the depositor is signing the report on Form 10-K; or (2) The senior officer in charge of the servicing function of the servicer if the servicer is signing the report on Form 10-K on behalf of the issuing entity. See Rules 13a-14(e) and 15d-14(e) (§§240.13a-14(e) and 240.15d-14(e)). If multiple servicers are involved in servicing the pool assets, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent function) must sign if a representative of the servicer is to sign the certification. If there is a master servicer and one or more underlying servicers, the references in the certification relate to the master servicer. A natural person must sign the certification in his or her individual capacity, although the title of that person in the organization of which he or she is an officer may be included under the signature.

[2]The first version of paragraph 4 is to be used when the servicer is signing the report on behalf of the issuing entity. The second version of paragraph 4 is to be used when the depositor is signing the report.

[3]The certification refers to the reports prepared by parties participating in the servicing function that are required to be included as an exhibit to the Form 10-K. See Item 1122 of Regulation AB (§229.1122) and Rules 13a-18 and 15d-18 (§§240.13a-18 and 240.15d-18 of this chapter). If a report that is otherwise required to be included is not attached, disclosure that the report is not included and an associated explanation must be provided in the Form 10-K report.

[4]Because the signer of the certification must rely in certain circumstances on information provided by unaffiliated parties outside of the signer's control, this paragraph must be included if the signer is reasonably relying on information that unaffiliated trustees, depositors, servicers, sub-servicers or co-servicers have provided.

(32) *Section 1350 Certifications.* (i) The certifications required by Rule 13a-14(b) (17 CFR 240.13a-14(b)) or Rule 15d-14(b) (17 CFR 240.15d-14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(33) *Report on assessment of compliance with servicing criteria for asset-backed securities.* Each report on assessment of compliance with servicing criteria required by §229.1122(a).

(34) *Attestation report on assessment of compliance with servicing criteria for asset-backed securities.* Each attestation report on assessment of compliance with servicing criteria for asset-backed securities required by §229.1122 (b).

(35) *Servicer compliance statement.* Each servicer compliance statement required by §229.1123.

(36) *Certification for shelf offerings of asset-backed securities.* Provide the certification required by General Instruction I.B.1.(a) of Form SF-3 (§239.45 of this chapter) exactly as set forth below:

Certification

I [identify the certifying individual] certify as of [the date of the final prospectus under §230.424 of this chapter] that:

1. I have reviewed the prospectus relating to [title of all securities, the offer and sale of which are registered] (the "securities") and am familiar with, in all material respects, the following: The characteristics of the securitized assets underlying the offering (the "securitized assets"), the structure of the securitization, and all material underlying transaction agreements as described in the prospectus;

2. Based on my knowledge, the prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

3. Based on my knowledge, the prospectus and other information included in the registration statement of which it is a part fairly present, in all material respects, the characteristics of the securitized assets, the structure of the securitization and the risks of ownership of the securities, including the risks relating to the securitized assets that would affect the cash flows available to service payments or distributions on the securities in accordance with their terms; and

4. Based on my knowledge, taking into account all material aspects of the characteristics of the securitized assets, the structure of the securitization, and the related risks as described in the prospectus, there is a reasonable basis to conclude that the securitization is structured to produce, but is not guaranteed by this certification to produce, expected cash flows at times and in amounts to service scheduled payments of interest and the ultimate repayment of principal on the securities (or other scheduled or required distributions on the securities, however denominated) in accordance with their terms as described in the prospectus.

5. The foregoing certifications are given subject to any and all defenses available to me under the federal securities laws, including any and all defenses available to an executive officer that signed the registration statement of which the prospectus referred to in this certification is part.

Date: _____

[Signature]

_____

[Title]

The certification must be signed by the chief executive officer of the depositor, as required by General Instruction I.B.1.(a) of Form SF-3.

(37) through (94) [Reserved]

(95) *Mine Safety Disclosure Exhibit.* A registrant that is an operator, or that has a subsidiary that is an operator, of a coal or other mine must provide the information required by Item 104 of Regulation S-K (§229.104 of this chapter) in an exhibit to its Exchange Act annual or quarterly report. For purposes of this Item:

(1) The term *coal or other mine* means a coal or other mine, as defined in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802), that is subject to the provisions of such Act (30 U.S.C. 801 *et seq*).

(2) The term *operator* has the meaning given the term in section 3 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 802).

(3) The term *subsidiary* has the meaning given the term in Exchange Act Rule 12b-2 (17 CFR 240.12b-2).

(96) through (98) [Reserved]

(99) *Additional exhibits.* (i) Any additional exhibits which the registrant may wish to file shall be so marked as to indicate clearly the subject matters to which they refer.

(ii) Any document (except for an exhibit) or part thereof which is incorporated by reference in the filing and is not otherwise required to be filed by this Item or is not a Commission filed document incorporated by reference in a Securities Act registration statement.

(iii) If pursuant to Section 11(a) of the Securities Act (15 U.S.C. 77k(a)) an issuer makes generally available to its security holders an earnings statement covering a period of at least 12 months beginning after the effective date of the registration statement, and if such earnings statement is made available by "other methods" than those specified in paragraphs (a) or (b) of §230.158 of this chapter, it must be filed as an exhibit to the Form 10-Q or the Form 10-K, as appropriate, covering the period in which the earnings statement was released.

(100) *XBRL-Related Documents.* Only an electronic filer that prepares its financial statements in accordance with Article 6 of Regulation S-X (17 CFR 210.6-01 *et seq.*) is permitted to participate in the voluntary XBRL (eXtensible Business Reporting Language) program and, as a result, may submit XBRL-Related Documents (§232.11 of this chapter) in electronic format as an exhibit to: the filing to which they relate; an amendment to such filing; or a Form 8-K (§249.308 of this chapter) that references such filing, if the Form 8-K is submitted no earlier than the date of filing. Rule 401 of Regulation S-T (§232.401 of this chapter) sets forth further details regarding eligibility to participate in the voluntary XBRL program.

(101) *Interactive Data File.* An Interactive Data File (§232.11 of this chapter) is:

(i) *Required to be submitted and posted.* Required to be submitted to the Commission and posted on the registrant's corporate Web site, if any, in the manner provided by Rule 405 of Regulation S-T (§232.405 of this chapter) if the registrant does not prepare its financial statements in accordance with Article 6 of Regulation S-X (17 CFR 210.6-01 *et seq.*) and is described in paragraph (b)(101)(i)(A), (B) or (C) of this Item, except that an Interactive Data File: first is required for a periodic report on Form 10-Q (§249.308a of this chapter), Form 20-F (§249.220f of this chapter) or Form 40-F (§249.240f of this chapter), as applicable; is required for a registration statement under the Securities Act only if the registration statement contains a price or price range; and is required for a Form 8-K (§249.308 of this chapter) only when the Form 8-K contains audited annual financial statements that are a revised version of financial statements that previously were filed with the Commission that have been revised pursuant to applicable accounting standards to reflect the effects of certain subsequent events, including a discontinued operation, a change in reportable segments or a change in accounting principle, and, in such case, the Interactive Data File would be required only as to such revised financial statements regardless whether the Form 8-K contains other financial statements:

(A) A large accelerated filer (§240.12b-2 of this chapter) that had an aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of more than $5 billion as of the last business day of the second fiscal quarter of its most recently completed fiscal year that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2009;

(B) A large accelerated filer not specified in paragraph (b)(101)(i)(A) of this Item that prepares its financial statements in accordance with generally accepted accounting principles as used in the United States and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2010; or

(C) A filer not specified in paragraph (b)(101)(i)(A) or (B) of this Item that prepares its financial statements in accordance with either generally accepted accounting principles as used in the United States or International Financial Reporting Standards as issued by the International Accounting Standards Board, and the filing contains financial statements of the registrant for a fiscal period that ends on or after June 15, 2011.

(ii) *Permitted to be submitted.* Permitted to be submitted to the Commission in the manner provided by Rule 405 of Regulation S-T (§232.405 of this chapter) if the:

(A) Registrant prepares its financial statements:

(*1*) In accordance with either:

(*i*) Generally accepted accounting principles as used in the United States; or

(*ii*) International Financial Reporting Standards as issued by the International Accounting Standards Board; and

(*2*) Not in accordance with Article 6 of Regulation S-X (17 CFR 210.6-01 *et seq.*); and

(B) Interactive Data File is not required to be submitted to the Commission under paragraph (b)(101)(i) of this Item.

(iii) *Not permitted to be submitted.* Not permitted to be submitted to the Commission if the registrant prepares its financial statements in accordance with Article 6 of Regulation S-X (17 CFR 210.6-01 *et seq.*).

(102) *Asset Data File.* An Asset Data File (as defined in §232.11 of this chapter) filed pursuant to Item 1111(h)(3) of Regulation AB (§229.1111(h)(3)).

(103) *Asset related document.* Additional asset-level information or explanatory language pursuant to Item 1111(h)(4) and (5) of Regulation AB (§229.1111(h)(4) and (h)(5)).

(104)-(105) [Reserved]

(106) *Static pool.* If not included in the prospectus filed in accordance with §230.424(b)(2) or (5) and (h) of this chapter, static pool disclosure as required by §229.1105.

(c) *Smaller reporting companies.* A smaller reporting company need not provide the disclosure required in paragraph (b)(12) of this Item, Statements re computation of ratios.

[47 FR 11401, Mar. 16, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §229.601, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov.*

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Subpart 229.700—Miscellaneous

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§229.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

Furnish the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act. Include sales of reacquired securities, as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) *Securities sold.* Give the date of sale and the title and amount of securities sold.

(b) *Underwriters and other purchasers.* Give the names of the principal underwriters, if any. As to any such securities not publicly offered, name the persons or identify the class of persons to whom the securities were sold.

(c) *Consideration.* As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.

(d) *Exemption from registration claimed.* Indicate the section of the Securities Act or the rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.

(e) *Terms of conversion or exercise.* If the information called for by this paragraph (e) is being presented on Form 8-K, Form 10-Q, Form 10-K, or Form 10-D under the Exchange Act (§249.308, §249.308(a), §240.310 or §249.312) of this chapter, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

(f) *Use of proceeds.* As required by §230.463 of this chapter, following the effective date of the first registration statement filed under the Securities Act by an issuer, the issuer or successor issuer shall report the use of proceeds on its first periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act (15 U.S.C. 78m(a) and 78o(d)) after effectiveness of its Securities Act registration statement, and thereafter on each of its subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act through the later of disclosure of the application of all the offering proceeds, or disclosure of the termination of the offering. If a report of the use of proceeds is required with respect to the first effective registration statement of the predecessor issuer, the successor issuer shall provide such a report. The information provided pursuant to paragraphs (f)(2) through (f)(4) of this Item need only be provided with respect to the first periodic report filed pursuant to sections 13(a) and 15(d) of the Exchange Act after effectiveness of the registration

statement filed under the Securities Act. Subsequent periodic reports filed pursuant to sections 13(a) and 15(d) of the Exchange Act need only provide the information required in paragraphs (f)(2) through (f)(4) of this Item if any of such required information has changed since the last periodic report filed. In disclosing the use of proceeds in the first periodic report filed pursuant to the Exchange Act, the issuer or successor issuer should include the following information:

(1) The effective date of the Securities Act registration statement for which the use of proceeds information is being disclosed and the Commission file number assigned to the registration statement;

(2) If the offering has commenced, the offering date, and if the offering has not commenced, an explanation why it has not;

(3) If the offering terminated before any securities were sold, an explanation for such termination; and

(4) If the offering did not terminate before any securities were sold, disclose:

(i) Whether the offering has terminated and, if so, whether it terminated before the sale of all securities registered;

(ii) The name(s) of the managing underwriter(s), if any;

(iii) The title of each class of securities registered and, where a class of convertible securities is being registered, the title of any class of securities into which such securities may be converted;

(iv) For each class of securities (other than a class of securities into which a class of convertible securities registered may be converted without additional payment to the issuer) the following information, provided for both the account of the issuer and the account(s) of any selling security holder(s): the amount registered, the aggregate price of the offering amount registered, the amount sold and the aggregate offering price of the amount sold to date;

(v) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of expenses incurred for the issuer's account in connection with the issuance and distribution of the securities registered for underwriting discounts and commissions, finders' fees, expenses paid to or for underwriters, other expenses and total expenses. Indicate if a reasonable estimate for the amount of expenses incurred is provided instead of the actual amount of expense. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others;

(vi) The net offering proceeds to the issuer after deducting the total expenses described in paragraph (f)(4)(v) of this Item;

(vii) From the effective date of the Securities Act registration statement to the ending date of the reporting period, the amount of net offering proceeds to the issuer used for construction of plant, building and facilities; purchase and installation of machinery and equipment; purchases of real estate; acquisition of other business(es); repayment of indebtedness; working capital; temporary investments (which should be specified); and any other purposes for which at least five (5) percent of the issuer's total offering proceeds or $100,000 (whichever is less) has been used (which should be specified). Indicate if a reasonable estimate for the amount of net offering proceeds applied is provided instead of the actual amount of net offering proceeds used. Indicate whether such payments were:

(A) Direct or indirect payments to directors, officers, general partners of the issuer or their associates; to persons owning ten (10) percent or more of any class of equity securities of the issuer; and to affiliates of the issuer; or

(B) Direct or indirect payments to others; and

(viii) If the use of proceeds in paragraph (f)(4)(vii) of this Item represents a material change in the use of proceeds described in the prospectus, the issuer should describe briefly the material change.

Instructions. 1. Information required by this Item 701 need not be set forth as to notes, drafts, bills of exchange, or bankers' acceptances which mature not later than one year from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

[47 FR 11401, Mar. 16, 1982, as amended at 61 FR 54508, Oct. 18, 1996; 62 FR 39762, July 24, 1997; 70 FR 1597, Jan. 7, 2005; 73 FR 967, Jan. 4, 2008]

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§229.702 (Item 702) Indemnification of directors and officers.

State the general effect of any statute, charter provisions, by-laws, contract or other arrangements under which any controlling persons, director or officer of the registrant is insured or indemnified in any manner against liability which he may incur in his capacity as such.

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§229.703 Purchases of equity securities by the issuer and affiliated purchasers.

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the issuer or any "affiliated purchaser," as defined in §240.10b-18(a)(3) of this chapter, of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates)				
Month #2 (identify beginning and ending dates)				
Month #3 (identify beginning and ending dates)				
Total				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a));

Instruction to paragraph (b)(1) of Item 703: Include in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (e.g., whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

(2) The average price paid per share (or unit) (column (b));

(3) The total number of shares (or units) purchased as part of publicly announced repurchase plans or programs (column (c)); and

(4) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instructions to paragraphs (b)(3) and (b)(4) of Item 703: 1. In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2. By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share or unit amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table; and

e. Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

Instruction to Item 703: Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of §240.10b-18 of this chapter.

[68 FR 64969, Nov. 17, 2003]

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Subpart 229.800—List of Industry Guides

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§229.801 Securities Act industry guides.

(a)-(b) [Reserved]

(c) *Guide 3.* Statistical disclosure by bank holding companies.

(d) *Guide 4.* Prospectuses relating to interests in oil and gas programs.

(e) *Guide 5.* Preparation of registration statements relating to interests in real estate limited partnerships.

(f) *Guide 6.* Disclosures concerning unpaid claims and claim adjustment expenses of property-casualty insurance underwriters.

(g) *Guide 7.* Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations.

[47 FR 11401, Mar. 16, 1982, and 49 FR 47600, Dec. 6, 1984, as amended at 57 FR 36466, Aug. 13, 1992; 61 FR 30401, June 14, 1996; 74 FR 2193, Jan. 14, 2009]

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§229.802 Exchange Act industry guides.

(a)-(b) [Reserved]

(c) *Guide 3.* Statistical disclosure by bank holding companies.

(d) *Guide 4.* Disclosures concerning unpaid claims and claim adjustment expenses of property-casualty underwriters.

(e)-(f) [Reserved]

(g) *Guide 7.* Description of Property by Issuers Engaged or To Be Engaged in Significant Mining Operations.

[47 FR 11401, Mar. 16, 1982, as amended at 49 FR 47600, Dec. 6, 1984; 57 FR 36468, Aug. 13, 1992; 61 FR 30401, June 14, 1996; 74 FR 2193, Jan. 14, 2009]

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Subpart 229.900—Roll-Up Transactions

SOURCE: 56 FR 57247, Nov. 8, 1991, unless otherwise noted.

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§229.901 (Item 901) Definitions.

For the purposes of this subpart 229.900:

(a) *General partner* means the person or persons responsible under state law for managing or directing the management of the business and affairs of a partnership that is the subject of a roll-up transaction including, but not limited to, the general partner(s), board of directors, board of trustees, or other person(s) having a fiduciary duty to such partnership.

(b)(1) *Partnership* means any:

(i) Finite-life limited partnership; or

(ii) Other finite-life entity.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this Item (§229.901(b)(2)(ii)), a limited partnership or other entity is "finite-life" if:

(A) It operates as a conduit vehicle for investors to participate in the ownership of assets for a limited period of time; and

(B) It has as a policy or purpose distributing to investors proceeds from the sale, financing or refinancing of assets or cash from operations, rather than reinvesting such proceeds or cash in the business (whether for the term of the entity or after an initial period of time following commencement of operations).

(ii) A real estate investment trust as defined in I.R.C. section 856 is not *finite-life* solely because of the distribution to investors of net income as provided by the I.R.C. if its policies or purposes do not include the distribution to investors of proceeds from the sale, financing or refinancing of assets, rather than the reinvestment of such proceeds in the business.

(3) *Partnership* does not include any entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) or any Business Development Company as defined in section 2(a)(48) of that Act (15 U.S.C. 80a-2(a)(48)).

(c)(1) Except as provided in paragraph (c)(2) or (c)(3) of this Item, (§229.901(c)(2) or (c)(3)) *roll-up transaction* means a transaction involving the combination or reorganization of one or more partnerships, directly or indirectly, in which some or all of the investors in any of such partnerships will receive new securities, or securities in another entity.

(2) Notwithstanding paragraph (c)(1) of this Item, (§229.901(c)(1)) *roll-up transaction* shall not include:

(i) A transaction wherein the interests of all of the investors in each of the partnerships are repurchased, recalled, or exchanged in accordance with the terms of the preexisting partnership agreement for securities in an operating company specifically identified at the time of the formation of the original partnership;

(ii) A transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*);

(iii) A transaction that involves only issuers that are not required to register or report under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), both before and after the transaction;

(iv) A transaction that involves the combination or reorganization of one or more partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if:

(A) Such action is approved by not less than 66⅔ % of the outstanding units of each of the participating partnerships; and

(B) As a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the preexisting partnership agreements;

(v) A transaction in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1), if:

(A) Such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

(B) The securities of that entity issued to investors in the transaction do not exceed 20% of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity; and

(C) For purposes of paragraph (c)(2)(v) of this Item (§229.901(c)(2)(v)), a *regularly traded* security means any security with a minimum closing price of $2.00 or more for a majority of the business days during the preceding three-month period and a six-month minimum average daily trading volume of 1,000 shares;

(vi) A transaction in which all of the investors' partnership securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1) and such investors receive new securities or securities in another entity that are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1), except that, for purposes of this paragraph, securities that are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Securities Exchange Act of 1934 shall not include securities listed on the American Stock Exchange's Emerging Company Marketplace;

(vii) A transaction in which the investors in any of the partnerships involved in the transaction are not subject to a significant adverse change with respect to voting rights, the terms of existence of the entity, management compensation or investment objectives; or

(viii) A transaction in which all investors are provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

(3) The Commission, upon written request or upon its own motion, may exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the definition of roll-up transaction or the requirements imposed on roll-up transactions by Items 902-915 of Regulation S-K (§§229.902-229.915), if it finds such action to be consistent with the public interest and the protection of investors.

(d) *Sponsor* means the person proposing the roll-up transaction.

(e) *Successor* means the surviving entity after completion of the roll-up transaction or the entity whose securities are being offered or sold to, or acquired by, limited partners of the partnerships or the limited partnerships to be combined or reorganized.

Instruction to Item 901. If a transaction is a roll-up transaction as defined in Item 901(c) of this subpart (§229.901(c)), the requirements of this subpart apply to each entity proposed to be included in the roll-up transaction, whether or not the entity is a "partnership" as defined in Item 901(b) of this subpart (§229.901(b)).

[56 FR 57247, Nov. 8, 1991, as amended at 59 FR 63682, Dec. 8, 1994]

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§229.902 (Item 902) Individual partnership supplements.

(a) If two or more entities are proposed to be included in the roll-up transaction, provide the information specified in this Item (§229.902) in a separate supplement to the disclosure document for each entity.

(b) The separate supplement required by paragraph (a) of this Item (§229.902) shall be filed as part of the registration statement, shall be delivered with the prospectus to investors in the partnership covered thereby, and shall include:

(1) A statement in the forepart of the supplement to the effect that:

(i) Supplements have been prepared for each partnership;

(ii) The effects of the roll-up transaction may be different for investors in the various partnerships; and

(iii) Upon receipt of a written request by an investor or his representative who has been so designated in writing, a copy of any supplement will be transmitted promptly, without charge, by the general partner or sponsor.

This statement must include the name and address of the person to whom investors should make their request.

(2) A brief description of each material risk and effect of the roll-up transaction, including, but not limited to, federal income tax consequences, for investors in the partnership, with appropriate cross references to the discussions of the risks, effects and tax consequences of the roll-up transaction required in the principal disclosure document pursuant to Items 904 and 915 of this subpart (§§229.904 and 229.915). Such discussion shall address the effect of the roll-up transaction on the partnership's financial condition and results of operations.

(3) A statement concerning whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in the partnership, together with a brief discussion of the bases for such belief, with appropriate cross references to the discussion of the fairness of the roll-up transaction required in the principal disclosure document pursuant to Item 910 of this subpart (§229.910). If there are material differences between the fairness analysis for the partnership and for the other partnerships, such differences shall be described briefly in the supplement.

(4) A brief, narrative description of the method of calculating the value of the partnership and allocating interests in the successor to the partnership, and a table showing such calculation and allocation. Such table shall include the following information (or other information of a comparable character necessary to a thorough understanding of the calculation and allocation):

(i) The appraised value of each separately appraised significant asset (as defined in Item 911(c)(5) of this subpart (§229.911(c)(5)) held by the partnership, or, if appraisals have not been obtained for each significant asset, the value assigned for purposes of the valuation of the partnership to each significant asset for which an appraisal has not been obtained;

(ii) The dollar amount of any mortgages or other similar liabilities to which each of such assets is subject;

(iii) Cash and cash equivalent assets held by the partnership;

(iv) Other assets held by the partnership;

(v) Other liabilities of the partnership;

(vi) The value assigned to the partnership;

(vii) The value assigned to the partnership per interest held by investors in the partnership (on an equivalent interest basis, such as per $1,000 original investment);

(viii) The aggregate number of interests in the successor to be allocated to the partnership and the percentage of the total interests of the successor;

(ix) The number of interests in the successor to be allocated to investors in the partnership for each interest held by such investors (on an equivalent interest basis, such as per $1,000 original investment); and

(x) The value assigned to the general partner's interest in the partnership, and the number of interests in the successor or other consideration to be allocated in the roll-up transaction to the general partner for such general partnership interest or otherwise as compensation or reimbursement for claims against or interests in the partnership, such as foregone fees, unearned fees and for fees to be earned on the sale or refinancing of an asset.

(5) The amounts of compensation paid, and cash distributions made, to the general partner and its affiliates by the partnership for the last three fiscal years and the most recently completed interim period and the amounts that would have been paid if the compensation and distributions structure to be in effect after the roll-up transaction had been in effect during such period. If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor (e.g., if properties will be sold or purchased after the roll-up transaction and no properties were sold or purchased during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(6) Cash distributions made to investors during each of the last five fiscal years and most recently completed interim period, identifying any such distributions which represent a return of capital.

(7) An appropriate cross reference to selected financial information concerning the partnership and the pro forma financial statements included in the principal disclosure document in response to Item 914(b)(2) of this subpart (§229.914 (b)(2)).

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§229.903 (Item 903) Summary.

(a) Provide in the forepart of the disclosure document a clear, concise and comprehensible summary of the roll-up transaction.

(b) The summary required by paragraph (a) of this Item (§229.903) shall include a summary description of each of the following items, as well as any other material terms or consequences of the roll-up transaction necessary to an understanding of such transaction:

(1) Each material risk and effect on investors, including, but not limited to:

(i) Changes in the business plan, voting rights, cash distribution policies, form of ownership interest or management compensation;

(ii) The general partner's conflicts of interest in connection with the roll-up transaction and in connection with the successor's future operations; and

(iii) The likelihood that securities received by investors in the roll-up transaction will trade at prices substantially below the value assigned to such securities in the roll-up transaction and/or the value of the successor's assets;

(2) The material terms of the roll-up transaction, including the valuation method used to allocate securities in the successor to investors in the partnerships;

(3) Whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in each partnership, including a brief discussion of the bases for such belief;

(4) Any opinion from an outside party concerning the fairness of the roll-up transaction, including whether the opinion addresses the fairness of all possible combinations of partnerships or portions of partnerships, and contacts with any outside party concerning fairness opinions, valuations or reports in connection with the roll-up transaction required to be disclosed pursuant to Item 911(a)(5) of this subpart (§229.911(a)(5));

(5) The background of and reasons for the roll-up transaction, as well as alternatives to the roll-up transaction described in response to Item 908(b) of this subpart (§229.908(b));

(6) Rights of investors to exercise dissenters' or appraisal rights or similar rights and to obtain a list of investors in the partnership in which the investor holds an interest; and

(7) If any affiliates of the general partner or the sponsor may participate in the business of the successor or receive compensation from the successor, an organizational chart showing the relationships between the general partner, the sponsor and their affiliates.

Instruction to Item 903. The description of the material risks and effects of the roll-up transaction required by paragraph (b)(1) of this Item (§229.903) must be presented prominently in the forepart of the summary.

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§229.904 (Item 904) Risk factors and other considerations.

(a) Immediately following the summary required by Item 903 of this subpart (§229.903), describe in reasonable detail each material risk and effect of the roll-up transaction on investors in each partnership, including, but not limited to:

(1) The potential risks, adverse effects and benefits of the roll-up transaction for investors and for the general partner, including those which result from each matter described in response to Item 905 of this subpart (§229.905), with appropriate cross references to the comparative information required by Item 905;

(2) The material risks arising from an investment in the successor; and

(3) The likelihood that securities of the successor received by investors in the roll-up transaction will trade in the securities markets at a price substantially below the value assigned to such securities in the roll-up transaction and/or the value of the assets of the successor, and the effects on investors of such a trading market discount.

(b) Quantify each risk or effect to the extent practicable.

(c) State whether any of such risks or effects may be different for investors in any partnership and, if so, identify such partnership(s) and describe such difference(s).

Instruction to Item 904. The requirement to quantify the effects of the roll-up transaction shall include, but not be limited to:

(i) If cost savings resulting from combined administration of the partnerships is identified as a potential benefit of the roll-up transaction, the amount of cost savings and a comparison of such amount to the costs of the roll-up transaction; and

(ii) If there may be a material conflict of interest of the sponsor or general partner arising from its receipt of payments or other consideration as a result of the roll-up transaction, the amount of such payments and other consideration to be obtained in the roll-up transaction and a comparison of such amounts to the amounts to which the sponsor or general partner would be entitled without the roll-up transaction.

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§229.905 (Item 905) comparative information.

(a)(1) Describe the voting and other rights of investors in the successor under the successor's governing instruments and under applicable law. Compare such rights to the voting and other rights of investors in each partnership subject to the transaction under the partnerships' governing instruments and under applicable law. Describe the effects of the change(s) in such rights.

(2) Describe the duties owed by the general partner of the successor to investors in the successor under the successor's governing instruments and under applicable law. Compare such duties to the duties owed by the general partner of each partnership to investors in the partnership under the partnership's governing instruments and under applicable law. Describe the effects of the change(s) in such duties.

(b)(1) Describe each item of compensation (including reimbursement of expenses) payable by the successor after the roll-up transaction to the general partner and its affiliates or to any affiliate of the successor. Compare such compensation to the compensation currently payable to the general partner and its affiliates by each partnership. Describe the effects of the change(s) in compensation arrangements.

(2) Describe each instance in which cash or other distributions may be made by the successor to the general partner and its affiliates or to any affiliate of the successor. Compare such distributions to the distributions currently paid or payable to the general partner and its affiliates by each partnership. Describe the effects of the change(s) in distribution arrangements. If distributions similar to those currently paid or payable by any partnership to the general partner or its affiliates will not be made by the successor, state whether or not other compensation arrangements with the successor described in response to paragraph (b)(1) of this Item (§229.905) (e.g., incentive fees payable upon sale of a property) will, in effect, replace such distributions.

(3) Provide a table demonstrating the changes in such compensation and distributions setting forth among other things:

(i) The actual amounts of compensation and distributions, separately identified, paid by the partnerships on a combined basis to the general partner and its affiliates for the partnerships' last three fiscal years and most recently ended interim periods; and

(ii) The amounts of compensation and distributions that would have been paid if the compensation and distributions structure to be in effect after the roll-up transaction had been in effect during such period.

(4) If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor from that shown in the table provided in response to paragraph (b)(3)(ii) of this Item (§229.905) (e.g., if properties will be sold or purchased after the roll-up transaction and no properties were sold or purchased during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(5) Describe the material conflicts that may arise between the interests of the sponsor or general partner and the interests of investors in the successor as a result of the compensation and distribution arrangements described in response to paragraphs (b)(1) and (2) of this Item (§229.905) and describe any steps that will be taken to resolve any such conflicts.

(c) Describe any provisions in the governing instruments of the successor and any policies of the general partner of the successor relating to distributions to investors of cash from operations, proceeds from the sale, financing or refinancing of assets, and any other distributions. Compare such provisions and policies to those of each of the partnerships. Describe the effects of any change(s) in such provisions or policies.

(d)(1) Describe each material investment policy of the successor, including, without limitation, policies with respect to borrowings by the successor. Compare such investment policies to the investment policies of each of the partnerships. Describe the effects of any change(s) in such policies.

(2) Describe any plans of the general partner, sponsor or of any person who will be an affiliate of the successor with respect to:

(i) A sale of any material assets of the partnerships;

(ii) A purchase of any material assets; and

(iii) Borrowings.

(3)(i) State whether or not specific assets have been identified for sale, financing, refinancing or purchase following the roll-up transaction.

(ii) If specific assets have been so identified, describe the assets and the proposed transaction.

(e) Describe any other similar terms or policies of the successor that are material to an investment in the successor. Compare any such terms or policies to those of each of the partnerships. Describe the effects of any change(s) in any such terms or policies.

Instructions to Item 905: (1) The information provided in response to this Item (§229.905) should be illustrated in tables or other readily understandable formats, which should be included together with the disclosures required by this Item.

(2) The information required by this Item (§229.905) shall be set forth in appropriate separate sections of the principal disclosure document.

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§229.906 (Item 906) Allocation of roll-up consideration.

(a) Describe in reasonable detail the method used to allocate interests in the successor to investors in the partnerships and the reasons why such method was used.

(b) Provide a table showing the calculation of the valuation of each partnership and the allocation of interests in the successor to investors. Such table shall include for each partnership the following information (or other information of a comparable character necessary to an understanding of the calculation and allocation):

(1) The value assigned to each significant category of assets of the partnership and the total value assigned to the partnership;

(2) The total value assigned to all partnerships;

(3) The aggregate amount of interests in the successor to be allocated to each partnership and the percentage of the total amount of all such interests represented thereby; and

(4) The amount of interests of the successor to be issued to investors per interest held in each partnership (on an equivalent interest basis, such as per $1,000 invested).

(c) If interests in the successor will be allocated to the general partner in exchange for its general partner interest or otherwise or if the general partner will receive other consideration in connection with the roll-up transaction:

(1) Describe in reasonable detail the method used to allocate interests in the successor to the general partner or to determine the amount of consideration payable to the general partner and the reasons such method(s) was used; and

(2) Identify the consideration paid by the general partner for interests in the partnerships that will be exchanged in the roll-up transaction.

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§229.907 (Item 907) Background of the roll-up transaction.

(a)(1) Furnish a summary of the background of the transaction. Such summary shall include, but not be limited to, a description of any contacts, negotiations or transactions concerning any of the following matters:

(i) A merger, consolidation, or combination of any of the partnerships;

(ii) An acquisition of any of the partnerships or a material amount of any of their assets;

(iii) A tender offer for or other acquisition of securities of any class issued by any of the partnerships; or

(iv) A change in control of any of the partnerships.

(2) The summary required by paragraph (a)(1) of this Item shall:

(i) Cover the period beginning with each partnership's second full fiscal year preceding the date of the filing of the roll-up transaction;

(ii) Include contacts, negotiations or transactions between the general partner or its affiliates and any person who would have a direct interest in the matters listed in paragraphs (a)(1)(i)-(iv) of this Item; and

(iii) Identify the person who initiated such contacts, negotiations or transactions.

(b) Briefly describe the background of each partnership, including, but not limited to:

(1) The amount of capital raised from investors, the extent to which net proceeds from the original offering of interests have been invested, the extent to which funds have been invested as planned and the amount not yet invested; and

(2) The partnership's investment objectives and the extent to which the partnership has achieved its investment objectives.

(c) Discuss whether the general partner (including any affiliated person materially dependent on the general partner's compensation arrangement with the partnership) or any partnership has experienced since the commencement of the most recently completed fiscal year or is likely to experience any material adverse financial developments. If so, describe such developments and the effect of the transaction on such matters.

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§229.908 (Item 908) Reasons for and alternatives to the roll-up transaction.

(a) Describe the reason(s) for the roll-up transaction.

(b)(1) If the general partner or sponsor considered alternatives to the roll-up transaction being proposed, describe such alternative(s) and state the reason(s) for their rejection.

(2) Whether or not described in response to paragraph (b)(1) of this Item (§229.908), describe in reasonable detail the potential alternative of continuation of the partnerships in accordance with their existing business plans, including the effects of such continuation and the material risks and benefits that likely would arise in connection therewith, and, if applicable, the general partner's reasons for not considering such alternative.

(3) Whether or not described in response to paragraph (b)(1) of this Item (§229.908), describe in reasonable detail the potential alternative of liquidation of the partnerships, the procedures required to accomplish liquidation, the effects of liquidation, the material risks and benefits that likely would arise in connection with liquidation, and, if applicable, the general partner's reasons for not considering such alternative.

(c) State the reasons for the structure of the roll-up transaction and for undertaking such transaction at this time.

(d) State whether the general partner initiated the roll-up transaction and, if not, whether the general partner participated in the structuring of the transaction.

(e) State whether the general partner recommends the roll-up transaction and briefly describe the reasons for such recommendation.

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§229.909 (Item 909) Conflicts of interest.

(a) Briefly describe the general partner's fiduciary duties to each partnership subject to the roll-up transaction and each actual or potential material conflict of interest between the general partner and the investors relating to the roll-up transaction.

(b)(1) State whether or not the general partner has retained an unaffiliated representative to act on behalf of investors for purposes of negotiating the terms of the roll-up transaction. If no such representative has been retained, describe the reasons therefor and the risks arising from the absence of separate representation.

(2) If an unaffiliated representative has been retained to represent investors:

(i) Identify such unaffiliated representative;

(ii) Briefly describe the representative's qualifications, including a brief description of any other transaction similar to the roll-up transaction in which the representative has served in a similar capacity within the past five years;

(iii) Describe the method of selection of such representative, including a statement as to whether or not any investors were consulted in the selection of the representative and, if so, the names of such investors;

(iv) Describe the scope and terms of the engagement of the representative, including, but not limited to, what party will be responsible for paying the representative's fees and whether such fees are contingent upon the outcome of the roll-up transaction;

(v) Describe any material relationship between the representative or its affiliates and:

(A) The general partner, sponsor, any affiliate of the general partner or sponsor; or

(B) Any other person having a material interest in the roll-up transaction,

which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(vi) Describe in reasonable detail the actions taken by the representative on behalf of investors; and

(vii) Describe the fiduciary duties or other legal obligations of the representative to investors in each of the partnerships.

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§229.910 (Item 910) Fairness of the transaction.

(a) State whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors and the reasons for such belief. Such discussion must address the fairness of the roll-up transaction to investors in each of the partnerships and as a whole. If the roll-up transaction may be completed with a combination of partnerships consisting of less than all partnerships, or with portions of partnerships, the belief stated must address each possible combination.

(b) Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this Item (§229.910) is based and, to the extent practicable, the weight assigned to each such factor. Such discussion should include an analysis of the extent, if any, to which such belief is based on the factors set forth in Instructions (2) and (3) to this Item (§229.910), paragraph (b)(1) of Item 909 of this subpart (§229.909(b)(1)) and Item 911 of this subpart (§229.911). This discussion also must:

(1) Compare the value of the consideration to be received in the roll-up transaction to the value of the consideration that would be received pursuant to each of the alternatives discussed in response to Item 908(b) of this subpart (§229.908 (b)); and

(2) Describe any material differences among the partnerships (e.g., different types of assets or different investment objectives) relating to the fairness of the transaction.

(c) If any offer of the type described in Instruction (2)(viii) to this Item (§229.910) has been received, describe such offer and state the reason(s) for its rejection.

(d) Describe any factors known to the general partner that may affect materially the value of the consideration to be received by investors in the roll-up transaction, the values assigned to the partnerships for purposes of the comparisons to alternatives required by paragraph (b) of this Item (§229.910) and the fairness of the transaction to investors.

(e) State whether the general partner's statements in response to paragraphs (a) and (b) of this Item (§229.910) are based, in whole or in part, on any report, opinion or appraisal described in response to Item 911 of this subpart (§229.911). If so, describe any material uncertainties known to the general partner that relate to the conclusions in any such report, opinion or appraisal including, but not limited to, developments or trends that have affected or are reasonably likely to affect materially such conclusions.

Instructions to Item 910: (1) A statement that the general partner has no reasonable belief as to the fairness of the roll-up transaction to investors will not be considered sufficient disclosure in response to paragraph (a) of this Item (§229.910(a)).

(2) The factors which are important in determining the fairness of a roll-up transaction to investors and the weight, if any, which should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraph (b)(1) of Item 909 (§229.909(b)(1)) and whether the consideration offered to investors constitutes fair value in relation to:

(i) Current market prices, if any;

(ii) Historic market prices, if any;

(iii) Net book value;

(iv) Going concern value;

(v) Liquidation value;

(vi) Purchases of limited partnership interests by the general partner or sponsor or their affiliates since the commencement of the partnership's second full fiscal year preceding the date of filing of the disclosure document for the roll-up transaction;

(vii) Any report, opinion, or appraisal described in Item 911 of this subpart (§229.911); and

(viii) Offers of which the general partner or sponsor is aware made during the preceding eighteen months for a merger, consolidation, or combination of any of the partnerships; an acquisition of any of the partnerships or a material amount of their assets; a tender offer for or other acquisition of securities of any class issued by any of the partnerships; or a change in control of any of the partnerships.

(3) The discussion concerning fairness should specifically address material terms of the transaction including whether the consideration offered to investors constitutes fair value in relation to:

(i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction;

(ii) The methods used to determine such consideration; and

(iii) The compensation to be paid to the sponsor in the future.

(4) Conclusory statements, such as "The roll-up transaction is fair to investors in relation to net book value, going concern value, liquidation value and future prospects of the partnership," will not be considered sufficient disclosure in response to paragraph (b) of this Item (§229.910(b)).

(5) Consideration should be given to presenting the comparative numerical data as to the value of the consideration being received by investors, liquidation value and other values in a tabular format. Financial and other information concerning the partnerships should be prepared based upon the most recent available information, such as, in the case of financial information, the periods covered by interim selected financial information included in the prospectus in accordance with Item 914 of this subpart (§229.914).

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§229.911 (Item 911) Reports, opinions and appraisals.

(a)(1) *All material reports, opinions or appraisals.* State whether or not the general partner or sponsor has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party which is materially related to the roll-up transaction including, but not limited to, any such report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to investors in connection with the roll-up transaction or the fairness of such transaction to the general partner or investors.

(2) With respect to any report, opinion or appraisal described in paragraph (a)(1) of this Item (§229.911);

(i) Identify such outside party;

(ii) Briefly describe the qualifications of such outside party;

(iii) Describe the method of selection of such outside party;

(iv) Describe any material relationship between:

(A) The outside party or its affiliates; and

(B) The general partner, sponsor, the successor or any of their affiliates,

which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(v) If such report, opinion or appraisal relates to the fairness of the consideration, state whether the general partner, sponsor or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid.

(vi) Furnish a summary concerning such report, opinion or appraisal which shall include, but not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the general partner, sponsor or its affiliates; and any limitation imposed by the general partner, sponsor or affiliate on the scope of the investigation. If any limitation was imposed by the general partner, sponsor or affiliate on the scope of the investigation, including, but not limited to, access to its personnel, premises, and relevant books and records, state the reasons therefor.

(vii) State whether any compensation paid to such outside party is contingent on the approval or completion of the roll-up transaction and, if so, the reasons for compensating such parties on a contingent basis.

(3) Furnish a statement to the effect that upon written request by an investor or his representative who has been so designated in writing, a copy of any such report, opinion or appraisal shall be transmitted promptly, without charge, by the general partner or sponsor. The statement also must include the name and address of the person to whom investors or their representatives should make their request.

(4) All reports, opinions or appraisals referred to in paragraph (a)(1) of this Item (§229.911) shall be filed as exhibits to the registration statement.

(5)(i) Describe any contacts in connection with the roll-up transaction between the sponsor or the general partner and any outside party with respect to the preparation by such party of an opinion concerning the fairness of the roll-up transaction, a valuation of a partnership or its assets, or any other report with respect to the roll-up transaction. No description is required, however, of contacts with respect to reports, opinions or appraisals filed as exhibits pursuant to paragraph (a)(4) of this Item (§229.911).

(ii) The description of contacts with any outside party required by paragraph (a)(5)(i) of this Item (§229.911) shall include the following:

(A) The identity of each such party;

(B) The nature of the contact;

(C) The actions taken by such party;

(D) Any views, preliminary or final, expressed on the proposed subject matter of the report, opinion or appraisal; and

(E) Any reasons such party did not provide a report, opinion or appraisal.

(b) *Fairness opinions:* (1) If any report, opinion or appraisal relates to the fairness of the roll-up transaction to investors in the partnerships, state whether or not the report, opinion or appraisal addresses the fairness of:

(i) The roll-up transaction as a whole and to investors in each partnership; and

(ii) All possible combinations of partnerships in the roll-up transaction (including portions of partnerships if the transaction is structured to permit portions of partnerships to participate). If all possible combinations are not addressed:

(A) Identify the combinations that are addressed;

(B) Identify the person(s) that determined which combinations would be addressed and state the reasons for the selection of the combinations; and

(C) State that if the roll-up transaction is completed with a combination of partnerships not addressed, no report, opinion or appraisal concerning the fairness of the roll-up transaction will have been obtained.

(2) If the sponsor or the general partner has not obtained any opinion on the fairness of the proposed roll-up transaction to investors in each of the affected partnerships, state the sponsor's or general partner's reasons for concluding that such an opinion is not necessary in order to permit the limited partners or shareholders to make an informed decision on the proposed transaction.

(c) *Appraisals.* If the report, opinion or appraisal consists of an appraisal of the assets of the partnerships:

(1) Describe the purpose(s) for which the appraisals were obtained and their use in connection with the roll-up transaction;

(2) Describe which assets are covered by the appraisals and state the aggregate appraised value of the assets covered by the appraisals (including such value net of associated indebtedness). Provide a description of, and valuation of, any assets subject to any material qualifications by the appraiser and a summary of such qualifications;

(3) Identify the date as of which the appraisals were prepared. State whether and in what circumstances the appraisals will be updated. State whether any events have occurred or conditions have changed since the date of the appraisals that may have caused a material change in the value of the assets;

(4) Include as an appendix to the prospectus one or more tables setting forth the following information:

(i) The appraised value of any separately appraised asset that is significant to the partnership holding such asset;

(ii) If the appraiser considered different valuation approaches in preparing the appraisals of the assets identified in response to paragraph (c)(4)(i) of this Item (§229.911(c)(4)(i)), the value of each such asset under each valuation approach considered by the appraiser, identifying the valuation approach used by the appraiser in determining the appraised value and the reason such approach was chosen; and

(iii) All material assumptions used by the appraiser in appraising the assets identified in response to paragraph (c)(4)(i) of this Item (§229.911(c)(4)(i)), and, if the appraiser used different assumptions for any of such assets, the reasons the different assumptions were chosen.

(5) For purposes of this Item and Item 902 of this subpart (§229.902), an asset is "significant" to a partnership if it represents more than 10% of the value of the partnership's assets as of the end of the most recently-completed fiscal year or recently-completed interim period or if 10% or more of the partnership's cash flow or net income for the most recently-completed fiscal year or most recently-completed subsequent interim period was derived from such asset.

Instructions to Item 911: (1) The reports, opinions and appraisals required to be identified in response to paragraph (a) of this Item (§229.911) include any reports, opinions and appraisals which materially relate to the roll-up transaction whether or not relied upon, such as reports or opinions regarding alternatives to the roll-up transaction whether or not the alternatives were rejected.

(2) The information called for by paragraph (a)(2) of this Item (§229.911) should be given with respect to the firm which provides the report, opinion or appraisal rather than the employees of such firm who prepared it.

(3) With respect to appraisals, a summary prepared by the appraisers should not be included in lieu of the description of the appraisals required by paragraph (c) of this Item (§229.911). A clear and concise summary description of the appraisals is required.

[56 FR 57247, Nov. 8, 1991, as amended at 59 FR 63683, Dec. 8, 1994]

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§229.912 (Item 912) Source and amount of funds and transactional expenses.

(a) State the source and total amount of funds or other consideration to be used in the roll-up transaction.

(b)(1) Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the roll-up transaction including, but not limited to, filing fees, legal, financial advisory, accounting and appraisal fees, solicitation expenses and printing costs. Identify the persons responsible for paying any or all of such expenses.

(2) State whether or not any partnership subject to the roll-up transaction will be, directly or indirectly, responsible for any or all of the expenses of the transaction. If any partnership will be so responsible, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(c) If all or any part of the consideration to be used by the sponsor or successor in the roll-up transaction is expected to be, directly or indirectly, provided by any partnership, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(d) If all or any part of the funds or other consideration is, or is expected to be, directly or indirectly borrowed by the sponsor or successor for the purpose of the roll-up transaction:

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

(2) Briefly describe any plans or arrangements to finance or repay such borrowing, or, if no plans or arrangements have been made, make a statement to that effect.

(e) If the source of all or any part of the funds to be used in the roll-up transaction is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Exchange Act and section 13(d) or 14(d) is applicable to such transaction, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

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§229.913 (Item 913) Other provisions of the transaction.

(a) State whether or not appraisal rights are provided under applicable state law, under the partnership's governing instruments or will be voluntarily accorded by the successor, the general partner or the sponsor (or any of their affiliates) in connection with the roll-up transaction. If so, summarize such appraisal rights. If appraisal rights will not be available to investors who object to the transaction, briefly outline the rights which may be available to such investors under such law.

(b) If any provision has been made to allow investors to obtain access to the books and records of the partnership or to obtain counsel or appraisal services at the expense of the successor, the general partner, the partnership, the sponsor (or any of their affiliates), describe such provision.

(c) Discuss the investors' rights under federal and state law to obtain a partnership's list of investors.

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§229.914 (Item 914) Pro forma financial statements: selected financial data.

(a) In addition to the information required by Item 301 of Regulation S-K, Selected Financial Data (§229.301), and Item 302 of Regulation S-K, Supplementary Financial Information (§229.302), for each partnership proposed to be included in a roll-up transaction provide: Ratio of earnings to fixed charges, cash and cash equivalents, total assets at book value, total assets at the value assigned for purposes of the roll-up transaction (if applicable), total liabilities, general and limited partners' equity, net increase (decrease) in cash and cash equivalents, net cash provided by operating activities, distributions; and per unit data for net income (loss), book value, value assigned for purposes of the roll-up transaction (if applicable), and distributions (separately identifying distributions that represent a return of capital). This information should be provided for the same period(s) for which Selected Financial Data and Supplementary Financial Information are required to be provided. Additional or other information should be provided if material to an understanding of each partnership proposed to be included in a roll-up transaction.

(b) Provide pro forma financial information (including oil and gas reserves and cash flow disclosure, if appropriate), assuming:

(1) All partnerships participate in the roll-up transaction; and

(2) Participation in a roll-up transaction of those partnerships that on a combined basis have the lowest combined net cash provided by operating activities for the last fiscal year of such partnerships, *provided* participation by such partnerships satisfies all conditions to consummation of the roll-up transaction. If the combination of all partnerships proposed to be included in a roll-up transaction results in such lowest combined net cash provided by operating activities, this shall be noted and no separate pro forma financial statements are required.

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

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

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

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

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

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

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

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§229.915 (Item 915) Federal income tax consequences.

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

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

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

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

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§229.1000 (Item 1000) Definitions.

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

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

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

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

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

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

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

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

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

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§229.1001 (Item 1001) Summary term sheet.

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

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

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

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

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§229.1002 (Item 1002) Subject company information.

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

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

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

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

(e) *Prior public offerings.* If the filing person has made an underwritten public offering of the subject securities for cash during the past three years that was registered under the Securities Act of 1933 or exempt from registration under Regulation A (§230.251 through §230.263 of this chapter), state the date of the offering, the amount of securities offered,

the offering price per share (adjusted for stock splits, stock dividends, etc. as appropriate) and the aggregate proceeds received by the filing person.

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

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

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

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

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

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

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

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

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

(5) Country of citizenship.

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

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

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§229.1004 (Item 1004) Terms of the transaction.

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

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

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

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

(iii) The scheduled expiration date;

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

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

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

(vii) The procedures for tendering and withdrawing securities;

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

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

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

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

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

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

(i) A brief description of the transaction;

(ii) The consideration offered to security holders;

(iii) The reasons for engaging in the transaction;

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

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

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

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

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

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

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

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

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

(f) *Eligibility for listing or trading.* If the transaction involves the offer of securities of the filing person in exchange for equity securities held by unaffiliated security holders of the subject company, describe whether or not the filing person will take steps to assure that the securities offered are or will be eligible for trading on an automated quotations system operated by a national securities association.

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

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

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

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

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

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

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

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

(1) Merger;

(2) Consolidation;

(3) Acquisition;

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

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

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

(c) *Negotiations or contacts.* Describe any negotiations or material contacts concerning the matters referred to in paragraph (b) of this section during the past two years between:

(1) Any affiliates of the subject company; or

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

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

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

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

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

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

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

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

2. Include information for any securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of the subject securities. No disclosure, however, is required about standard default and similar provisions contained in loan agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Conditions.* State any material conditions to the financing discussed in response to paragraph (a) of this section. Disclose any alternative financing arrangements or alternative financing plans in the event the primary financing plans fall through. If none, so state.

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

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

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

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

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

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

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

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

2. The information required by this section may be based on the number of outstanding securities disclosed in the subject company's most recently available filing with the Commission, unless the filing person has more current information.

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

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

(1) The identity of the persons specified in the Instruction to this section who effected the transaction;

(2) The date of the transaction;

(3) The amount of securities involved;

(4) The price per share; and

(5) Where and how the transaction was effected.

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

(a) The filing person (for all schedules);

(b) Any person named in Instruction C of the schedule and any associate or majority-owned subsidiary of the issuer or filing person (for all schedules except Schedule 14D-9 (§240.14d-101 of this chapter));

(c) Any executive officer, director, affiliate or subsidiary of the filing person (for Schedule 14D-9 (§240.14d-101 of this chapter);

(d) The issuer and any executive officer or director of any subsidiary of the issuer or filing person (for an issuer tender offer on Schedule TO (§240.14d-100 of this chapter)); and

(e) The issuer and any pension, profit-sharing or similar plan of the issuer or affiliate filing the schedule (for a going-private transaction on Schedule 13E-3 (§240.13e-100 of this chapter)).

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

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

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

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

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

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§229.1010 (Item 1010) Financial statements.

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

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

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

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

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

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

(1) The company's balance sheet as of the date of the most recent balance sheet presented under paragraph (a) of this section;

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

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

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

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

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

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

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

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

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

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§229.1011 (Item 1011) Additional information.

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

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

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

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

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

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

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

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

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

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

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

Instructions to Item 1011(b).

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

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

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

[64 FR 61443, Nov. 10, 1999, as amended at 76 FR 6044, Feb. 2, 2011]

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§229.1012 (Item 1012) The solicitation or recommendation.

(a) *Solicitation or recommendation.* State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the filing person is advising holders of the subject securities to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, describe the other action recommended. If the filing person is the subject company and is not making a recommendation, state whether the subject company is expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Factors considered in determining fairness.* Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this section is based and, to the extent practicable, the weight assigned to each factor. The discussion must include an analysis of the extent, if any, to which the filing person's beliefs are based on the factors described in Instruction 2 of this section, paragraphs (c), (d) and (e) of this section and Item 1015 of Regulation M-A (§229.1015).

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

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

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

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

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

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

(i) Current market prices;

(ii) Historical market prices;

(iii) Net book value;

(iv) Going concern value;

(v) Liquidation value;

(vi) Purchase prices paid in previous purchases disclosed in response to Item 1002(f) of Regulation M-A (§229.1002(f));

(vii) Any report, opinion, or appraisal described in Item 1015 of Regulation M-A (§229.1015); and

(viii) Firm offers of which the subject company or affiliate is aware made by any unaffiliated person, other than the filing persons, during the past two years for:

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The subject company or its affiliates;

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

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

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

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

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§229.1016 (Item 1016) Exhibits.

File as an exhibit to the schedule:

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

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

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

(3) Going-private disclosure document;

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

(5) Any other disclosure materials;

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

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

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

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

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

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

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

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

EXHIBIT TABLE TO ITEM 1016 OF REGULATION M-A

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

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Subpart 229.1100—Asset-Backed Securities (Regulation AB)

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

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§229.1100 (Item 1100) General.

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

(b) *Presentation of historical delinquency and loss information.* Several items in Regulation AB call for the presentation of historical information and data on delinquencies and loss information. In providing such information:

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

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

(3) Present loss and cumulative loss information, as applicable, regarding charge-offs, charge-off rate, gross losses, recoveries and net losses (with a description of how these terms are defined), the number and amount of assets experiencing a loss and the number and amount of assets with a recovery, the ratio of aggregate net losses to average portfolio balance and the average of net loss on all assets that have experienced a net loss.

(4) Categorize all delinquency and loss information by pool asset type.

(5) In a registration statement under the Securities Act or the Exchange Act or in a prospectus to be filed pursuant to §230.424, describe how delinquencies, charge-offs and uncollectible accounts are defined or determined, addressing the

effect of any grace period, re-aging, restructure, partial payments considered current or other practices on delinquency and loss experience.

(6) Describe any other material information regarding delinquencies and losses particular to the pool asset type(s), such as repossession information, foreclosure information and real estate owned (REO) or similar information.

(c) *Presentation of certain third party information.* If information of a third party is required in a filing by Item 1112(b) of this Regulation AB (Information regarding significant obligors) (§229.1112(b)), Items 1114(b)(2) or 1115(b) of this Regulation AB (Information regarding significant provider of enhancement or other support) (§229.1114(b)(2) or (§229.1115(b)), or Item 1125 of this Regulation AB (Asset-level information) (§229.1125) such information, in lieu of including such information, may be provided as follows:

(1) *Incorporation by reference.* If the following conditions are met, you may incorporate by reference (by means of a statement to that effect) the reports filed by the third party (or the entity that consolidates the third party) pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)):

(i) Such third party or the entity that consolidates the third party is required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act.

(ii) Such third party or the entity that consolidates the third party has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or such shorter period that such party was required to file such reports and materials).

(iii) The reports filed by such third party, or entity that consolidates the third party, include (or properly incorporate by reference) the financial statements of such third party.

(iv) If incorporated by reference into a prospectus or registration statement, the prospectus also states that all documents subsequently filed by such third party, or the entity that consolidates the third party, pursuant to section 13(a) or 15(d) of the Exchange Act prior to the termination of the offering also shall be deemed to be incorporated by reference into the prospectus.

Instructions to Item 1100(c)(1): 1. In addition to the conditions in paragraph (c)(1) of this section, any information incorporated by reference must comply with all applicable Commission rules pertaining to incorporation by reference, such as Item 10(d) of Regulation S-K (§229.10(d)), Rule 303 of Regulation S-T (§232.303 of this chapter), Rule 411 of Regulation C (§230.411 of this chapter), and Rules 12b-23 and 12b-32 under the Exchange Act (§§240.12b-23 and 240.12b-32 of this chapter).

2. In addition, any applicable requirements under the Securities Act or the rules and regulations of the Commission regarding the filing of a written consent for the use of incorporated material apply to the material incorporated by reference. *See*, for example, §230.439 of this chapter.

3. Any undertakings set forth in Item 512 of Regulation S-K (§229.512) apply to any material incorporated by reference in a registration statement or prospectus.

4. If neither the third party nor any of its affiliates has had a direct or indirect agreement, arrangement, relationship or understanding, written or otherwise, relating to the ABS transaction, and neither the third party nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the ABS transaction, then paragraph (c)(1)(ii) of this section is qualified by the knowledge of the registrant.

5. If you are relying on paragraph (c)(1) of this section to provide information required by Item 1112 of this Regulation AB regarding a significant obligor that is an asset-backed issuer and the pool assets relating to such significant obligor are asset-backed securities, then for purposes of paragraph (c)(1)(iii) of this section, the term "financial statements" means the information required by Instruction 3 of Item 1112 of this Regulation AB. Such information required by Instruction 3.a. of Item 1112 of this Regulation AB may be incorporated by reference from a prospectus that contains such information and is included in an effective Securities Act registration statement or filed pursuant to §230.424 of this chapter.

(2) *Reference information for significant obligors.* If the third party information relates to a significant obligor and the following conditions are met, you may include a reference to the third party's periodic reports (or the third party's parent with respect to paragraph (c)(2)(ii)(C) of this section) under section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) that are on file with the Commission (or otherwise publicly available with respect to paragraph (c)(2)(ii)(F) of this section), along with a statement of how those reports may be accessed, including the third party's name and Commission file number, if applicable (See, e.g., Item 1118 of this Regulation AB):

(i) Neither the third party nor any of its affiliates has had a direct or indirect agreement, arrangement, relationship or understanding, written or otherwise, relating to the asset-backed securities transaction, and neither the third party nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the asset-backed securities transaction.

(ii) To the knowledge of the registrant, any of the following is true:

(A) The third party is eligible to use Form S-3 or F-3 (§239.13 or 239.33 of this chapter) for a primary offering of non-investment grade securities pursuant to General Instruction I.B.1 of such forms.

(B) The third party meets the requirements of General Instruction I.A. of Form S-3 or General Instructions 1.A.1, 2, 3, 4 and 6 of Form F-3 and the pool assets relating to such third party are non-convertible investment grade securities, as described in General Instruction 1.B.2 of Form S-3 or Form F-3.

(C) If the third party does not meet the conditions of paragraph (c)(2)(ii)(A) or (c)(2)(ii)(B) of this section and the pool assets relating to the third party are fully and unconditionally guaranteed by a direct or indirect parent of the third party, General Instruction I.C.3 of Form S-3 or General Instruction I.A.5(iii) of Form F-3 is met with respect to the pool assets relating to such third party and the requirements of Rule 3-10 of Regulation S-X (§210.3-10 of this chapter) are satisfied regarding the information in the reports to be referenced.

(D) If the pool assets relating to the third party are guaranteed by a wholly owned subsidiary of the third party and the subsidiary does not meet the conditions of paragraph (c)(2)(ii)(A) or (c)(2)(ii)(B) of this section, the criteria in either paragraph (c)(2)(ii)(A) or paragraph (c)(2)(ii)(B) of this section are met with respect to the third party and the requirements of Rule 3-10 of Regulation S-X (§210.3-10 of this chapter) are satisfied regarding the information in the reports to be referenced.

(E) The pool assets relating to such third party are asset-backed securities and the third party is filing reports pursuant to section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) and has filed all the material that would be required to be filed pursuant to section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for a period of at least twelve calendar months and any portion of a month immediately preceding the filing referencing the third party's reports (or such shorter period that such third party was required to file such materials).

(F) The third party is a U.S. government-sponsored enterprise, has outstanding securities held by non-affiliates with an aggregate market value of $75 million or more, and makes information publicly available on an annual and quarterly basis, including audited financial statements prepared in accordance with generally accepted accounting principles covering the same periods that would be required for audited financial statements under Regulation S-X (§§210.1-01 through 210.12-29 of this chapter) and non-financial information consistent with that required by Regulation S-K (§§229.10 through 229.1123).

Instruction to Item 1100(c)(2): If you are relying on paragraph (c)(2)(ii)(E) of this section because the pool assets relating to such third party are asset-backed securities, then for purposes of a registration statement under the Securities Act or the Exchange Act or a prospectus to be filed pursuant to §230.424 for your securities, you also must include a reference (including Commission reporting number and filing date) to the prospectus for the third party asset-backed securities that:

(a) Is either included in an effective Securities Act registration statement or filed pursuant to §230.424 of this chapter; and

(b) Contains the information required by Instruction 3.a. of Item 1112 of this Regulation AB.

(d) *Other participants to the transaction and pool assets representing interests in certain other asset pools.* (1) If the asset-backed securities transaction involves additional or intermediate parties not specifically identified in this Regulation AB, the disclosure required by this Regulation AB includes information to the extent material regarding any such party and its role, function and experience in relation to the asset-backed securities and the asset pool. Describe the material terms of any agreement with such party regarding the transaction, and file such agreement as an exhibit.

(2) If the asset pool backing the asset-backed securities includes one or more pool assets representing an interest in or the right to the payments or cash flows of another asset pool, then for purposes of this Regulation AB and §§240.13a-18 and 240.15d-18 of this chapter, references to the asset pool and the pool assets of the issuing entity also include the other asset pool and its pool assets if the following conditions are met:

(i) Both the issuing entity for the asset-backed securities and the entity issuing the pool asset to be included in the issuing entity's asset pool were established under the direction of the same sponsor or depositor.

(ii) The pool asset was created solely to satisfy legal requirements or otherwise facilitate the structuring of the asset-backed securities transaction.

Instruction to Item 1100(d)(2). Reference to the underlying asset pool includes, without limitation, compliance with applicable servicing criteria referenced in §§240.13a-18 and 240.15d-18 of this chapter and the servicer compliance statement required by Item 1123 of this Regulation AB. In addition, provide clear and concise disclosure, including by flow chart or other illustration, of the transaction and the various parties involved.

(e) *Foreign asset-backed securities.* If the asset-backed securities are issued by a foreign issuer (as defined in §230.405 of this chapter), backed by pool assets that are foreign assets, or affected by enhancement or support contemplated by Items 1114 or 1115 of this Regulation AB provided by a foreign entity, then in providing the disclosure required by this Regulation AB (including, but not limited to, Items 1104 and 1110 of this Regulation AB regarding origination and securitization practices, Item 1107 of this Regulation AB regarding the sale or transfer of the pool assets, bankruptcy remoteness and collateral protection, Item 1108 of this Regulation AB regarding servicing, Item 1109 of this Regulation AB regarding the rights, duties and responsibilities of the trustee, Item 1111 of this Regulation AB regarding the terms, nature and treatment of the pool assets and Items 1114 or 1115 of this Regulation AB, as applicable, regarding the enhancement provider), the filing must describe any pertinent governmental, legal or regulatory or administrative matters and any pertinent tax matters, exchange controls, currency restrictions or other economic, fiscal, monetary or

potential factors in the applicable home jurisdiction that could materially affect payments on, the performance of, or other matters relating to, the assets contained in the pool or the asset-backed securities. See also Instruction 2 to Item 202 of Regulation S-K (§229.202). In addition, in a registration statement under the Securities Act, provide the information required by Item 101(g) of Regulation S-K (§229.101(g)). Disclosure also is required in Forms 10-D (§249.312 of this chapter) and 10-K (§249.310 of this chapter) with respect to the asset-backed securities regarding any material impact caused by foreign legal and regulatory developments during the period covered by the report which have not been previously described in a Form 10-D, 10-K or 8-K (§249.308 of this chapter) filed under the Exchange Act.

(f) *Filing of required exhibits.* Where agreements or other documents in this Regulation AB (§§229.1100 through 229.1125) are specified to be filed as exhibits to a Securities Act registration statement, such agreements or other documents, if applicable, may be incorporated by reference as an exhibit to the registration statement, such as by filing a Form 8-K (§249.308 of this chapter) in the case of offerings registered on Form SF-3 (§239.45 of this chapter). Final agreements must be filed and made part of the registration statement no later than the date the final prospectus is required to be filed under §230.424 of this chapter.

[70 FR 1597, Jan. 7, 2005, as amended at 70 FR 72373, Dec. 5, 2005; 79 FR 57313, Sept. 24, 2014; 80 FR 6652, Feb. 6, 2015]

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§229.1101 (Item 1101) Definitions.

The following definitions apply to the terms used in Regulation AB (§§229.1100 through 229.1123), unless specified otherwise:

(a) *ABS informational and computational material* means a written communication consisting solely of one or some combination of the following:

(1) Factual information regarding the asset-backed securities being offered and the structure and basic parameters of the securities, such as the number of classes, seniority, payment priorities, terms of payment, the tax, Employment Retirement Income Security Act of 1974, as amended, (29 U.S.C. 1001 *et seq.*) ("ERISA") or other legal conclusions of counsel, and descriptive information relating to each class (e.g., principal amount, coupon, minimum denomination, anticipated price, yield, weighted average life, credit enhancements, anticipated ratings, and other similar information relating to the proposed structure of the offering);

(2) Factual information regarding the pool assets underlying the asset-backed securities, including origination, acquisition and pool selection criteria, information regarding any prefunding or revolving period applicable to the offering, information regarding significant obligors, data regarding the contractual and related characteristics of the underlying pool assets (e.g., weighted average coupon, weighted average maturity, delinquency and loss information and geographic distribution) and other factual information concerning the parameters of the asset pool appropriate to the nature of the underlying assets, such as the type of assets comprising the pool and the programs under which the loans were originated;

(3) Identification of key parties to the transaction, such as servicers, trustees, depositors, sponsors, originators and providers of credit enhancement or other support, including a brief description of each such party's roles, responsibilities, background and experience;

(4) Static pool data, as referenced in Item 1105 of this Regulation AB, such as for the sponsor's and/or servicer's portfolio, prior transactions or the asset pool itself;

(5) Statistical information displaying for a particular class of asset-backed securities the yield, average life, expected maturity, interest rate sensitivity, cash flow characteristics, total rate of return, option adjusted spread or other financial or statistical information relating to the class or classes under specified prepayment, interest rate, loss or other hypothetical scenarios. Examples of such information under the definition include:

(i) Statistical results of interest rate sensitivity analyses regarding the impact on yield or other financial characteristics of a class of securities from changes in interest rates at one or more assumed prepayment speeds;

(ii) Statistical information showing the cash flows that would be associated with a particular class of asset-backed securities at a specified prepayment speed; and

(iii) Statistical information reflecting the financial impact of losses based on a variety of loss or default experience, prepayment, interest rate and related assumptions.

(6) The names of underwriters participating in the offering of the securities, and their additional roles, if any, within the underwriting syndicate;

(7) The anticipated schedule for the offering (including the approximate date upon which the proposed sale to the public will begin) and a description of marketing events (including the dates, times, locations, and procedures for attending or otherwise accessing them); and

(8) A description of the procedures by which the underwriters will conduct the offering and the procedures for transactions in connection with the offering with an underwriter or participating dealer (including procedures regarding account-opening and submitting indications of interest and conditional offers to buy).

(b) *Asset-backed issuer* means an issuer whose reporting obligation results from either the registration of an offering of asset-backed securities under the Securities Act, or the registration of a class of asset-backed securities under section 12 of the Exchange Act (15 U.S.C. 78*l*).

(c)(1) *Asset-backed security* means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases.

(2) The following additional conditions apply in order to be considered an *asset-backed security:*

(i) Neither the depositor nor the issuing entity is an investment company under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) nor will become an investment company as a result of the asset-backed securities transaction.

(ii) The activities of the issuing entity for the asset-backed securities are limited to passively owning or holding the pool of assets, issuing the asset-backed securities supported or serviced by those assets, and other activities reasonably incidental thereto.

(iii) No non-performing assets are part of the asset pool as of the measurement date.

(iv) Delinquent assets do not constitute 50% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(v) With respect to securities that are backed by leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute:

(A) For motor vehicle leases, 65% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(B) For all other leases, 50% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(3) Notwithstanding the requirement in paragraph (c)(1) of this section that the asset pool be a discrete pool of assets, the following are considered to be a discrete pool of assets for purposes of being considered an *asset-backed security:*

(i) *Master trusts.* The offering related to the securities contemplates adding additional assets to the pool that backs such securities in connection with future issuances of asset-backed securities backed by such pool. The offering related to the securities also may contemplate additions to the asset pool, to the extent consistent with paragraphs (c)(3)(ii) and (c)(3)(iii) of this section, in connection with maintaining minimum pool balances in accordance with the transaction agreements for master trusts with revolving periods or receivables or other financial assets that arise under revolving accounts.

(ii) *Prefunding periods.* The offering related to the securities contemplates a prefunding account where a portion of the proceeds of that offering is to be used for the future acquisition of additional pool assets, if the duration of the prefunding period does not extend for more than one year from the date of issuance of the securities and the portion of the proceeds for such prefunding account does not involve in excess of:

(A) For master trusts, 25% of the aggregate principal balance of the total asset pool whose cash flows support the securities; and

(B) For other offerings, 25% of the proceeds of the offering.

(iii) *Revolving periods.* The offering related to the securities contemplates a revolving period where cash flows from the pool assets may be used to acquire additional pool assets, provided, that, for securities backed by receivables or other financial assets that do not arise under revolving accounts, the revolving period does not extend for more than three years from the date of issuance of the securities and the additional pool assets are of the same general character as the original pool assets.

Instructions to Item 1101(c). 1. For purposes of determining non-performing, delinquency and residual value thresholds, the "measurement date" means either:

a. The designated cut-off date for the transaction (*i.e.*, the date on and after which collections on the pool assets accrue for the benefit of asset-backed security holders), if applicable; or

b. In the case of master trusts, the date as of which delinquency and loss information or securitized pool balance information, as applicable, is presented in the prospectus for the asset-backed securities to be filed pursuant to §230.424(b) of this chapter.

2. Non-performing and delinquent assets that are not funded or purchased by proceeds from the securities and that are not considered in cash flow calculations for the securities need not be considered as part of the asset pool for purposes of determining non-performing and delinquency thresholds.

3. For purposes of determining non-performing, delinquency and residual value thresholds for master trusts, calculations are to be measured against the total asset pool whose cash flows support the securities.

4. For purposes of determining residual value thresholds, residual values need not be included in measuring against the thresholds to the extent a separate party is obligated for such amounts (e.g., through a residual value guarantee, residual value insurance or where the lessee is obligated to cover any residual losses).

(d) *Delinquent*, for purposes of determining if a pool asset is delinquent, means if a pool asset is more than 30 or 31 days or a single payment cycle, as applicable, past due from the contractual due date, as determined in accordance with any of the following:

(1) The transaction agreements for the asset-backed securities;

(2) The delinquency recognition policies of the sponsor, any affiliate of the sponsor that originated the pool asset or the servicer of the pool asset; or

(3) The delinquency recognition policies applicable to such pool asset established by the primary safety and soundness regulator of any entity listed in paragraph (d)(2) of this section or the program or regulatory entity that oversees the program under which the pool asset was originated.

(e) *Depositor* means the depositor who receives or purchases and transfers or sells the pool assets to the issuing entity. For asset-backed securities transactions where there is not an intermediate transfer of the assets from the sponsor to the issuing entity, the term depositor refers to the sponsor. For asset-backed securities transactions where the person transferring or selling the pool assets is itself a trust, the depositor of the issuing entity is the *depositor* of that trust.

(f) *Issuing entity* means the trust or other entity created at the direction of the sponsor or depositor that owns or holds the pool assets and in whose name the asset-backed securities supported or serviced by the pool assets are issued.

(g) *Non-performing*, for purposes of determining if a pool asset is non-performing, means a pool asset if any of the following is true:

(1) The pool asset would be treated as wholly or partially charged-off under the requirements in the transaction agreements for the asset-backed securities;

(2) The pool asset would be treated as wholly or partially charged-off under the charge-off policies of the sponsor, an affiliate of the sponsor that originates the pool asset or a servicer that services the pool asset; or

(3) The pool asset would be treated as wholly or partially charged-off under the charge-off policies applicable to such pool asset established by the primary safety and soundness regulator of any entity listed in paragraph (g)(2) of this section or the program or regulatory entity that oversees the program under which the pool asset was originated.

(h) *NRSRO* has the same meaning as the term "nationally recognized statistical rating organization" as used in §240.15c3-1(c)(2)(vi)(F) of this chapter.

(i) *Obligor* means any person who is directly or indirectly committed by contract or other arrangement to make payments on all or part of the obligations on a pool asset.

(j) *Servicer* means any person responsible for the management or collection of the pool assets or making allocations or distributions to holders of the asset-backed securities. The term *servicer* does not include a trustee for the issuing entity or the asset-backed securities that makes allocations or distributions to holders of the asset-backed securities if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer.

(k) *Significant obligor* means any of the following:

(1) An obligor or a group of affiliated obligors on any pool asset or group of pool assets if such pool asset or group of pool assets represents 10% or more of the asset pool.

(2) A single property or group of related properties securing a pool asset or a group of pool assets if such pool asset or group of pool assets represents 10% or more of the asset pool.

(3) A lessee or group of affiliated lessees if the related lease or group of leases represents 10% or more of the asset pool.

Instructions to Item 1101(k): 1. Regarding paragraph (k)(3) of this section, the calculation must focus on the leases whose cash flow supports the asset-backed securities directly or indirectly (including the residual value of the physical property underlying the leases if a portion of the securitized pool balance is attributable to the residual value of such property), regardless of whether the asset pool contains the leases themselves, mortgages on properties that are the subject of the leases or other assets related to the leases.

2. If separate pool assets, or properties underlying pool assets, are cross-defaulted and/or cross-collateralized, such pool assets are to be aggregated and considered together in determining concentration levels.

3. If the pool asset is a mortgage or lease relating to real estate, the pool asset is non-recourse to the obligor, and the obligor does not manage the property or does not own other assets and has no other operations, then the obligor need not be considered a separate significant obligor from the real estate. Otherwise, the obligor is a separate significant obligor.

4. The determination of significant obligors is to be made as of the designated cut-off date for the transaction (*i.e.*, the date on and after which collections on the pool assets accrue for the benefit of asset-backed security holders), provided, that, in the case of master trusts, the determination is to be made as of the cut-off date (or issuance date if there is not a cut-off date) for each issuance of asset-backed securities backed by the same asset pool. In addition, if disclosure is required pursuant to either Item 6.05 of Form 8-K (17 CFR 249.308) or in a Form 10-D (17 CFR 249.312) pursuant to Item 1121(b) of this Regulation AB, the determination of significant obligors is to be made against the asset pool described in such report. However, if the percentage concentration regarding an obligor falls below 10% subsequent to the determination dates discussed in this Instruction, the obligor no longer need be considered a significant obligor.

(l) *Sponsor* means the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.

(m) *Asset representations reviewer* means any person appointed to review the underlying assets for compliance with the representations and warranties on the underlying pool assets and is not affiliated with any sponsor, depositor, servicer, or trustee of the transaction, or any of their affiliates. The asset representations reviewer shall not be the party to determine whether noncompliance with representations or warranties constitutes a breach of any contractual provision. The asset representations reviewer also shall not be the same party or an affiliate of any party hired by the sponsor or underwriter to perform pre-closing due diligence work on the pool assets.

[70 FR 1597, Jan. 7, 2005, as amended at 79 FR 57313, Sept. 24, 2014]

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§229.1102 (Item 1102) Forepart of registration statement and outside cover page of the prospectus.

In addition to the information required by Item 501 of Regulation S-K (§229.501), provide the following information on the outside front cover page of the prospectus. Present information regarding multiple classes in tables if doing so will aid understanding. If information regarding multiple classes cannot appear on the cover page due to space limitations, include the information in the summary or in an immediately preceding separate table.

(a) Identify the sponsor, the depositor and the issuing entity (if known). Such identifying information should include a Central Index Key number for the depositor and the issuing entity, and if applicable, the sponsor.

(b) In identifying the title of the securities, include the series number, if applicable. If there is more than one class of securities offered, state the class designations of the securities offered.

(c) Identify the asset type(s) being securitized.

(d) Include a statement, if applicable and appropriately modified to the transaction, that the securities represent the obligations of the issuing entity only and do not represent the obligations of or interest in the sponsor, depositor or any of their affiliates.

(e) Identify the aggregate principal amount of all securities offered and the principal amount, if any, of each class of securities offered. If a class has no principal amount, disclose that fact, and, if applicable, state the notional amount, clearly identifying that the amount is a notional one. If the amounts are approximate, disclose that fact.

(f) Indicate the interest rate or specified rate of return of each class of security offered. If a class of securities does not bear interest or a specified return, disclose that fact. If the rate is based on a formula or is calculated in reference to a generally recognized interest rate index, such as a U.S. Treasury securities index, either provide the formula on the cover, or indicate that the rate is variable, indicate the index upon which the rate is based and indicate that further disclosure of how the rate is determined is included in the transaction summary.

(g) Identify the distribution frequency, by class or series where applicable, and the first expected distribution date for the asset-backed securities.

(h) Briefly describe any credit enhancement or other support for the transaction and identify any enhancement or support provider referenced in Items 1114(b) or 1115 of this Regulation AB.

Instruction to Item 1102: Also see Item 1113(f)(2) of this Regulation AB regarding the title of any class of securities with an optional redemption or termination feature that may be exercised when 25% or more of the original principal balance of the pool assets are still outstanding.

[70 FR 1597, Jan. 7, 2005, as amended at 79 FR 57313, Sept. 24, 2014]

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§229.1103 (Item 1103) Transaction summary and risk factors.

(a) *Prospectus summary.* In providing the information required by Item 503(a) of Regulation S-K (§229.503(a)), provide the following information in the prospectus summary, as applicable. Present information regarding multiple classes in tables if doing so will aid understanding. Consider using diagrams to illustrate the relationships among the parties, the structure of the securities offered (including, for example, the flow of funds or any subordination features) and any other material features of the transaction.

(1) Identify the participants in the transaction, including the sponsor, depositor, issuing entity, trustee and servicers contemplated by Item 1108(a)(2) of this Regulation AB, and their respective roles. Describe the roles briefly if they are not apparent from the title of the role. Identify any originator contemplated by Item 1110 of this Regulation AB and any significant obligor.

(2) Briefly identify the pool assets and summarize briefly the size and material characteristics of the asset pool. Identify the cut-off date or similar date for establishing the composition of the asset pool, if applicable.

Instruction to Item 1103(a)(2). What is required is summary disclosure tailored to the particular asset pool backing the asset-backed securities. While the material characteristics will vary depending on the nature of the pool assets, summary disclosure may include, among other things, statistical information of: The types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination. Include a cross-reference in the prospectus summary to the more detailed statistical information found in the prospectus.

(3) State briefly the basic terms of each class of securities offered. In particular:

(i) Identify the classes offered by the prospectus and any classes issued in the same transaction or residual or equity interests in the transaction that are not being offered by the prospectus.

(ii) State the interest rate or rate of return on each class of securities offered, to the extent that the rates on any class of securities were not disclosed in full on the prospectus cover page.

(iii) State the expected final and final scheduled maturity or principal distribution dates, if applicable, of each class of securities offered.

(iv) Identify the denominations in which the securities may be issued.

(v) Identify the distribution frequency on the securities.

(vi) Summarize the flow of funds, payment priorities and allocations among the classes of securities offered, the classes of securities that are not offered, and fees and expenses, to the extent necessary to understand the payment characteristics of the classes that are offered by the prospectus.

(vii) Identify any events in the transaction agreements that can trigger liquidation or amortization of the asset pool or other performance triggers that would alter the transaction structure or the flow of funds.

(viii) Identify any optional or mandatory redemption or termination features.

(ix) Identify any credit enhancement or other support for the transaction, as referenced in Items 1114(a) and 1115 of this Regulation AB, and briefly describe what protection or support is provided by the enhancement. Identify any enhancement provider referenced in Items 1114(b) and 1115 of this Regulation AB. Summarize how losses not covered by credit enhancement or support will be allocated to the securities.

(4) Identify any outstanding series or classes of securities that are backed by the same asset pool or otherwise have claims on the pool assets. In addition, state if additional series or classes of securities may be issued that are backed by the same asset pool and briefly identify the circumstances under which those additional securities may be issued. Specify if security holder approval is necessary for such issuances and if security holders will receive notice of such issuances.

(5) If the transaction will include prefunding or revolving periods, indicate:

(i) The term or duration of the prefunding or revolving period.

(ii) For prefunding periods, the amount of proceeds to be deposited in the prefunding account.

(iii) For revolving periods, the maximum amount of additional assets that may be acquired during the revolving period, if applicable.

(iv) The percentage of the asset pool and any class or series of the asset-backed securities represented by the prefunding account or the revolving period, if applicable.

(v) Any limitation on the ability to add pool assets.

(vi) The requirements for assets that may be added to the pool.

(6) If pool assets can otherwise be added, removed or substituted (for example, in the event of a breach in representations or warranties regarding pool assets), summarize briefly the circumstances under which such actions can occur.

(7) Summarize the amount or formula for calculating the fee that the servicer will receive for performing its duties, and identify from what source those fees will be paid and the distribution priority of those fees.

(8) Summarize the federal income tax issues material to investors of each class of securities offered.

(9) Indicate whether the issuance or sale of any class of offered securities is conditioned on the assignment of a rating by one or more rating agencies. If so, identify each rating agency and the minimum rating that must be assigned.

(b) *Risk factors.* In providing the information required by Item 503(c) of Regulation S-K (§229.503(c)), identify any risks that may be different for investors in any offered class of asset-backed securities, and if so, identify such classes and describe such difference(s).

[70 FR 1597, Jan. 7, 2005, as amended at 79 FR 57313, Sept. 24, 2014]

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§229.1104 (Item 1104) Sponsors.

Provide the following information about the sponsor:

(a) State the sponsor's name and describe the sponsor's form of organization.

(b) Describe the general character of the sponsor's business.

(c) Describe the sponsor's securitization program and state how long the sponsor has been engaged in the securitization of assets. The description must include, to the extent material, a general discussion of the sponsor's experience in securitizing assets of any type as well as a more detailed discussion of the sponsor's experience in and overall procedures for originating or acquiring and securitizing assets of the type included in the current transaction. Include to the extent material information regarding the size, composition and growth of the sponsor's portfolio of assets of the type to be securitized and information or factors related to the sponsor that may be material to an analysis of the origination or performance of the pool assets, such as whether any prior securitizations organized by the sponsor have defaulted or experienced an early amortization triggering event.

(d) Describe the sponsor's material roles and responsibilities in its securitization program, including whether the sponsor or an affiliate is responsible for originating, acquiring, pooling or servicing the pool assets, and the sponsor's participation in structuring the transaction.

(e) *Repurchases and replacements.* (1) If the underlying transaction agreements provide a covenant to repurchase or replace an underlying asset for breach of a representation or warranty, provide in the body of the prospectus for the prior three years, the information required by Rule 15Ga-1(a) (17 CFR 240.15Ga-1(a)) concerning all assets securitized by the sponsor that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets for all asset-backed securities (as that term is defined in Section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)) where the underlying transaction agreements included a covenant to repurchase or replace an underlying asset of the same asset class held by non-affiliates of the sponsor, except that:

(i) For prospectuses to be filed pursuant to §230.424 of this chapter prior to February 14, 2013, information may be limited to the prior year; and

(ii) For prospectuses to be filed pursuant to §230.424 of this chapter on or after February 14, 2013 but prior to February 14, 2014, information may be limited to the prior two years.

(2) Include a reference to the most recent Form ABS-15G filed by the securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) and disclose the CIK number of the securitizer.

(3) For prospectuses to be filed pursuant to §230.424 of this chapter, the information presented shall not be more than 135 days old.

(f) If the sponsor is required to repurchase or replace any asset for breach of a representation and warranty pursuant to the transaction agreements, provide information regarding the sponsor's financial condition to the extent that there is a material risk that the effect on its ability to comply with the provisions in the transaction agreements relating to the repurchase obligations for those assets resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

(g) Describe any interest that the sponsor, or any affiliate of the sponsor, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the sponsor or, if known, by an affiliate of the sponsor to offset the risk position held.

Instruction to Item 1104(g). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the sponsor in order to satisfy such requirements.

[70 FR 1597, Jan. 7, 2005, as amended at 76 FR 4511, Jan. 26, 2011; 79 FR 57313, Sept. 24, 2014]

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§229.1105 (Item 1105) Static pool information.

Describe the static pool information presented. Provide appropriate introductory and explanatory information to introduce the characteristics, the methodology used in determining or calculating the characteristics and any terms or abbreviations used. Include a description of how the static pool differs from the pool underlying the securities being offered, such as the extent to which the pool underlying the securities being offered was originated with the same or differing underwriting criteria, loan terms, and risk tolerances than the static pools presented. In addition to a narrative description, the static pool information should be presented graphically if doing so would aid in understanding.

(a) For amortizing asset pools, unless the registrant determines that such information is not material:

(1) Provide static pool information, to the extent material, regarding delinquencies, cumulative losses and prepayments for prior securitized pools of the sponsor for that asset type.

(2) If the sponsor has less than three years of experience securitizing assets of the type to be included in the offered asset pool, consider providing instead static pool information, to the extent material, regarding delinquencies, cumulative losses and prepayments by vintage origination years regarding originations or purchases by the sponsor, as applicable, for that asset type. A vintage origination year represents assets originated during the same year.

(3) In providing the information required by paragraphs (a)(1) and (a)(2) of this section:

(i) Provide the requested information for prior pools or vintage origination years, as applicable, relating to the following time period, to the extent material:

(A) Five years, or

(B) For so long as the sponsor has been either securitizing assets of the same asset type (in the case of paragraph (a)(1) of this section) or making originations or purchases of assets of the same asset type (in the case of paragraph (a)(2) of this section) if less than five years.

(ii) Present delinquency, cumulative loss and prepayment data for each prior securitized pool or vintage origination year, as applicable, over the life of the prior securitized pool or vintage origination year. The most recent periodic increment for the data must be as of a date no later than 135 days after the date of first use of the prospectus.

Instruction to Item 1105(a)(3)(ii). Present historical delinquency and loss information in accordance with Item 1100(b) of this Regulation AB (§229.1100(b)) through no less than 120 days.

(iii) Provide summary information for the original characteristics of the prior securitized pools or vintage origination years, as applicable and material. While the material summary characteristics may vary, these characteristics may include, among other things, the following: number of pool assets; original pool balance; weighted average initial loan balance; weighted average interest or note rate; weighted average original term; weighted average remaining term; weighted average and minimum and maximum standardized credit score or other applicable measure of obligor credit quality; product type; loan purpose; loan-to-value information; distribution of assets by loan or note rate; and geographic distribution information.

(iv) Provide graphical illustration of delinquencies, prepayments and losses for each prior securitized pool or by vintage origination year regarding originations or purchases by the sponsor, as applicable for that asset type.

(b) For revolving asset master trusts, unless the registrant determines that such information is not material, provide, to the extent material, data regarding delinquencies, cumulative losses, prepayments, payment rate, yield and standardized credit scores or other applicable measure of obligor credit quality in separate increments based on the date of origination of the pool assets. While the material increments may vary, consider presenting such data at a minimum in 12-month

increments through the first five years of the account's life (e.g., 0-12 months, 13-24 months, 25-36 months, 37-48 months, 49-60 months and 61 months or more).

(c) If the information that would otherwise be required by paragraph (a)(1), (a)(2) or (b) of this section is not material, but alternative static pool information would provide material disclosure, provide such alternative information instead. Similarly, information contemplated by paragraph (a)(1), (a)(2) or (b) of this section regarding a party or parties other than the sponsor may be provided in addition to or in lieu of such information regarding the sponsor if appropriate to provide material disclosure. In addition, provide other explanatory disclosure, including why alternative disclosure is being provided and explain the absence of any static pool information contemplated by paragraph (a)(1), (a)(2) or (b) of this section, as applicable.

(d) The following information provided in response to this section shall not be deemed to be a prospectus or part of a prospectus for the asset-backed securities nor shall such information be deemed to be part of the registration statement for the asset-backed securities:

(1) With respect to information regarding prior securitized pools of the sponsor that do not include the currently offered pool, information regarding prior securitized pools that were established before January 1, 2006; and

(2) With respect to information regarding the currently offered pool, information about the pool for periods before January 1, 2006.

(e) For prospectuses to be filed pursuant to §230.424 of this chapter that include information specified in paragraph (d)(1) or (d)(2) of this section, the prospectus shall disclose that such information is not deemed to be part of that prospectus or the registration statement for the asset-backed securities.

(f) If any of the information identified in paragraph (d)(1) or (d)(2) of this section that is to be provided in response to this section is unknown and not available to the registrant without unreasonable effort or expense, such information may be omitted, provided the registrant provides the information on the subject it possesses or can acquire without unreasonable effort or expense, and the registrant includes a statement in the prospectus showing that unreasonable effort or expense would be involved in obtaining the omitted information.

[70 FR 1597, Jan. 7, 2005, as amended at 70 FR 72373, Dec. 5, 2005; 79 FR 57314, Sept. 24, 2014]

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§229.1106 (Item 1106) Depositors.

If the depositor is not the same entity as the sponsor, provide separately the information regarding the depositor called for by paragraphs (a) and (b) of Item 1104 of this Regulation AB, and, to the extent the information would be material and materially different from the sponsor, paragraphs (c) and (d) of Item 1104 of this Regulation AB. In addition, provide the following information:

(a) The ownership structure of the depositor.

(b) The general character of any activities the depositor is engaged in other than securitizing assets and the time period during which it has been so engaged.

(c) Any continuing duties of the depositor after issuance of the asset-backed securities being registered regarding the asset-backed securities or the pool assets.

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§229.1107 (Item 1107) Issuing entities.

Provide the following information about the issuing entity:

(a) State the issuing entity's name and describe the issuing entity's form of organization, including the State or other jurisdiction under whose laws the issuing entity is organized. File the issuing entity's governing documents as an exhibit.

(b) Describe the permissible activities and restrictions on the activities of the issuing entity under its governing documents, including any restrictions on the ability to issue or invest in additional securities, to borrow money or to make loans to other persons. Describe any provisions in the issuing entity's governing documents allowing for modification of the issuing entity's governing documents, including its permissible activities.

(c) Describe any specific discretionary activities with regard to the administration of the asset pool or the asset-backed securities, and identify the person or persons authorized to exercise such discretion.

(d) Describe any assets owned or to be owned by the issuing entity, apart from the pool assets, as well as any liabilities of the issuing entity, apart from the asset-backed securities. Disclose the fiscal year end of the issuing entity.

(e) If the issuing entity has executive officers, a board of directors or persons performing similar functions, provide the information required by Items 401, 402, 403 404 and 407(a), (c)(3), (d)(4), (d)(5) and (e)(4) of Regulation S-K (§§229.401, 229.402, 229.403, 229.404 and 229.407(a), (c)(3), (d)(4), (d)(5) and (e)(4)) for the issuing entity.

(f) Describe the terms of any management or administration agreement regarding the issuing entity. File any such agreement as an exhibit.

(g) Describe the capitalization of the issuing entity and the amount or nature of any equity contribution to the issuing entity by the sponsor, depositor or other party.

(h) Describe the sale or transfer of the pool assets to the issuing entity as well as the creation (and perfection and priority status) of any security interest in favor of the issuing entity, the trustee, the asset-backed security holders or others, including the material terms of any agreement providing for such sale, transfer or creation of a security interest. File any such agreements as an exhibit. In addition to an appropriate narrative description, also provide this information graphically or in a flow chart if it will aid understanding.

(i) If the pool assets are securities, as defined under the Securities Act, state the market price of the securities and the basis on which the market price was determined.

(j) If expenses incurred in connection with the selection and acquisition of the pool assets are to be payable from offering proceeds, disclose the amount of such expenses. If such expenses are to be paid to the sponsor, servicer contemplated by Item 1108(a)(2) of this Regulation AB, depositor, issuing entity, originator contemplated by Item 1110 of this Regulation AB, underwriter, or any affiliate of the foregoing, separately identify the type and amount of expenses paid to each such party.

(k) Describe to the extent material any provisions or arrangements included to address any one or more of the following issues:

(1) Whether any security interests granted in connection with the transaction are perfected, maintained and enforced.

(2) Whether declaration of bankruptcy, receivership or similar proceeding with respect to the issuing entity can occur.

(3) Whether in the event of a bankruptcy, receivership or similar proceeding with respect to the sponsor, originator, depositor or other seller of the pool assets, the issuing entity's assets will become part of the bankruptcy estate or subject to the bankruptcy control of a third party.

(4) Whether in the event of a bankruptcy, receivership or similar proceeding with respect to the issuing entity, the issuing entity's assets will become subject to the bankruptcy control of a third party.

(l) If applicable law prohibits the issuing entity from holding the pool assets directly (for example, an "eligible lender" trustee must hold student loans originated under the Federal Family Education Loan Program of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*)), describe the arrangements instituted to hold the pool assets on behalf of the issuing entity. Include disclosure regarding the arrangements taken, as applicable, regarding the items in paragraph (k) of this section with respect to any such additional entity that holds such assets on behalf of the issuing entity.

[70 FR 1597, Jan. 7, 2005, as amended at 71 FR 53259, Sept. 8, 2006]

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§229.1108 (Item 1108) Servicers.

Provide the following information for the servicer.

(a) *Multiple servicers.* Where servicing of the pool assets utilizes multiple servicers (e.g., master servicers that oversee the actions of other servicers, primary servicers that have primary contact with the obligor, or special servicers for specific servicing functions):

(1) Provide a clear introductory description of the roles, responsibilities and oversight requirements of the entire servicing structure and the parties involved. In addition to an appropriate narrative discussion of the allocation of servicing responsibilities, also consider presenting the information graphically if doing so will aid understanding.

(2) Identify:

(i) Each master servicer;

(ii) Each affiliated servicer;

(iii) Each unaffiliated servicer that services 10% or more of the pool assets; and

(iv) Any other material servicer responsible for calculating or making distributions to holders of the asset-backed securities, performing work-outs or foreclosures, or other aspect of the servicing of the pool assets or the asset-backed securities upon which the performance of the pool assets or the asset-backed securities is materially dependent.

(3) Provide the information in paragraphs (b), (c), (d), and (e) of this section, as applicable depending on the servicer's role, for each servicer identified in paragraphs (a)(2)(i), (ii) and (iv) of this section and each unaffiliated servicer identified in paragraph (a)(2)(iii) of this section that services 20% or more of the pool assets

(b) *Identifying information and experience.* (1) State the servicer's name and describe the servicer's form of organization.

(2) State how long the servicer has been servicing assets. Provide, to the extent material, a general discussion of the servicer's experience in servicing assets of any type as well as a more detailed discussion of the servicer's experience in, and procedures for the servicing function it will perform in the current transaction for assets of the type included in the current transaction. Include to the extent material information regarding the size, composition and growth of the servicer's portfolio of serviced assets of the type included in the current transaction and information on factors related to the servicer that may be material to an analysis of the servicing of the assets or the asset-backed securities, as applicable.

(3) Describe any material changes to the servicer's policies or procedures in the servicing function it will perform in the current transaction for assets of the same type included in the current transaction during the past three years.

(4) Provide information regarding the servicer's financial condition to the extent that there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

(c) *Servicing agreements and servicing practices.* (1) Describe the material terms of the servicing agreement and the servicer's duties regarding the asset-backed securities transaction. File the servicing agreement as an exhibit.

(2) Describe to the extent material the manner in which collections on the assets will be maintained, such as through a segregated collection account, and the extent of commingling of funds that occurs or may occur from the assets with other funds, serviced assets or other assets of the servicer.

(3) Describe to the extent material any special or unique factors involved in servicing the particular type of assets included in the current transaction, such as subprime assets, and the servicer's processes and procedures designed to address such factors.

(4) Describe to the extent material the terms of any arrangements whereby the servicer is required or permitted to provide advances of funds regarding collections, cash flows or distributions, including interest or other fees charged for such advances and terms of recovery by the servicer of such advances. To the extent material, provide statistical information regarding servicer advances on the pool assets and the servicer's overall servicing portfolio for the past three years.

(5) Describe to the extent material the servicer's process for handling delinquencies, losses, bankruptcies and recoveries, such as through liquidation of the underlying collateral, note sale by a special servicer or borrower negotiation or workouts.

(6) If the servicer has custodial responsibility for the assets, describe material arrangements regarding the safekeeping and preservation of the assets, such as the physical promissory notes, and procedures to reflect the segregation of the assets from other serviced assets. If no servicer has custodial responsibility for the assets, disclose that fact, identify the party that has such responsibility and provide the information called for by this paragraph for such party.

(7) Describe any limitations on the servicer's liability under the transaction agreements regarding the asset-backed securities transaction.

(d) *Back-up servicing.* Describe the material terms regarding the servicer's removal, replacement, resignation or transfer, including:

(1) Provisions for selection of a successor servicer and financial or other requirements that must be met by a successor servicer.

(2) The process for transferring servicing to a successor servicer.

(3) Provisions for payment of expenses associated with a servicing transfer and any additional fees charged by a successor servicer. Specify the amount of any funds set aside for a servicing transfer.

(4) Arrangements, if any, regarding a back-up servicer for the assets and the identity of any such back-up servicer.

(e) Describe any interest that the servicer, or any affiliate of the servicer, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the servicer or, if known, by an affiliate of the servicer to offset the risk position held.

Instruction to Item 1108(e). The disclosure required under this item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the servicer in order to satisfy such requirements.

[70 FR 1597, Jan. 7, 2005, as amended at 79 FR 57314, Sept. 24, 2014]

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§229.1109 (Item 1109) Trustees and other transaction parties.

(a) *Trustees.* Provide the following information for each trustee:

(1) State the trustee's name and describe the trustee's form of organization.

(2) Describe to what extent the trustee has had prior experience serving as a trustee for asset-backed securities transactions involving similar pool assets, if applicable.

(3) Describe the trustee's duties and responsibilities regarding the asset-backed securities under the governing documents and under applicable law. In addition, describe any actions required by the trustee, including whether notices are required to investors, rating agencies or other third parties, upon an event of default, potential event of default (and how defined) or other breach of a transaction covenant and any required percentage of a class or classes of asset-backed securities that is needed to require the trustee to take action.

(4) Describe any limitations on the trustee's liability under the transaction agreements regarding the asset-backed securities transaction.

(5) Describe any indemnification provisions that entitle the trustee to be indemnified from the cash flow that otherwise would be used to pay the asset-backed securities.

(6) Describe any contractual provisions or understandings regarding the trustee's removal, replacement or resignation, as well as how the expenses associated with changing from one trustee to another trustee will be paid.

Instruction to Item 1109. If multiple trustees are involved in the transaction, provide a description of the roles and responsibilities of each trustee.

(b) *Asset representations reviewer.* Provide the following for each asset representations reviewer:

(1) State the asset representations reviewer's name and describe its form of organization.

(2) Describe to what extent the asset representations reviewer has had prior experience serving as an asset representations reviewer for asset-backed securities transactions involving similar pool assets.

(3) Describe the asset representations reviewer's duties and responsibilities regarding the asset-backed securities under the governing documents and under applicable law. In addition, describe any actions required of the asset representations reviewer, including whether notices are required to investors, rating agencies or other third parties, and any required percentage of a class or classes of asset-backed securities that is needed to require the asset representations reviewer to take action.

(4) Disclose the manner and amount in which the asset representations reviewer is compensated.

(5) Describe any limitations on the asset representations reviewer's liability under the transaction agreements regarding the asset-backed securities transaction.

(6) Describe any indemnification provisions that entitle the asset representations reviewer to be indemnified from the cash flow that otherwise would be used to pay holders of the asset-backed securities.

(7) Describe any contractual provisions or understandings regarding the asset representations reviewer's removal, replacement or resignation, as well as how the expenses associated with changing from one asset representations reviewer to another asset representations reviewer will be paid.

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§229.1110 (Item 1110) Originators.

(a) Identify any originator or group of affiliated originators, apart from the sponsor or its affiliates, that originated, or is expected to originate, 10% or more of the pool assets. Also identify any originator(s) originating less than 10% of the pool assets if the cumulative amount originated by parties other than the sponsor or its affiliates is more than 10% of the pool assets.

(b) Provide the following information for any originator or group of affiliated originators, apart from the sponsor or its affiliates, that originated, or is expected to originate, 20% or more of the pool assets:

(1) The originator's form of organization.

(2) To the extent material, a description of the originator's origination program and how long the originator has been engaged in originating assets. The description must include a discussion of the originator's experience in originating assets of the type included in the current transaction. In providing the description, include, if material, information regarding the size and composition of the originator's origination portfolio as well as information material to an analysis of the performance of the pool assets, such as the originator's credit-granting or underwriting criteria for the asset types being securitized.

(3) Describe any interest that the originator, or any affiliate of the originator, has retained in the transaction, including the amount and nature of that interest. Disclose any hedge (security specific or portfolio) materially related to the credit risk of the securities that was entered into by the originator or, if known, by an affiliate of the originator to offset the risk position held.

Instruction to Item 1110(b)(3). The disclosure required under this Item shall separately state the amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the originator in order to satisfy such requirements.

(c) For any originator identified under paragraph (b) of this section, if such originator is required to repurchase or replace a pool asset for breach of a representation and warranty pursuant to the transaction agreements, provide information regarding the originator's financial condition to the extent that there is a material risk that the effect on its ability to comply with the provisions in the transaction agreements relating to the repurchase obligations for those assets resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

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§229.1111 (Item 1111) Pool assets.

Describe the pool assets, including the information required by this Item 1111. Present statistical information in tabular or graphical format, if such presentation will aid understanding. Present statistical information in appropriate distributional groups or incremental ranges in addition to presenting appropriate overall pool totals, averages and weighted averages, if such presentation will aid in the understanding of the data. In addition to presenting the number, amount and percentage of pool assets by distributional group or range, also provide statistical information for each group or range by variables, to the extent material, such as, average balance, weighted average coupon, average age and remaining term, average loan-to-value or similar ratio and weighted average standardized credit score or other applicable measure of obligor credit quality. These variables are just examples and should be tailored to the particular asset class backing the asset-backed securities. Consider providing minimums and maximums when presenting averages on an aggregate basis and within each group or range. In addition, provide historical data on the pool assets as appropriate (e.g., the lesser of three years or the time such assets have existed) to allow material evaluation of the pool data. In making any calculations regarding overall pool balances, disregard any funds set aside for a prefunding account.

(a) *Information regarding pool asset types and selection criteria.* Provide the following information:

(1) A brief description of the type or types of pool assets to be securitized.

(2) A general description of the material terms of the pool assets.

(3) A description of the solicitation, credit-granting or underwriting criteria used to originate or purchase the pool assets, including, to the extent known, any changes in such criteria and the extent to which such policies and criteria are or could be overridden.

(4) The method and criteria by which the pool assets were selected for the transaction.

(5) The cut-off date or similar date for establishing the composition of the asset pool, if applicable.

(6) If legal or regulatory provisions (such as bankruptcy, consumer protection, predatory lending, privacy, property rights or foreclosure laws or regulations) may materially affect pool asset performance or payments or expected payments on the asset-backed securities, briefly identify these provisions and their effects on such items.

Instruction to Item 1111(a)(6): Unless a material concentration of assets exists, it is not necessary to provide details of the laws in each jurisdiction. Even in that case, a legalistic description or recitation of the laws or regulations in a particular jurisdiction is not required.

(7)(i) The nature of a review of the assets performed by an issuer or sponsor (required by §230.193), including whether the issuer of any asset-backed security engaged a third party for purposes of performing the review of the pool assets underlying an asset-backed security; and

(ii) The findings and conclusions of the review of the assets by the issuer, sponsor, or third party described in paragraph (a)(7)(i) of this section.

Instruction to Item 1111(a)(7): The disclosure required under this item shall provide an understanding of how the review related to the disclosure regarding the assets. For example, if benchmarks or criteria different from that specified in the prospectus were used to evaluate the assets, these should be described, as well as the findings and conclusions. If the review is of a sample of assets in the pool, disclose the size of the sample and the criteria used to select the assets sampled. If the issuer has engaged a third party for purposes of performing the review of assets, and attributes the findings and conclusions of the review to the third party in the disclosure required by this item, the issuer must provide the name of the third-party reviewer and comply with the requirements of §230.436 of this chapter.

(8) If any assets in the pool deviate from the disclosed underwriting criteria or other criteria or benchmark used to evaluate the assets, or any assets in the sample or assets otherwise known to deviate if only a sample was reviewed, disclose how those assets deviate from the disclosed underwriting criteria or other criteria or benchmark used to evaluate the assets and include data on the amount and characteristics of those assets that did not meet the disclosed standards. Disclose which entity (e.g., sponsor, originator, or underwriter) or entities determined that those assets should be included in the pool, despite not having met the disclosed underwriting standards or other criteria or benchmark used to evaluate the assets, and what factors were used to make the determination, such as compensating factors or a determination that the exception was not material. If compensating or other factors were used, provide data on the amount of assets in the pool or in the sample that are represented as meeting each such factor and the amount of assets that do not meet those factors. If multiple entities are involved in the decision to include assets despite not having met the disclosed underwriting standards, this should be described and each participating entity should be disclosed.

(b) *Pool characteristics.* Describe the material characteristics of the asset pool. Provide appropriate introductory and explanatory information to introduce the characteristics, the methodology used in determining or calculating the characteristics and any terms or abbreviations used. While the material characteristics will vary depending on the nature of the pool assets, such characteristics may include, among other things:

(1) Number of each type of pool assets.

(2) Asset size, such as original balance and outstanding balance as of a designated cut-off date.

(3) Interest rate or rate of return, including type of interest rate if the pool includes different types, such as fixed and floating rates.

(4) Capitalized or uncapitalized accrued interest.

(5) Age, maturity, remaining term, average life (based on different prepayment assumptions), current payment/prepayment speeds and pool factors, as applicable.

(6) Servicer distribution, if different servicers service different pool assets.

(7) If a loan or similar receivable:

(i) Amortization period.

(ii) Loan purpose (e.g., whether a purchase or refinance) and status, if applicable (e.g., repayment or deferment).

(iii) Loan-to-value (LTV) ratios and debt service coverage ratios (DSCR), as applicable.

(iv) Type and/or use of underlying property, product or collateral (e.g., occupancy type for residential mortgages or industry sector for commercial mortgages).

(8) If a receivable or other financial asset that arises under a revolving account, such as a credit card receivable:

(i) Monthly payment rate.

(ii) Maximum credit lines.

(iii) Average account balance.

(iv) Yield percentages.

(v) Type of asset.

(vi) Finance charges, fees and other income earned.

(vii) Balance reductions granted for refunds, returns, fraudulent charges or other reasons.

(viii) Percentage of full-balance and minimum payments made.

(9) If the asset pool includes commercial mortgages, the following information, to the extent material:

(i) For all commercial mortgages:

(A) The location and present use of each mortgaged property.

(B) Net operating income and net cash flow information, as well as the components of net operating income and net cash flow, for each mortgaged property.

(C) Current occupancy rates for each mortgaged property.

(D) The identity, square feet occupied by and lease expiration dates for the three largest tenants at each mortgaged property.

(E) The nature and amount of all other material mortgages, liens or encumbrances against such properties and their priority.

(ii) For each commercial mortgage that represents, by dollar value, 10% or more of the asset pool, as measured as of the cut-off date:

(A) Any proposed program for the renovation, improvement or development of such properties, including the estimated cost thereof and the method of financing to be used.

(B) The general competitive conditions to which such properties are or may be subject.

(C) Management of such properties.

(D) Occupancy rate expressed as a percentage for each of the last five years.

(E) Principal business, occupations and professions carried on in, or from the properties.

(F) Number of tenants occupying 10% or more of the total rentable square footage of such properties and principal nature of business of such tenant, and the principal provisions of the leases with those tenants including, but not limited to: rental per annum, expiration date, and renewal options.

(G) The average effective annual rental per square foot or unit for each of the last three years prior to the date of filing.

(H) Schedule of the lease expirations for each of the ten years starting with the year in which the registration statement is filed (or the year in which the prospectus supplement is dated, as applicable), stating:

(*1*) The number of tenants whose leases will expire.

(*2*) The total area in square feet covered by such leases.

(*3*) The annual rental represented by such leases.

(*4*) The percentage of gross annual rental represented by such leases.

Instruction to Item 1111(b)(9): What is required is information material to an investor's understanding of the asset-backed securities. Detailed descriptions of the physical characteristics of individual properties or legal descriptions by metes and bounds are not required.

(10) Whether the pool asset is secured or unsecured, and if secured, the type(s) of collateral.

(11) Standardized credit scores of obligors and other information regarding obligor credit quality.

(12) Billing and payment procedures, including frequency of payment, payment options, fees, charges and origination or payment incentives.

(13) Information about the origination channel and origination process for the pool assets, such as originator information (and how acquired) and the level of origination documentation required, as applicable.

(14) Geographic distribution, such as by state or other material geographic region. If 10% or more of the pool assets are or will be located in any one state or other geographic region, describe any economic or other factors specific to such state or region that may materially impact the pool assets or pool asset cash flows.

Instruction to Item 1111(b)(14): For most assets, such as credit card accounts, motor vehicle leases, trade receivables and student loans, the location of the asset is the underlying obligor's billing address. For assets involving real estate, such as mortgages, the location of the asset is where the physical property underlying the asset is located.

(15) Other concentrations material to the asset type (e.g., school type for student loans). If material, provide information required by paragraph (b)(14) of this section regarding such concentrations, as applicable.

(c) *Delinquency and loss information.* Provide delinquency and loss information for the asset pool, including statistical information regarding delinquencies and losses.

(d) *Sources of pool cash flow.* If the cash flows from the pool assets that are to be used to support the asset-backed securities are to come from more than one source (such as separate cash flows from lease payments and from the sale of the residual asset at the termination of the lease), provide the following information:

(1) Disclose the specific sources of funds that will be used to make the payments and distributions on the asset-backed securities, and, if applicable, provide information on the relative amount and percentage of funds that are to be derived from each source, including a description of any assumptions, data, models and methodology used to derive such amounts. If payments on different classes or different categories of payments on or related to the asset-backed securities (e.g., principal, interest or expenses) are to come from different or segregated cash flows from the pool assets or other sources, disclose the source of funds that will be used for such payments.

(2) *Residual value information.* If the asset pool includes leases or other assets where a portion of the securitized pool balance is attributable to the residual value of the underlying physical property underlying the leases, disclose the following:

(i) How the residual values used to structure the transaction were estimated, including an explanation of any material discount rates, models or assumptions used and who selected such rates, models or assumptions.

(ii) Any material procedures or requirements incorporated to preserve residual values during the term of the lease, such as lessee responsibilities, prohibitions on subletting, indemnification or required insurance or guarantees.

(iii) The procedures by which the residual values will be realized and by whom those procedures will be carried out, including information on the experience of such party, any affiliations with a party described in Item 1119(a) of this Regulation AB and the compensation arrangements with such party.

(iv) Whether the pool assets are open-end leases (e.g., where the lessee is required to cover the shortfall between the residual value of the leased property and the sale proceeds) or closed-end leases (e.g., where the lessor is responsible for such shortfalls), and where both types of leases are included in the asset pool, the percentage of each.

(v) To the extent material, any lessor obligations that are required under the leases, and the effect or potential effect on the asset-backed securities from failure by the lessor to perform its obligations.

(vi) Statistical information regarding estimated residual values for the pool assets.

(vii) Summary historical statistics on turn-in rates, if applicable, and residual value realization rates by the party responsible for such process over the past three years, or such longer period as is material to an evaluation of the pool assets.

(viii) The effect on security holders if not enough cash flow is received from the realization of the residual values, whether there are any provisions to address this contingency, and how any cash flow greater than that necessary to pay security holders will be allocated.

(e) *Representations and warranties and modification provisions relating to the pool assets.* Provide the following information:

(1) *Representations and warranties.* Summarize any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction, and describe briefly the remedies available if those representations and warranties are breached, such as repurchase obligations.

(2) *Modification provisions.* Describe any provisions in the transaction agreements governing the modification of the terms of any asset, including how such modification may affect the cash flows from the assets or to the securities.

(f) *Claims on pool assets.* Describe any material direct or contingent claim that parties other than the holders of the asset-backed securities have on any pool assets. Also, describe any material cross-collateralization or cross-default provisions relating to the pool assets.

(g) *Revolving periods, prefunding accounts and other changes to the asset pool.* If the transaction contemplates a prefunding or revolving period, provide the following information, as applicable. Provide similar information regarding any other circumstances where pool assets may be added, substituted or removed from the asset pool, such as in the event of additional issuances of asset-backed securities in a master trust or a breach of a pool asset representation or warranty:

(1) The term or duration of any prefunding or revolving period.

(2) For prefunding periods, the amount of proceeds to be deposited in the prefunding account.

(3) For revolving periods, the maximum amount of additional assets that may be acquired during the revolving period, if applicable.

(4) The percentage of the asset pool and any class or series of the asset-backed securities represented by the prefunding account or the revolving account, if applicable.

(5) Triggers or events that would trigger limits on or terminate the prefunding or revolving period and the effects of such triggers. In particular for a revolving period, describe the operation of the revolving period and the amortization period.

(6) When and how new pool assets may be acquired during the prefunding or revolving period, and if, when and how pool assets can be removed or substituted. Describe any limits on the amount, type or speed with which pool assets may be acquired, substituted or removed.

(7) The acquisition or underwriting criteria for additional pool assets to be acquired during the prefunding or revolving period, including a description of any differences from the criteria used to select the current asset pool.

(8) Which party has the authority to add, remove or substitute assets from the asset pool or determine if such pool assets meet the acquisition or underwriting criteria for additional pool assets. In addition, disclose whether or not there will be any independent verification of such person's exercise of authority or determinations.

(9) Any requirements to add or remove minimum amounts of pool assets and any effects of not meeting those requirements.

(10) If applicable, the procedures and standards for the temporary investment of funds in a prefunding or revolving account pending use (including the disposition of gains and losses on pending funds) and a description of the financial products or instruments eligible for such accounts.

(11) The circumstances under which funds in a prefunding or revolving account will be returned to investors or otherwise disposed of.

(12) A statement of whether, and if so, how, investors will be notified of changes to the asset pool.

(h) *Asset-level information.* (1) If the asset pool includes residential mortgages, commercial mortgages, automobile loans, automobile leases, debt securities or resecuritizations of asset-backed securities, provide asset-level information for each asset or security in the pool in the manner specified in Schedule AL (§229.1125).

(2) File the disclosures as an Asset Data File (as defined in §232.11 of this chapter) in the format required by the EDGAR Filer Manual. See §232.301 of this chapter.

(3) File the Asset Data File as an exhibit to Form ABS-EE (§249.1401 of this chapter) in accordance with Item 601(b)(102) of Regulation S-K (§229.601(b)(102)).

(4) A registrant may provide additional explanatory disclosure related to an Asset Data File by filing an asset related document as an exhibit to Form ABS-EE (§249.1401 of this chapter) in accordance with Item 601(b)(103) of Regulation S-K (§229.601(b)(103)).

(5) A registrant may provide other asset-level information in addition to the information required by Schedule AL (§229.1125) by filing an asset related document as an exhibit to Form ABS-EE (§249.1401 of this chapter) in accordance with Item 601(b)(103) of Regulation S-K (§229.601(b)(103)). The asset related document(s) must contain the definitions and formulas for each additional data point and the related tagged data and may contain explanatory disclosure about each additional data point.

Instruction to Item 1111(h). All of the information required by this Item must be provided at the time of every filing for each asset that was in the asset pool during the reporting period, including assets removed prior to the end of the reporting period.

[70 FR 1597, Jan. 7, 2005, as amended at 76 FR 4243, Jan. 25, 2011; 79 FR 57315, Sept. 24, 2014]

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§229.1112 (Item 1112) Significant obligors of pool assets.

(a) *Descriptive information.* Provide the following information for each significant obligor:

(1) The name of the obligor.

(2) The organizational form and general character of the business of the obligor.

(3) The nature of the concentration of the pool assets with the obligor.

(4) The material terms of the pool assets and the agreements with the obligor involving the pool assets.

(b) *Financial information.* (1) If the pool assets relating to a significant obligor represent 10% or more, but less than 20%, of the asset pool, provide selected financial data required by Item 301 of Regulation S-K (§229.301) for the significant obligor, provided, however, that for a significant obligor under Item 1101(k)(2) of this Regulation AB, only net operating income for the most recent fiscal year and interim period is required.

(2) If pool assets relating to a significant obligor represent 20% or more of the asset pool, provide financial statements meeting the requirements of Regulation S-X (§§210.1-01 through 210.12-29 of this chapter), except §210.3-05 of this chapter and Article 11 of Regulation S-X (§§210.11-01 through 210.11-03 of this chapter), of the significant obligor. Financial statements of such obligor and its subsidiaries consolidated (as required by §240.14a-3(b) of this chapter) shall be filed under this item.

Instructions to Item 1112(b): 1. No information need be provided pursuant to paragraph (b) of this section if the obligations of the significant obligor as they relate to the pool assets are backed by the full faith and credit of the United States.

2. If the significant obligor is an asset-backed issuer and the pool assets relating to the significant obligor are asset-backed securities, provide the following information in lieu of the information required by paragraph (b) of this section:

a. For a registration statement under the Securities Act or the Exchange Act or a prospectus to be filed pursuant to §230.424 of this chapter, the information required by Items 1104 through 1115, 1117 and 1119 of this Regulation AB regarding such asset-backed securities; and

b. For an Exchange Act report on Form 10-K or Form 10-D (§249.310 or 249.312 of this chapter), the information required by General Instruction J. of Form 10-K regarding such asset-backed securities for the period for which the last Form 10-K of the asset-backed securities was due (or would have been due if such asset-backed securities are not required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)).

3. If the significant obligor is a foreign business (as defined §210.1-02 of this chapter):

a. Paragraph (b)(1) of this section may be complied with by providing the information required by Item 3.A. of Form 20-F (§249.220f of this chapter). If a reconciliation to U.S. generally accepted accounting principles called for by Instruction 2. to Item 3.A. of Form 20-F is unavailable or not obtainable without unreasonable cost or expense, at a minimum provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements used as a basis for the selected financial data from those accepted in the U.S.

b. Paragraph (b)(2) of this section may be complied with by providing financial statements meeting the requirements of Item 17 of Form 20-F for the periods specified by Item 8.A. of Form 20-F.

[70 FR 1597, Jan. 7, 2005, as amended at 79 FR 57313, Sept. 24, 2014]

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§229.1113 (Item 1113) Structure of the transaction.

(a) *Description of the securities and transaction structure.* In providing the information required by Item 202 of Regulation S-K (§229.202), address the following specific factors relating to the asset-backed securities, as applicable:

(1) The types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes (including IO (interest only) or PO (principal only) securities), planned amortization or companion classes or residual or subordinated interests.

(2) The flow of funds for the transaction, including the payment allocations, rights and distribution priorities among all classes of the issuing entity's securities, and within each class, with respect to cash flows, credit enhancement or other support and any other structural features designed to enhance credit, facilitate the timely payment of monies due on the pool assets or owing to security holders, adjust the rate of return on the asset-backed securities, or preserve monies that will or might be distributed to security holders. In addition to an appropriate narrative discussion of the allocation and priority structure of pool cash flows, present the flow of funds graphically if doing so will aid understanding. In the flow of funds discussion, provide information regarding any requirements directing cash flows from the pool assets (such as to reserve accounts, cash collateral accounts or expenses) and the purpose and operation of such requirements.

(3) In describing the interest rate or rate of return on the asset-backed securities and how such amounts are payable, explain how the rate is determined and how frequently it will be determined. If the rate to be paid can be a combination of two or more rates (such as the lesser of a variable rate or the actual weighted average net coupon on the pool assets), provide clear information regarding each rate and when each rate applies.

(4) How principal, if any, will be paid on the asset-backed securities, including maturity dates, amortization or principal distribution schedules, principal distribution dates, formulas for calculating principal distributions from the cash flows and other factors that will affect the timing or amount of principal payments for each class of securities.

(5) The denominations in which the asset-backed securities may be issued.

(6) Any specified changes to the transaction structure that would be triggered upon a default or event of default (such as a change in distribution priority among classes).

(7) Any liquidation, amortization, performance or similar triggers or events, and the rights of investors or changes to the transaction structure or flow of funds if such events were to occur.

(i) Describe how the delinquency threshold that triggers a review by the asset representations reviewer was determined to be appropriate. In describing the appropriateness of such delinquency threshold, compare such delinquency threshold against the delinquencies disclosed for prior securitized pools of the sponsor for that asset type in accordance with Item 1105 of Regulation AB (§229.1105).

(ii) [Reserved]

(8) Whether the servicer or other party is required to provide periodic evidence of the absence of a default or of compliance with the terms of the transaction agreements.

(9) If applicable, the extent, expressed as a percentage, the transaction is overcollateralized or undercollateralized as measured by comparing the principal balance of the asset-backed securities to the asset pool.

(10) Any provisions contained in other securities that could result in a cross-default or cross-collateralization.

(11) Any minimum standards, restrictions or suitability requirements regarding potential investors in purchasing the securities or any restrictions on ownership or transfer of the securities.

(12) Security holder vote required to amend the transaction documents and allocation of voting rights among security holders.

(b) *Distribution frequency and cash maintenance.* (1) Disclose the frequency of distribution dates for the asset-backed securities and the collection periods for the pool assets.

(2) Describe how cash held pending distribution or other uses is held and invested. Also describe the length of time cash will be held pending distributions to security holders. Identify the party or parties with access to cash balances and the authority to invest cash balances. Specify who determines any decisions regarding the deposit, transfer or disbursement of pool asset cash flows and whether there will be any independent verification of the transaction accounts or account activity.

(c) *Fees and expenses.* Provide in a separate table an itemized list of all fees and expenses to be paid or payable out of the cash flows from the pool assets. In itemizing the fees and expenses, also indicate their general purpose, the party receiving such fees or expenses, the source of funds for such fees or expenses (if different from other fees or expenses or if such fees or expenses are to be paid from a specified portion of the cash flows) and the distribution priority of such expenses. If the amount of such fees or expenses is not fixed, provide the formula used to determine such fees or expenses. The tabular presentation should be accompanied by footnotes or other accompanying narrative disclosure to the extent necessary for an understanding of the timing or amount of such fees or expenses, such as any restrictions or limits on fees or whether the estimate may change in certain instances, such as in an event of default (and how the fees would change in such an instance or the factors that would affect the change). In addition, through footnote or other accompanying narrative disclosure, describe if any, and if so how, such fees or expenses can be changed without notice to, or approval by, security holders and any restrictions on the ability to change a fee or expense amount, such as due to a change in transaction party.

(d) *Excess cash flow.* (1) Describe the disposition of residual or excess cash flows. Identify who owns any residual or retained interests to the cash flows if such person is affiliated with the sponsor, depositor, issuing entity or any entity identified in Item 1119(a) of this Regulation AB or if such person has rights that may alter the transaction structure beyond receipt of residual or excess cash flows. Describe such rights, as material.

(2) Disclose any requirements in the transaction agreements to maintain a minimum amount of excess cash flow or spread from, or retained interest in, the transaction and any actions that would be required or changes to the transaction structure that would occur if such requirements were not met.

(3) To the extent material to an understanding of the asset-backed securities, disclose any features or arrangements to facilitate a securitization of the excess cash flow or retained interest from the transaction, including whether any material changes to the transaction structure may be made without the consent of asset-backed security holders in connection with these securitizations.

(e) *Master trusts.* If one or more additional series or classes have been or may be issued that are backed by the same asset pool, provide information regarding the additional securities to the extent material to an understanding of their effect on the securities being offered, including the following:

(1) Relative priority of such additional securities to the securities being offered and rights to the underlying pool assets and their cash flows.

(2) Allocation of cash flow from the asset pool and any expenses or losses among the various series or classes.

(3) Terms under which such additional series or classes may be issued and pool assets increased or changed.

(4) The terms of any security holder approval or notification of such additional securities.

(5) Which party has the authority to determine whether such additional securities may be issued. In addition, if there are conditions to such additional issuance, disclose whether or not there will be an independent verification of such person's exercise of authority or determinations.

(f) *Optional or mandatory redemption or termination.* (1) If any class of the asset-backed securities includes an optional or mandatory redemption or termination feature, provide the following information:

(i) Terms for triggering the redemption or termination.

(ii) The identity of the party that holds the redemption or termination option or obligation, as well as whether such party is an affiliate of the sponsor, depositor, issuing entity or any entity identified in Item 1119(a) of this Regulation AB.

(iii) The amount of the redemption or repurchase price or formula for determining such amount.

(iv) The procedures for redemption or termination, including any notices to security holders.

(v) If the amount allocated to security holders is reduced by losses, the policy regarding any amounts recovered after redemption or termination.

(2) The title of any class of securities with an optional redemption or termination feature that may be exercised when 25% or more of the original principal balance of the pool assets is still outstanding must include the word "callable," *provided, however,* that in the case of a master trust, a title of a class of securities must include the word "callable" when an optional redemption or termination feature may be exercised when 25% or more of the original principal balance of the particular series in which the class was issued is still outstanding.

(g) *Prepayment, maturity and yield considerations.* (1) Describe any models, including the related material assumptions and limitations, used as a means to identify cash flow patterns with respect to the pool assets.

(2) Describe to the extent material the degree to which each class of securities is sensitive to changes in the rate of payment on the pool assets (e.g., prepayment or interest rate sensitivity), and describe the consequences of such changing rate of payment. Provide statistical information of such effects, such as the effect of prepayments on yield and weighted average life.

(3) Describe any special allocations of prepayment risks among the classes of securities, and whether any class protects other classes from the effects of the uncertain timing of cash flow.

[70 FR 1597, Jan. 7, 2005, as amended at 79 FR 57315, Sept. 24, 2014]

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§229.1114 (Item 1114) Credit enhancement and other support, except for certain derivatives instruments.

(a) *Descriptive information.* To the extent material, describe the following, including a clear discussion of the manner in which each potential item is designed to affect or ensure timely payment of the asset-backed securities:

(1) Any external credit enhancement designed to ensure that the asset-backed securities or pool assets will pay in accordance with their terms, such as bond insurance, letters of credit or guarantees.

(2) Any mechanisms to ensure that payments on the asset-backed securities are timely, such as liquidity facilities, lending facilities, guaranteed investment contracts and minimum principal payment agreements.

(3) Any derivatives whose primary purpose is to provide credit enhancement related to pool assets or the asset-backed securities.

(4) Any internal credit enhancement as a result of the structure of the transaction that increases the likelihood that payments will be made on one or more classes of the asset-backed securities in accordance with their terms, such as subordination provisions, overcollateralization, reserve accounts, cash collateral accounts or spread accounts.

Instructions to Item 1114(a): 1. Include a description of the material terms of any enhancement or support described, including any limits on the timing or amount of the enhancement or support or any conditions that must be met before the enhancement or support can be accessed. The enhancement or support agreement is to be filed as an exhibit. Also describe any provisions regarding the substitution of enhancement or support.

2. This item should not be construed as allowing anything other than an asset-backed security whose payment is based primarily by reference to the performance of the receivables or other financial assets in the asset pool.

(b) *Information regarding significant enhancement providers*—(1) *Descriptive information.* If an entity or group of affiliated entities providing enhancement or other support described in paragraph (a) of this section is liable or contingently liable to provide payments representing 10% or more of the cash flow supporting any offered class of asset-backed securities, provide the following information:

(i) The name of such enhancement provider.

(ii) The organizational form of enhancement provider.

(iii) The general character of the business of such enhancement provider.

(2) *Financial information.* (i) If any entity or group of affiliated entities providing enhancement or other support described in paragraph (a) of this section is liable or contingently liable to provide payments representing 10% or more, but less than 20%, of the cash flow supporting any offered class of the asset-backed securities, provide financial data required by Item 301 of Regulation S-K (§229.301) for each such entity or group of affiliated entities.

(ii) If any entity or group of affiliated entities providing enhancement or other support described in paragraph (a) of this section is liable or contingently liable to provide payments representing 20% or more of the cash flow supporting any offered class of the asset-backed securities, provide financial statements meeting the requirements of Regulation S-X (§§210.1-01 through 210.12-29 of this chapter), except §210.3-05 of this chapter and Article 11 of Regulation S-X (§§210.11-01 through 210.11-03 of this chapter), of such entity or group of affiliated entities. Financial statements of such enhancement provider and its subsidiaries consolidated (as required by §240.14a-3(b) of this chapter) shall be filed under this item.

Instruction 1 to Item 1114(b). The requirements in paragraph (b) of this section apply to all providers of external credit enhancement or other support, other than those described in Item 1115 of this Regulation AB. Enhancement may support payment on the pool assets or payments on the asset-backed securities themselves.

Instruction 2 to Item 1114(b). No information need be provided pursuant to paragraph (b)(2) of this section if the obligations of the enhancement provider are backed by the full faith and credit of the United States.

Instruction 3 to Item 1114(b). If the pool assets are student loans originated under the Federal Family Education Loan Program of the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*)) and the enhancement provider for the pool assets is a guarantee agency as defined under the Higher Education Act, then the following information may be provided in lieu of providing financial information required pursuant to paragraph (b)(2) of this section:

a. The number of pool assets and aggregate outstanding principal balance of pool assets guaranteed by the guarantee agency (both by number and percentage of the asset pool as of the cut-off date or other applicable date).

b. Disclosure of the following with respect to the guarantee agency, as applicable, including a brief description regarding the method of calculation, covering at least five federal fiscal years:

i. Aggregate principal amount of all student loans guaranteed.

ii. Reserve ratio.

iii. Recovery rate.

iv. Loss rate.

v. Claims rate.

Instruction 4 to Item 1114(b). If the enhancement provider is a foreign business (as defined §210.1-02 of this chapter):

a. Paragraph (b)(2)(i) of this section may be complied with by providing the information required by Item 3.A. of Form 20-F (§249.220f of this chapter). If a reconciliation to U.S. generally accepted accounting principles called for by Instruction 2. to Item 3.A. of Form 20-F is unavailable or not obtainable without unreasonable cost or expense, at a minimum provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements used as a basis for the selected financial data from those accepted in the U.S.

b. Paragraph (b)(2)(ii) of this section may be complied with by providing financial statements meeting the requirements of Item 17 of Form 20-F for the periods specified by Item 8.A. of Form 20-F.

[70 FR 1597, Jan. 7, 2005, as amended at 79 FR 57315, Sept. 24, 2014]

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§229.1115 (Item 1115) Certain derivatives instruments.

This item relates to derivative instruments, such as interest rate and currency swap agreements, that are used to alter the payment characteristics of the cashflows from the issuing entity and whose primary purpose is not to provide credit

enhancement related to the pool assets or the asset-backed securities. For purposes of this section, the "significance estimate" of the derivative instrument is to be determined based on a reasonable good-faith estimate of maximum probable exposure, made in substantially the same manner as that used in the sponsor's internal risk management process in respect of similar instruments. The "significance percentage" is the percentage that the amount of the significance estimate represents of the aggregate principal balance of the pool assets, provided, that if the derivative instrument relates only to one or more classes of the asset-backed securities, the "significance percentage" is the percentage that the amount of the significance estimate represents of the aggregate principal balance of such classes.

(a) *Descriptive information.* (1) Describe the following regarding the external counterparty:

(i) The name of the derivative counterparty.

(ii) The organizational form of the derivative counterparty.

(iii) The general character of the business of the derivative counterparty.

(2) Describe the operation and material terms of the derivative instrument, including any limits on the timing or amount of payments or any conditions to payments.

(3) Describe any material provisions regarding substitution of the derivative instrument.

(4) At a minimum, disclose whether the significance percentage, as calculated in accordance with this section, is less than 10%, at least 10% but less than 20%, or 20% or more.

(5) File the agreement relating to the derivative instrument as an exhibit.

(b) *Financial information.* (1) If the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments contemplated by this section is 10% or more, but less than 20%, provide financial data required by Item 301 of Regulation S-K (§229.301) for such entity or group of affiliated entities.

(2) If the aggregate significance percentage related to any entity or group of affiliated entities providing derivative instruments contemplated by this section is 20% or more, provide financial statements meeting the requirements of Regulation S-X (§§210.1-01 through 210.12-29 of this chapter), except §210.3-05 of this chapter and Article 11 of Regulation S-X (§§210.11-01 through 210.11-03 of this chapter), of such entity or group of affiliated entities. Financial statements of such entity and its subsidiaries consolidated (as required by §240.14a-3(b) of this chapter) shall be filed under this item.

Instructions to Item 1115: 1. Instructions 2, 3 and 5 to Item 1114 of this Regulation AB apply to the information contemplated by paragraph (b) of this item.

2. This Item should not be construed as allowing anything other than an asset-backed security whose payment is based primarily by reference to the performance of the receivables or other financial assets in the asset pool.

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§229.1116 (Item 1116) Tax matters.

Provide a brief, clear and understandable summary of:

(a) The tax treatment of the asset-backed securities transaction under federal income tax laws.

(b) The material federal income tax consequences of purchasing, owning and selling the asset-backed securities. If any of the material federal income tax consequences are not expected to be the same for investors in all classes offered by the registration statement, describe the material differences.

(c) The substance of counsel's tax opinion, including identification of the material consequences upon which counsel has not been asked, or is unable, to opine.

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§229.1117 (Item 1117) Legal proceedings.

Describe briefly any legal proceedings pending against the sponsor, depositor, trustee, issuing entity, servicer contemplated by Item 1108(a)(3) of this Regulation AB, originator contemplated by Item 1110(b) of this Regulation AB, or other party contemplated by Item 1100(d)(1) of this Regulation AB, or of which any property of the foregoing is the subject, that is material to security holders. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

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§229.1118 (Item 1118) Reports and additional information.

(a) *Reports required under the transaction documents.* Describe the reports or other documents provided to security holders required under the transaction agreements, including information included, schedule and manner of distribution or other availability, and the entity or entities that will prepare and provide the reports.

(b) *Reports to be filed with the Commission.* (1) Specify the names, and if available, the Commission file numbers of the entity or entities under which reports about the asset-backed securities will be filed with the Securities and Exchange Commission. Identify the reports and other information filed with the Commission.

(2) State that the public may read and copy any materials filed with the Commission at the Commission's Public Reference Room at 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1-800-SEC-0330. State that the Commission maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the Commission and state the address of that site (*http://www.sec.gov*).

(c) *Web site access to reports.* (1) State whether the issuing entity's annual reports on Form 10-K (§249.310 of this chapter), distribution reports on Form 10-D (§249.312 of this chapter), current reports on Form 8-K (§249.308 of this chapter), and amendments to those reports filed or furnished pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) will be made available on the Web site of a specified transaction party (e.g., the sponsor, depositor, servicer, issuing entity or trustee) as soon as reasonably practicable after such material is electronically filed with, or furnished to, the Commission.

(2) Disclose whether other reports to security holders or information about the asset-backed securities will be made available in this manner.

(3) If filings and other reports will be made available in this manner, disclose the Web site address where such filings may be found.

(4) If filings and other reports will not be made available in this manner, describe the reasons why they will not and whether an identified transaction party voluntarily will provide electronic or paper copies of those filings and other reports free of charge upon request.

[70 FR 1597, Jan. 7, 2005, as amended at 73 FR 967, Jan. 4, 2008]

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§229.1119 (Item 1119) Affiliations and certain relationships and related transactions.

(a) Describe if so, and how, the sponsor, depositor or issuing entity is an affiliate (as defined in §230.405 of this chapter) of any of the following parties as well as, to the extent known and material, if so, and how, any of the following parties are affiliates of any of the other following parties:

(1) Servicer contemplated by Item 1108(a)(3) of this Regulation AB.

(2) Trustee.

(3) Originator contemplated by Item 1110 of this Regulation AB.

(4) Significant obligor contemplated by Item 1112 of this Regulation AB.

(5) Enhancement or support provider contemplated by Items 1114 or 1115 of this Regulation AB.

(6) Any other material parties related to the asset-backed securities contemplated by Item 1100(d)(1) of this Regulation AB.

(7) Asset representations reviewer.

(b) Describe whether there is, and if so the general character of, any business relationship, agreement, arrangement, transaction or understanding that is entered into outside the ordinary course of business or is on terms other than would be obtained in an arm's length transaction with an unrelated third party, apart from the asset-backed securities transaction, between the sponsor, depositor or issuing entity and any of the parties in paragraphs (a)(1) through (a)(6) of this section, or any affiliates of such parties, that currently exists or that existed during the past two years and that is material to an investor's understanding of the asset-backed securities.

Instruction to Item 1119(b): What is required is information material to an investor's understanding of the asset-backed securities. A detailed description or itemized listing of all commercial relationships among the parties is not required. Instead, the disclosure should indicate whether any relationships outside of the asset-backed securities transaction do exist that are outside the normal course and the general character of those relationships.

(c) Notwithstanding paragraph (b) of this section, describe, to the extent material, any specific relationships involving or relating to the asset-backed securities transaction or the pool assets, including the material terms and approximate dollar amount involved, between the sponsor, depositor or issuing entity and any of the parties in paragraphs (a)(1) through (a)(6) of this section, or any affiliates of such parties, that currently exists or that existed during the past two years.

Instruction to Item 1119: With respect to disclosure in an annual report on Form 10-K, information required by this Item 1119 may be omitted to the extent that substantially the same information had been provided previously in an annual report on Form 10-K (§249.310) for the asset-backed securities or in an effective registration statement under the Securities Act or a prospectus timely filed pursuant to §230.424 of this chapter under the same Central Index Key (CIK) code as the current annual report on Form 10-K.

[70 FR 1597, Jan. 7, 2005, as amended at 79 FR 57315, Sept. 24, 2014]

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§229.1120 (Item 1120) Ratings.

Disclose whether the issuance or sale of any class of offered securities is conditioned on the assignment of a rating by one or more rating agencies, whether or not NRSROs. If so, identify each rating agency and the minimum rating that must be assigned. Describe any arrangements to have such rating monitored while the asset-backed securities are outstanding.

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§229.1121 (Item 1121) Distribution and pool performance information.

(a) Describe the distribution for the related distribution period and the performance of the asset pool during the distribution period. Provide appropriate introductory and explanatory information to introduce any material terms, parties or abbreviations used (or a cross-reference to a Commission filing where such information may be found). Present statistical information in tabular or graphical format, if such presentation will aid understanding. While the material information regarding the related distribution and pool performance will vary depending on the nature of the transaction, such information may include, among other things:

(1) Any applicable record dates, accrual dates, determination dates for calculating distributions and actual distribution dates for the distribution period.

(2) Cash flows received and the sources thereof for distributions, fees and expenses (including portfolio yield, if applicable).

(3) Calculated amounts and distribution of the flow of funds for the period itemized by type and priority of payment, including:

(i) Fees or expenses accrued and paid, with an identification of the general purpose of such fees and the party receiving such fees or expenses.

(ii) Payments accrued or paid with respect to enhancement or other support identified in Item 1114 of this Regulation AB (such as insurance premiums or other enhancement maintenance fees), with an identification of the general purpose of such payments and the party receiving such payments.

(iii) Principal, interest and other distributions accrued and paid on the asset-backed securities by type and by class or series and any principal or interest shortfalls or carryovers.

(iv) The amount of excess cash flow or excess spread and the disposition of excess cash flow.

(4) Beginning and ending principal balances of the asset-backed securities.

(5) Interest rates applicable to the pool assets and the asset-backed securities, as applicable. Consider providing interest rate information for pool assets in appropriate distributional groups or incremental ranges.

(6) Beginning and ending balances of transaction accounts, such as reserve accounts, and material account activity during the period.

(7) Any amounts drawn on any credit enhancement or other support identified in Item 1114 of this Regulation AB, as applicable, and the amount of coverage remaining under any such enhancement, if known and applicable.

(8) Number and amount of pool assets at the beginning and ending of each period, and updated pool composition information, such as weighted average coupon, weighted average life, weighted average remaining term, pool factors and prepayment amounts. For asset-backed securities backed by leases where a portion of the securitized pool balance is attributable to residual values of the physical property underlying the leases, this information also would include turn-in rates and residual value realization rates.

(9) Delinquency and loss information for the period. Present historical delinquency and loss information in accordance with Item 1100(b) of this Regulation AB (§229.1100(b)) through no less than 120 days.

(10) Information on the amount, terms and general purpose of any advances made or reimbursed during the period, including the general use of funds advanced and the general source of funds for reimbursements.

(11) Any material modifications, extensions or waivers to pool asset terms, fees, penalties or payments during the distribution period or that have cumulatively become material over time.

(12) Material breaches of pool asset representations or warranties or transaction covenants.

(13) Information on ratio, coverage or other tests used for determining any early amortization, liquidation or other performance trigger and whether the trigger was met.

(14) Information regarding any new issuance of asset-backed securities backed by the same asset pool, any pool asset changes (other than in connection with a pool asset converting into cash in accordance with its terms), such as additions or removals in connection with a prefunding or revolving period and pool asset substitutions and repurchases (and purchase rates, if applicable), and cash flows available for future purchases, such as the balances of any prefunding or revolving accounts, if applicable. Disclose any material changes in the solicitation, credit-granting, underwriting, origination, acquisition or pool selection criteria or procedures, as applicable, used to originate, acquire or select the new pool assets.

(b) During a prefunding or revolving period, or if there has been a new issuance of asset-backed securities backed by the same pool under a master trust during the fiscal year of the issuing entity, provide the information required by Items 1110, 1111 and 1112 of this Regulation AB applied taking the revised pool composition into account in the Form 10-D report (§249.312 of this chapter) for the last required distribution of the fiscal year of the issuing entity. In addition, provide such updated information in the first Form 10-D report for the period in which the prefunding or revolving period ends (if applicable). However, no disclosure need be provided by this paragraph if the information has not materially changed from that previously provided in an Exchange Act report relating to the asset-backed securities or in an effective registration statement under the Securities Act or a prospectus timely filed pursuant to §230.424 of this chapter under the same Central Index Key (CIK) code regarding a subsequent issuance of asset-backed securities backed by a pool of assets that includes the pool assets that are the subject of this paragraph.

(c) *Repurchases and replacements.* (1) Provide the information required by Rule 15Ga-1(a) (17 CFR 240.15Ga-1(a)) concerning all assets of the pool that were subject of a demand to repurchase or replace for breach of the representations and warranties.

(2) Include a reference to the most recent Form ABS-15G (17.CFR 249.1400) filed by the securitizer (as that term is defined in Section 15G(a) of the Securities Exchange Act of 1934) and disclose the CIK number of the securitizer.

(d) *Asset review.* (1) If during the distribution period a review of the underlying assets for compliance with the representations and warranties on the underlying assets is required, provide the following information, as applicable:

(i) A description of the event(s) that triggered the review during the distribution period; and

(ii) If the asset representations reviewer provided to the trustee during the distribution period a report of the findings and conclusions of the review, a summary of the report.

(2) *Change in asset representations reviewer.* If during the distribution period an asset representations reviewer has resigned or has been removed, replaced or substituted, or if a new asset representations reviewer has been appointed, state the date the event occurred and the circumstances surrounding the change. If a new asset representations reviewer has been appointed, provide the disclosure required by Item 1109(b) (§229.1109(b)), as applicable, regarding such asset representations reviewer.

(e) *Investor communication.* Disclose any request received from an investor to communicate with other investors during the reporting period received by the party responsible for making the Form 10-D filings on or before the end date of a distribution period. The disclosure regarding the request to communicate is required to include the name of the investor making the request, the date the request was received, a statement to the effect that the party responsible for filing the Form 10-D (§249.312 of this chapter) has received a request from such investor, stating that such investor is interested in communicating with other investors with regard to the possible exercise of rights under the transaction agreements, and a description of the method by which other investors may contact the requesting investor.

Instruction to Item 1121(e). The party responsible for filing the Form 10-D (§249.312 of this chapter) is required to disclose an investor's interest to communicate only where the communication relates to an investor exercising its rights under the terms of the transaction agreement.

[70 FR 1597, Jan. 7, 2005, as amended at 76 FR 4511, Jan. 26, 2011; 79 FR 57315, Sept. 24, 2014]

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§229.1122 (Item 1122) Compliance with applicable servicing criteria.

(a) *Reports on assessment of compliance with servicing criteria for asset-backed securities.* As required by paragraph (b) of §240.13a-18 or 240.15d-18 of this chapter, provide as an exhibit from each party participating in the servicing function a report on an assessment of compliance with the servicing criteria set forth in paragraph (d) of this section that contains the following:

(1) A statement of the party's responsibility for assessing compliance with the servicing criteria applicable to it;

(2) A statement that the party used the criteria in paragraph (d) of this section to assess compliance with the applicable servicing criteria;

(3) The party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K report (§249.310 of this chapter). This discussion must include disclosure of any material instance of noncompliance identified by the party; and

(4) A statement that a registered public accounting firm has issued an attestation report on the party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K report.

(b) *Registered public accounting firm attestation reports.* Provide the registered public accounting firm's attestation report required by paragraph (c) of §240.13a-18 or 240.15d-18 of this chapter on the party's assessment of compliance with the applicable servicing criteria as an exhibit.

(c) *Additional disclosure for the Form 10-K report.* (1) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, identifies any material instance of noncompliance with the servicing criteria, identify the material instance of noncompliance in the report on Form 10-K (§249.310 of this chapter). Also disclose whether the identified instance was determined to have involved the servicing of the assets backing the asset-backed securities covered in this Form 10-K report.

(2) Discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities with respect to asset-backed securities transactions taken as a whole involving such party and that are backed by the same asset type backing the asset-backed securities.

(3) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, is not included as an exhibit to the Form 10-K report, disclosure that the report is not included and an associated explanation must be provided in the report on Form 10-K.

(d) *Servicing criteria*—(1) *General servicing considerations.* (i) Policies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements.

(ii) If any material servicing activities are outsourced to third parties, policies and procedures are instituted to monitor the third party's performance and compliance with such servicing activities.

(iii) Any requirements in the transaction agreements to maintain a back-up servicer for the pool assets are maintained.

(iv) A fidelity bond and errors and omissions policy is in effect on the party participating in the servicing function throughout the reporting period in the amount of coverage required by and otherwise in accordance with the terms of the transaction agreements.

(v) Aggregation of information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information.

(2) *Cash collection and administration.* (i) Payments on pool assets are deposited into the appropriate custodial bank accounts and related bank clearing accounts no more than two business days of receipt, or such other number of days specified in the transaction agreements.

(ii) Disbursements made via wire transfer on behalf of an obligor or to an investor are made only by authorized personnel.

(iii) Advances of funds or guarantees regarding collections, cash flows or distributions, and any interest or other fees charged for such advances, are made, reviewed and approved as specified in the transaction agreements.

(iv) The related accounts for the transaction, such as cash reserve accounts or accounts established as a form of overcollateralization, are separately maintained (e.g., with respect to commingling of cash) as set forth in the transaction agreements.

(v) Each custodial account is maintained at a federally insured depository institution as set forth in the transaction agreements. For purposes of this criterion, "federally insured depository institution" with respect to a foreign financial institution means a foreign financial institution that meets the requirements of §240.13k-1(b)(1) of this chapter.

(vi) Unissued checks are safeguarded so as to prevent unauthorized access.

(vii) Reconciliations are prepared on a monthly basis for all asset-backed securities related bank accounts, including custodial accounts and related bank clearing accounts. These reconciliations:

(A) Are mathematically accurate;

(B) Are prepared within 30 calendar days after the bank statement cutoff date, or such other number of days specified in the transaction agreements;

(C) Are reviewed and approved by someone other than the person who prepared the reconciliation; and

(D) Contain explanations for reconciling items. These reconciling items are resolved within 90 calendar days of their original identification, or such other number of days specified in the transaction agreements.

(3) *Investor remittances and reporting.* (i) Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements. Specifically, such reports:

(A) Are prepared in accordance with timeframes and other terms set forth in the transaction agreements;

(B) Provide information calculated in accordance with the terms specified in the transaction agreements;

(C) Are filed with the Commission as required by its rules and regulations; and

(D) Agree with investors' or the trustee's records as to the total unpaid principal balance and number of pool assets serviced by the servicer.

(ii) Amounts due to investors are allocated and remitted in accordance with timeframes, distribution priority and other terms set forth in the transaction agreements.

(iii) Disbursements made to an investor are posted within two business days to the servicer's investor records, or such other number of days specified in the transaction agreements.

(iv) Amounts remitted to investors per the investor reports agree with cancelled checks, or other form of payment, or custodial bank statements.

(4) *Pool asset administration.* (i) Collateral or security on pool assets is maintained as required by the transaction agreements or related pool asset documents.

(ii) Pool assets and related documents are safeguarded as required by the transaction agreements.

(iii) Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements.

(iv) Payments on pool assets, including any payoffs, made in accordance with the related pool asset documents are posted to the applicable servicer's obligor records maintained no more than two business days after receipt, or such other number of days specified in the transaction agreements, and allocated to principal, interest or other items (e.g., escrow) in accordance with the related pool asset documents.

(v) The servicer's records regarding the pool assets agree with the servicer's records with respect to an obligor's unpaid principal balance.

(vi) Changes with respect to the terms or status of an obligor's pool asset (e.g., loan modifications or re-agings) are made, reviewed and approved by authorized personnel in accordance with the transaction agreements and related pool asset documents.

(vii) Loss mitigation or recovery actions (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and repossessions, as applicable) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements.

(viii) Records documenting collection efforts are maintained during the period a pool asset is delinquent in accordance with the transaction agreements. Such records are maintained on at least a monthly basis, or such other period specified in the transaction agreements, and describe the entity's activities in monitoring delinquent pool assets including, for example, phone calls, letters and payment rescheduling plans in cases where delinquency is deemed temporary (e.g., illness or unemployment).

(ix) Adjustments to interest rates or rates of return for pool assets with variable rates are computed based on the related pool asset documents.

(x) Regarding any funds held in trust for an obligor (such as escrow accounts):

(A) Such funds are analyzed, in accordance with the obligor's pool asset documents, on at least an annual basis, or such other period specified in the transaction agreements;

(B) Interest on such funds is paid, or credited, to obligors in accordance with applicable pool asset documents and state laws; and

(C) Such funds are returned to the obligor within 30 calendar days of full repayment of the related pool asset, or such other number of days specified in the transaction agreements.

(xi) Payments made on behalf of an obligor (such as tax or insurance payments) are made on or before the related penalty or expiration dates, as indicated on the appropriate bills or notices for such payments, provided that such support has been received by the servicer at least 30 calendar days prior to these dates, or such other number of days specified in the transaction agreements.

(xii) Any late payment penalties in connection with any payment to be made on behalf of an obligor are paid from the servicer's funds and not charged to the obligor, unless the late payment was due to the obligor's error or omission.

(xiii) Disbursements made on behalf of an obligor are posted within two business days to the obligor's records maintained by the servicer, or such other number of days specified in the transaction agreements.

(xiv) Delinquencies, charge-offs and uncollectible accounts are recognized and recorded in accordance with the transaction agreements.

(xv) Any external enhancement or other support, identified in Item 1114(a)(1) through (3) or Item 1115 of this Regulation AB, is maintained as set forth in the transaction agreements.

Instruction 1 to Item 1122: The assessment should cover all asset-backed securities transactions involving such party and that are backed by the same asset type backing the class of asset-backed securities which are the subject of the Commission filing. The asserting party may take into account divisions among transactions that are consistent with actual practices. However, if the asserting party includes in its platform less than all of the transactions backed by the same asset type that it services, a description of the scope of the platform should be included in the assessment.

Instruction 2 to Item 1122. If certain servicing criteria are not applicable to the asserting party based on the activities it performs with respect to asset-backed securities transactions taken as a whole involving such party and that are backed by the same asset type backing the class of asset-backed securities, the inapplicability of the criteria must be disclosed in that asserting party's and the related registered public accounting firm's reports.

Instruction 3 to Item 1122. If multiple parties are participating in the servicing function, a separate assessment report and attestation report must be included for each party participating in the servicing function. A party participating in the servicing function means any entity (e.g., master servicer, primary servicers, trustees) that is performing activities that address the criteria in paragraph (d) of this section, unless such entity's activities relate only to 5% or less of the pool assets.

Instruction 4 to Item 1122. If the asset pool backing the asset-backed securities includes a pool asset representing an interest in or the right to the payments or cash flows of another asset pool and both the issuing entity for the asset-backed securities and the entity issuing the asset to be included in the issuing entity's asset pool were established under the direction of the same sponsor and depositor, see also Item 1100(d)(2) of this Regulation AB.

[70 FR 1597, Jan. 7, 2005, as amended at 79 FR 57316, Sept. 24, 2014]

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§229.1123 (Item 1123) Servicer compliance statement.

Provide as an exhibit a statement of compliance from the servicer, signed by an authorized officer of such servicer, to the effect that:

(a) A review of the servicer's activities during the reporting period and of its performance under the applicable servicing agreement has been made under such officer's supervision.

(b) To the best of such officer's knowledge, based on such review, the servicer has fulfilled all of its obligations under the agreement in all material respects throughout the reporting period or, if there has been a failure to fulfill any such obligation in any material respect, specifying each such failure known to such officer and the nature and status thereof.

Instruction to Item 1123: If multiple servicers are involved in servicing the pool assets, a separate servicer compliance statement is required from each servicer that meets the criteria in Item 1108(a)(2)(i) through (iii) of this Regulation AB.

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§229.1124 (Item 1124) Sponsor interest in the securities.

Provide information about any material change in the sponsor's, or an affiliate's, interest in the securities resulting from the purchase, sale or other acquisition or disposition of the securities by the sponsor, or an affiliate, during the period covered by the report. Describe the change, including the amount of change and the sponsor's, or the affiliate's, resulting interest in the transaction after the change.

Instruction to Item 1124. The disclosure required under this item shall separately state the resulting amount and nature of any interest or asset retained in compliance with law, including any amounts that are retained by parties other than the sponsor in order to satisfy such requirement.

[79 FR 57316, Sept. 24, 2014]

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§229.1125 (Item 1125) Schedule AL—Asset-level information.

(a) The following definitions apply to the terms used in this schedule unless otherwise specified:

Debt service reduction. A modification of the terms of a loan resulting from a bankruptcy proceeding, such as a reduction of the amount of the monthly payment on the related mortgage loan.

Deficient valuation. A bankruptcy proceeding whereby the bankruptcy court may establish the value of the mortgaged property at an amount less than the then-outstanding principal balance of the mortgage loan secured by the mortgaged property or may reduce the outstanding principal balance of a mortgage loan.

Underwritten. The amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller.

(b) As required by Item 1111(h) (§229.1111(h)), provide asset-level information for each asset or security in the pool in the manner specified in appendix to §229.1125.

APPENDIX TO §229.1125—SCHEDULE AL

Item 1. Residential mortgages. If the asset pool includes residential mortgages, provide the following data and the data under Item 1 for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the residential mortgage.* (1) Original loan purpose. Specify the code which describes the purpose of the loan at the time the loan was originated.

(2) Originator. Identify the name of the entity that originated the loan.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan maturity date. Indicate the month and year in which the final payment on the loan is scheduled to be made at the time the loan was originated.

(5) Original amortization term. Indicate the number of months that would have been required to retire the mortgage loan through regular payments, as determined at the origination date of the loan. In the case of an interest-only loan, the original amortization term is the original term to maturity (other than in the case of a balloon loan). In the case of a balloon loan, the original amortization term is the number of months used to calculate the principal and interest payment due each month (other than the balloon payment).

(6) Original interest rate. Provide the rate of interest at the time the loan was originated.

(7) Accrual type. Provide the code that describes the method used to calculate interest on the loan.

(8) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable, step or other.

(9) Original interest only term. Indicate the number of months in which the obligor is permitted to pay only interest on the loan beginning from when the loan was originated.

(10) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(11) Original lien position. Indicate the code that describes the priority of the lien against the subject property at the time the loan was originated.

(12) Information related to junior liens. If the loan is a first mortgage with subordinate liens, provide the following additional information for each non-first mortgage if obtained or available:

(i) Most recent junior loan balance. Provide the most recent combined balance of any subordinate liens.

(ii) Date of most recent junior loan balance. Provide the date of the most recent junior loan balance.

(13) Information related to non-first mortgages. For non-first mortgages, provide the following information if obtained or available:

(i) Most recent senior loan amount. Provide the total amount of the balances of all associated senior loans.

(ii) Date of most recent senior loan amount. Provide the date(s) of the most recent senior loan amount.

(iii) Loan type of most senior lien. Indicate the code that describes the loan type of the first mortgage.

(iv) Hybrid period of most senior lien. For non-first mortgages where the associated first mortgage is a hybrid ARM, provide the number of months remaining in the initial fixed interest rate period for the first mortgage.

(v) Negative amortization limit of most senior lien. For non-first mortgages where the associated first mortgage features negative amortization, indicate the negative amortization limit of the mortgage as a percentage of the original unpaid principal balance.

(vi) Origination date of most senior lien. Provide the origination date of the associated first mortgage.

(14) Prepayment penalty indicator. Indicate yes or no as to whether the loan includes a penalty charged to the obligor in the event of a prepayment.

(15) Negative amortization indicator. Indicate yes or no as to whether the loan allows negative amortization.

(16) Modification indicator. Indicate yes or no as to whether the loan has been modified from its original terms.

(17) Number of modifications. Provide the number of times that the loan has been modified.

(18) Mortgage insurance requirement indicator. Indicate yes or no as to whether mortgage insurance is or was required as a condition for originating the loan.

(19) Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum to fully pay off the loan.

(20) Covered/High cost loan indicator. Indicate yes, no or unknown as to whether as of the end of the reporting period the loan is categorized as "high cost," "higher priced" or "covered" according to applicable federal, state or local statutes, ordinances or regulations.

(21) Servicer-placed hazard insurance. Indicate yes, no or unknown as to whether as of the end of the reporting period the hazard insurance on the property is servicer-placed.

(22) Refinance cash-out amount. For any refinance loan that is a cash-out refinance provide the amount the obligor received after all other loans to be paid by the mortgage proceeds have been satisfied. For any refinance loan that is a no-cash-out refinance provide the result of the following calculation: [NEW LOAN AMOUNT]−[PAID OFF FIRST MORTGAGE LOAN AMOUNT]−[PAID OFF SECOND MORTGAGE LOAN AMOUNT]−[CLOSING COSTS].

(23) Total origination and discount points. Provide the amount paid to the lender to increase the lender's effective yield and, in the case of discount points, to reduce the interest rate paid by the obligor.

(24) Broker. Indicate yes or no as to whether a broker originated or was involved in the origination of the loan.

(25) Channel. Specify the code that describes the source from which the issuer obtained the loan.

(26) NMLS company number. Specify the National Mortgage License System (NMLS) registration number of the company that originated the loan.

(27) Buy down period. Indicate the total number of months during which any buy down is in effect, representing the accumulation of all buy down periods.

(28) Loan delinquency advance days count. Indicate the number of days after which a servicer can stop advancing funds on a delinquent loan.

(29) Information related to ARMs. If the loan is an ARM, provide the following additional information:

(I) Original ARM Index. Specify the code that describes the type and source of index to be used to determine the interest rate at each adjustment.

(ii) ARM Margin. Indicate the number of percentage points that is added to the index value to establish the new interest rate at each interest rate adjustment date.

(iii) Fully indexed interest rate. Indicate the fully indexed interest rate to which the obligor was underwritten.

(iv) Initial fixed rate period for hybrid ARM. If the interest rate is initially fixed for a period of time, indicate the number of months between the first payment date of the loan and the first interest rate adjustment date.

(v) Initial interest rate decrease. Indicate the maximum percentage by which the interest rate may decrease at the first interest rate adjustment date.

(vi) Initial interest rate increase. Indicate the maximum percentage by which the interest rate may increase at the first interest rate adjustment date.

(vii) Index look-back. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate.

(viii) Subsequent interest rate reset period. Indicate the number of months between subsequent rate adjustments.

(ix) Lifetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.

(x) Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.

(xi) Subsequent interest rate decrease. Provide the maximum number of percentage points by which the interest rate may decrease at each rate adjustment date after the initial adjustment.

(xii) Subsequent interest rate increase. Provide the maximum number of percentage points by which the interest rate may increase at each rate adjustment date after the initial adjustment.

(xiii) Subsequent payment reset period. Indicate the number of months between payment adjustments after the first interest rate adjustment date.

(xiv) ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor.

(xv) ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded.

(xvi) Option ARM indicator. Indicate yes or no as to whether the loan is an option ARM.

(xvii) Payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast.

(xviii) Initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make.

(xix) Convertible indicator. Indicate yes or no as to whether the obligor of the loan has an option to convert an adjustable interest rate to a fixed interest rate during a specified conversion window.

(xx) HELOC indicator. Indicate yes or no as to whether the loan is a home equity line of credit (HELOC).

(xxi) HELOC draw period. Indicate the original maximum number of months from the month the loan was originated during which the obligor may draw funds against the HELOC account.

(30) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information:

(i) Prepayment penalty calculation. Specify the code that describes the method for calculating the prepayment penalty for the loan.

(ii) Prepayment penalty type. Specify the code that describes the type of prepayment penalty.

(iii) Prepayment penalty total term. Provide the total number of months after the origination of the loan that the prepayment penalty may be in effect.

(iv) Prepayment penalty hard term. For hybrid prepayment penalties, provide the number of months after the origination of the loan during which a "hard" prepayment penalty applies.

(31) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information:

(i) Negative amortization limit. Specify the maximum amount of negative amortization that is allowed before recalculating a fully amortizing payment based on the new loan balance.

(ii) Initial negative amortization recast period. Indicate the number of months after the origination of the loan that negative amortization is allowed.

(iii) Subsequent negative amortization recast period. Indicate the number of months after which the payment is required to recast after the first amortization recast period.

(iv) Negative amortization balance amount. Provide the amount of the negative amortization balance accumulated as of the end of the reporting period.

(v) Initial fixed payment period. Indicate the number of months after the origination of the loan during which the payment is fixed.

(vi) Initial periodic payment cap. Indicate the maximum percentage by which a payment can increase in the first amortization recast period.

(vii) Subsequent periodic payment cap. Indicate the maximum percentage by which a payment can increase in one amortization recast period after the initial cap.

(viii) Initial minimum payment reset period. Provide the maximum number of months after the origination of the loan that an obligor can initially pay the minimum payment before a new minimum payment is determined.

(ix) Subsequent minimum payment reset period. Provide the maximum number of months after the initial period an obligor can pay the minimum payment before a new minimum payment is determined.

(x) Minimum payment. Provide the amount of the minimum payment due during the reporting period.

(d) *Information related to the property.* (1) Geographic location. Specify the location of the property by providing the two-digit zip code.

(2) Occupancy status. Specify the code that describes the property occupancy status at the time the loan was originated.

(3) Most recent occupancy status. If a property inspection has been performed after the loan is originated, provide the code that describes the manner in which the property is occupied.

(4) Property type. Specify the code that describes the type of property that secures the loan.

(5) Most recent property value. If an additional property valuation was obtained by any transaction party or its affiliates after the original appraised property value, provide the most recent property value obtained.

(6) Most recent property valuation type. Specify the code that describes the method by which the most recent property value was reported.

(7) Most recent property valuation date. Specify the date on which the most recent property value was reported.

(8) Most recent AVM model name. Provide the code indicating the name of the AVM model if an AVM was used to determine the most recent property value.

(9) Most recent AVM confidence score. If an additional AVM was obtained by any transaction party or its affiliates after the original valuation, provide the confidence score presented on the most recent AVM report.

(10) Original combined loan-to-value. Provide the ratio obtained by dividing the amount of all known outstanding mortgage liens on a property at origination by the lesser of the original appraised property value or the sales price.

(11) Original loan-to-value. Provide the ratio obtained by dividing the amount of the original mortgage loan at origination by the lesser of the original appraised property value or the sales price.

(e) *Information related to the obligor.* (1) Original number of obligors. Indicate the number of obligors who are obligated to repay the mortgage note at the time the loan was originated.

(2) Original obligor credit score. Provide the standardized credit score of the obligor used to evaluate the obligor during the loan origination process.

(3) Original obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor during the loan origination process.

(4) Most recent obligor credit score. If an additional credit score was obtained by any transaction party or its affiliates after the original credit score, provide the most recently obtained standardized credit score of the obligor.

(5) Most recent obligor credit score type. Specify the type of the most recently obtained standardized credit score of the obligor.

(6) Date of most recent obligor credit score. Provide the date of the most recently obtained standardized credit score of the obligor.

(7) Obligor income verification level. Indicate the code describing the extent to which the obligor's income was verified during the loan origination process.

(8) 4506—T Indicator. Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506-T) was obtained and considered.

(9) Originator front-end debt-to-income (DTI). Provide the front-end DTI ratio used by the originator to qualify the loan.

(10) Originator back-end DTI. Provide the back-end DTI ratio used by the originator to qualify the loan.

(11) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment was verified during the loan origination process.

(12) Length of employment—obligor. Indicate whether the obligor was employed by its current employer for greater than 24 months at the time the loan was originated.

(13) Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan was verified during the loan origination process.

(14) Original pledged assets. If the obligor(s) pledged financial assets to the lender instead of making a down payment, provide the total value of assets pledged as collateral for the loan at the time of origination.

(15) Qualification method. Specify the code that describes the type of mortgage payment used to qualify the obligor for the loan.

(f) *Information related to mortgage insurance.* If mortgage insurance is required on the mortgage, provide the following additional information:

(1) Mortgage insurance company name. Provide the name of the entity providing mortgage insurance for the loan.

(2) Mortgage insurance coverage. Indicate the total percentage of the original loan balance that is covered by mortgage insurance.

(3) Pool insurance company. Provide the name of the pool insurance provider.

(4) Pool insurance stop loss percent. Provide the aggregate amount that the pool insurance company will pay, calculated as a percentage of the pool balance.

(5) Mortgage insurance coverage plan type. Specify the code that describes the coverage category of the mortgage insurance applicable to the loan.

(g) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added to the pool during the reporting period.

Instruction to paragraph (g)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under §230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the loan maturity date.

(3) Modification indicator—reporting period. Indicate yes or no whether the asset was modified during the reporting period.

(4) Next payment due date. For loans that have not been paid off, indicate the next payment due date.

(5) Advancing method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent loans.

(6) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are advanced by the servicer.

(7) Stop principal and interest advance date. Provide the first payment due date for which the servicer ceased advancing principal or interest.

(8) Reporting period beginning loan balance. Indicate the outstanding principal balance of the loan as of the beginning of the reporting period.

(9) Reporting period beginning scheduled loan balance. Indicate the scheduled principal balance of the loan as of the beginning of the reporting period.

(10) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(11) Reporting period interest rate. Indicate the interest rate in effect during the reporting period.

(12) Next interest rate. For loans that have not been paid off, indicate the interest rate that is in effect for the next reporting period.

(13) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(14) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(15) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(16) Other loan-level servicing fee(s) retained by the servicer. Provide the amount of all other fees earned by loan administrators during the reporting period that reduced the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(17) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(18) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(19) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(20) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period.

(21) Reporting period ending actual balance. Indicate the actual balance of the loan as of the end of the reporting period.

(22) Reporting period ending scheduled balance. Indicate the scheduled principal balance of the loan as of the end of the reporting period.

(23) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees and escrows).

(24) Total actual amount paid. Indicate the total payment (including all escrows) paid to the servicer during the reporting period.

(25) Actual interest collected. Indicate the gross amount of interest collected during the reporting period, whether or not from the obligor.

(26) Actual principal collected. Indicate the amount of principal collected during the reporting period, whether or not from the obligor.

(27) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period, whether or not from the obligor.

(28) Paid through date. Provide the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.

(29) Interest paid through date. Provide the date through which interest is paid with the payment received during the reporting period, which is the effective date from which interest will be calculated for the application of the next payment.

(30) Paid-in-full amount. Provide the scheduled loan "paid-in-full" amount (principal) (do not include the current month's scheduled principal). Applies to all liquidations and loan payoffs.

(31) Information related to servicer advances.

(i) Servicer advanced amount—principal. Provide the total amount the servicer advanced for the reporting period for due but unpaid principal on the loan.

(ii) Servicer advanced amounts repaid—principal. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid principal on the loan.

(iii) Servicer advances cumulative—principal. Provide the outstanding cumulative amount of principal advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(iv) Servicer advanced amount—interest. Provide the total amount the servicer advanced for the reporting period for due but unpaid interest on the loan.

(v) Servicer advanced amounts repaid—interest. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid interest on the loan.

(vi) Servicer advances cumulative—interest. Provide the outstanding cumulative amount of interest advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(vii) Servicer advanced amount—taxes and insurance. Provide the total amount the servicer advanced for the reporting period for due but unpaid property tax and insurance payments (escrow amounts).

(viii) Servicer advanced amount repaid—taxes and insurance. Provide the total amount of any payment made by the obligor during the reporting period that was applied to outstanding advances of due but unpaid escrow amounts.

(ix) Servicer advances cumulative—taxes and insurance. Provide the outstanding cumulative amount of escrow advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

(x) Servicer advanced amount—corporate. Provide the total amount the servicer advanced for property inspection and preservation expenses for the reporting period.

(xi) Servicer advanced amount repaid—corporate. Provide the total amount of any payments made by the obligor during the reporting period that was applied to outstanding corporate advances.

(xii) Servicer advances cumulative—corporate. Provide the outstanding cumulative amount of corporate advances made by the servicer as of the end of the reporting period, including amounts advanced for the reporting period.

Instruction to paragraph (g)(31): For loans modified or liquidated during a reporting period the data provided in response to this paragraph (g)(31) is to be information as of the liquidation date or modification date, as applicable.

(32) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan.

(i) Zero balance effective date. Provide the date on which the loan balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the loan's balance was reduced to zero.

(33) Most recent 12-month pay history. Provide the string that indicates the payment status per month listed from oldest to most recent.

(34) Number of payments past due. Indicate the number of payments the obligor is past due as of the end of the reporting period.

(35) Information related to activity on ARM loans. If the loan is an ARM, provide the following additional information.

(i) Rate at next reset. Provide the interest rate that will be used to determine the next scheduled interest payment, if known.

(ii) Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.

(iii) Next interest rate change date. Provide the next scheduled date on which the interest rate is scheduled to change.

(iv) Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change, if known.

(v) Exercised ARM conversion option indicator. Indicate yes or no whether the obligor exercised an option to convert an ARM loan to a fixed interest rate loan during the reporting period.

(h) *Information related to servicers.* (1) Primary servicer. Indicate the name of the entity that serviced the loan during the reporting period.

(2) Most recent servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(3) Master servicer. Provide the name of the entity that served as master servicer during the reporting period, if applicable.

(4) Special servicer. Provide the name of the entity that served as special servicer during the reporting period, if applicable.

(5) Subservicer. Provide the name of the entity that served as a subservicer during the reporting period, if applicable.

(i) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan from the pool.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(j) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charged-off principal amount. Specify the total amount of uncollected principal charged off.

(2) Charged-off interest amount. Specify the total amount of uncollected interest charged off.

(k) [Reserved]

(l) *Loss mitigation type indicator.* Indicate the code that describes the type of loss mitigation the servicer is pursuing with the obligor, loan, or property as of the end of the reporting period.

(m) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Most recent loan modification event type. Specify the code that describes the most recent action that has resulted in a change or changes to the loan note terms.

(2) Effective date of the most recent loan modification. Provide the date on which the most recent modification of the loan has gone into effect.

(3) Post-modification maturity date. Provide the loan's maturity date as of the modification effective payment date.

(4) Post-modification interest rate type. Indicate whether the interest rate type on the loan after the modification is fixed, adjustable, step, or other.

(5) Post-modification amortization type. Indicate the amortization type after modification.

(6) Post-modification interest rate. Provide the interest rate in effect as of the modification effective payment date.

(7) Post-modification first payment date. Indicate the date of the first payment due after the loan modification.

(8) Post-modification loan balance. Provide the loan balance as of the modification effective payment date as reported on the modification documents.

(9) Post-modification principal and interest payment. Provide total principal and interest payment amount as of the modification effective payment date.

(10) Total capitalized amount. Provide the amount added to the principal balance of the loan due to the modification.

(11) Income verification indicator (at modification). Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506-T) was obtained and considered during the loan modification process.

(12) Modification front-end DTI. Provide the front-end DTI ratio used to qualify the modification.

(13) Modification back-end DTI. Provide the back-end DTI ratio used to qualify the modification.

(14) Total deferred amount. Provide the deferred amount that is non-interest bearing.

(15) Forgiven principal amount (cumulative). Provide the total amount of all principal balance reductions as a result of loan modifications over the life of the loan.

(16) Forgiven principal amount (reporting period). Provide the total principal balance reduction as a result of a loan modification during the reporting period.

(17) Forgiven interest amount (cumulative). Provide the total amount of all interest forgiven as a result of loan modifications over the life of the loan.

(18) Forgiven interest amount (reporting period). Provide the total gross interest forgiven as a result of a loan modification during the reporting period.

(19) Actual ending balance—total debt owed. For a loan with principal forbearance, provide the sum of the actual ending balance field plus the principal deferred amount. For all other loans, provide the actual ending balance.

(20) Scheduled ending balance—total debt owed. For a loan with principal forbearance, provide the sum of the scheduled ending balance field plus the deferred amount. For all other loans, provide the scheduled ending balance.

(21) Information related to ARM loan modifications. If the loan was an ARM before and after the most recent modification, provide the following additional information:

(i) Post-modification ARM indicator. Indicate whether the loan's existing ARM parameters have changed per the modification agreement.

(ii) Post-modification ARM index. Specify the code that describes the index on which an adjustable interest rate is based as of the modification effective payment date.

(iii) Post-modification margin. Provide the margin as of the modification effective payment date. The margin is the number of percentage points added to the index to establish the new rate.

(iv) Post-modification interest reset period (if changed). Provide the number of months of the interest reset period of the loan as of the modification effective payment date.

(v) Post-modification next reset date. Provide the next interest reset date as of the modification effective payment date.

(vi) Post-modification index lookback. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate as of the modification effective payment date.

(vii) Post-modification ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor as of the modification effective payment date.

(viii) Post-modification ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded as of the modification effective payment date.

(ix) Post-modification initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make as of the modification effective payment date.

(x) Post-modification next payment adjustment date. Provide the due date on which the next payment adjustment is scheduled to occur for an ARM loan per the modification agreement.

(xi) Post-modification ARM payment recast frequency. Provide the payment recast frequency of the loan (in months) per the modification agreement.

(xii) Post-modification lifetime rate floor. Provide the minimum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life as of the modification effective payment date.

(xiii) Post-modification lifetime rate ceiling. Provide the maximum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life as of the modification effective payment date.

(xiv) Post-modification initial interest rate increase. Indicate the maximum percentage by which the interest rate may increase at the first interest rate adjustment date after the loan modification.

(xv) Post-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date after the loan modification.

(xvi) Post-modification subsequent interest rate increase. Provide the maximum number of percentage points by which the rate may increase at each rate adjustment date after the initial rate adjustment as of the modification effective payment date.

(xvii) Post-modification subsequent interest rate decrease. Provide the maximum number of percentage points by which the interest rate may decrease at each rate adjustment date after the initial adjustment as of the modification effective payment date.

(xviii) Post-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period as of the modification effective payment date.

(xix) Post-modification payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast as of the modification effective payment date.

(xx) Post-modification ARM interest rate teaser period. Provide the duration in months that the teaser interest rate is in effect as of the modification effective payment date.

(xxi) Post-modification payment teaser period. Provide the duration in months that the teaser payment is in effect as of the modification effective payment date.

(xxii) Post-modification ARM negative amortization indicator. Indicate yes or no whether a negative amortization feature is part of the loan as of the modification effective payment date.

(xxiii) Post-modification ARM negative amortization cap. Provide the maximum percentage of negative amortization allowed on the loan as of the modification effective payment date.

(22) Information related to loan modifications involving interest-only periods. If the loan terms for the most recent loan modification include an interest only period, provide the following additional information:

(i) Post-modification interest-only term. Provide the number of months of the interest-only period from the modification effective payment date.

(ii) Post-modification interest-only last payment date. Provide the date of the last interest-only payment as of the modification effective payment date.

(23) Post-modification balloon payment amount. Provide the new balloon payment amount due at maturity as a result of the loan modification, not including deferred amounts.

(24) Information related to step loans. If the loans terms for the most recent loan modification agreement call for the interest rate to step up over time, provide the following additional information:

(i) Post-modification interest rate step indicator. Indicate whether the terms of the modification agreement call for the interest rate to step up over time.

(ii) Post-modification step interest rate. Provide the rate(s) that will apply at each change date as stated in the loan modification agreement. All rates must be provided, not just the first change rate, unless there is only a single change date.

(iii) Post-modification step date. Provide the date(s) at which the next rate and/or payment change will occur per the loan modification agreement. All dates must be provided, not just the first change, unless there is only a single change date.

(iv) Post-modification—step principal and interest. Provide the principal and interest payment(s) that will apply at each change date as stated in the loan modification agreement. All payments must be provided, not just the first change payment, unless there is only a single change date.

(v) Post-modification—number of steps. Provide the total number of step rate adjustments under the step agreement.

(vi) Post-modification maximum future rate under step agreement. Provide the maximum interest rate to which the loan will step up.

(vii) Post-modification date of maximum rate under step agreement. Provide the date on which the maximum interest rate will be reached.

(25) Non-interest bearing principal deferred amount (cumulative). Provide the total amount of principal deferred (or forborne) by the modification that is not subject to interest accrual.

(26) Non-interest bearing principal deferred amount (reporting period). Provide the total amount of principal deferred by the modification that is not subject to interest accrual.

(27) Recovery of deferred principal (reporting period). Provide the amount of deferred principal collected from the obligor during the reporting period.

(28) Non-interest bearing deferred paid-in-full amount. If the loan had a principal forbearance and was paid in full or liquidated, provide the amount paid towards the amount of the principal forbearance.

(29) Non-interest bearing deferred interest and fees amount (reporting period). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual during the reporting period.

(30) Non-interest bearing deferred interest and fees amount (cumulative). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual.

(31) Recovery of deferred interest and fees (reporting period). Provide the amount of deferred interest and fees collected during the reporting period.

(n) *Information related to forbearance or trial modification.* If the type of loss mitigation is forbearance or a trial modification, provide the following additional information. A forbearance plan refers to a period during which either no payment or a payment amount less than the contractual obligation is required from the obligor. A trial modification refers to a temporary loan modification during which an obligor's application for a permanent loan modification is under evaluation.

(1) Most recent forbearance plan or trial modification start date. Provide the date on which a payment change pursuant to the most recent forbearance plan or trial modification started.

(2) Most recent forbearance plan or trial modification scheduled end date. Provide the date on which a payment change pursuant to the most recent forbearance plan or trial modification is scheduled to end.

(3) Most recent trial modification violated date. Provide the date on which the obligor ceased complying with the terms of the most recent trial modification.

(o) *Information related to repayment plan.* If the type of loss mitigation is a repayment plan, provide the following additional information. A repayment plan refers to a period during which an obligor has agreed to make monthly mortgage payments greater than the contractual installment in an effort to bring a delinquent loan current.

(1) Most recent repayment plan start date. Provide the date on which the most recent repayment plan started.

(2) Most recent repayment plan scheduled end date. Provide the date on which the most recent repayment plan is scheduled to end.

(3) Most recent repayment plan violated date. Provide the date on which the obligor ceased complying with the terms of the most recent repayment plan.

(p) *Information related to short sales.* Short sale refers to the process in which a servicer workers with a delinquent obligor to sell the property prior to the foreclosure sale. If the type of loss mitigation is short sale, provide the following information:

(1) Short sale accepted offer amount. Provide the amount accepted for a pending short sale.

(2) [Reserved]

(q) *Information related to loss mitigation exit.* If the loan has exited loss mitigation efforts during the reporting period, provide the following additional information:

(1) Most recent loss mitigation exit date. Provide the date on which the servicer deemed the most recent loss mitigation effort to have ended.

(2) Most recent loss mitigation exit code. Indicate the code that describes the reason the most recent loss mitigation effort ended.

(r) *Information related to loans in the foreclosure process.* If the loan is in foreclosure, provide the following additional information:

(1) Attorney referral date. Provide the date on which the loan was referred to a foreclosure attorney.

(2) Foreclosure delay reason. Indicate the code that describes the reason for delay within the foreclosure process.

(3) Foreclosure exit date. If the loan exited foreclosure during the reporting period, provide the date on which the loan exited foreclosure.

(4) Foreclosure exit reason. If the loan exited foreclosure during the reporting period, indicate the code that describes the reason the foreclosure proceeding ended.

(5) NOI Date. If a notice of intent (NOI) has been sent, provide the date on which the servicer sent the NOI correspondence to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.

(s) *Information related to REO.* REO (Real Estate Owned) refers to property owned by a lender after an unsuccessful sale at a foreclosure auction. If the loan is REO, provide the following additional information:

(1) Most recent accepted REO offer amount. If an REO offer has been accepted, provide the amount accepted for the REO sale.

(2) Most recent accepted REO offer date. If an REO offer has been accepted, provide the date on which the REO sale amount was accepted.

(3) Gross liquidation proceeds. If the REO sale has closed, provide the gross amount due to the issuing entity as reported on Line 420 of the HUD-1 settlement statement.

(4) Net sales proceeds. If the REO sale has closed, provide the net proceeds received from the escrow closing (before servicer reimbursement).

(5) Reporting period loss amount passed to issuing entity. Provide the cumulative loss amount passed through to the issuing entity during the reporting period, including subsequent loss adjustments and any forgiven principal as a result of a modification that was passed through to the issuing entity.

(6) Cumulative total loss amount passed to issuing entity. Provide the loss amount passed through to the issuing entity to date, including any forgiven principal as a result of a modification that was passed through to the issuing entity.

(7) Subsequent recovery amount. Provide the reporting period amount recovered subsequent to the initial gain/loss recognized at the time of liquidation.

(8) Eviction indicator. Indicate whether an eviction process has begun.

(9) REO exit date. If the loan exited REO during the reporting period, provide the date on which the loan exited REO status.

(10) REO exit reason. If the loan exited REO during the reporting period, indicate the code that describes the reason the loan exited REO status.

(t) *Information related to losses.* (1) Information related to loss claims. (i) UPB at liquidation. Provide the actual unpaid principal balance (UPB) at the time of liquidation.

(ii) Servicing fees claimed. Provide the amount of accrued servicing fees claimed at time of servicer reimbursement after liquidation.

(iii) Servicer advanced amounts reimbursed—principal. Provide the total amount of unpaid principal advances made by the servicer that were reimbursed to the servicer.

(iv) Servicer advanced amounts reimbursed—interest. Provide the total amount of unpaid interest advances made by the servicer that were reimbursed to the servicer.

(v) Servicer advanced amount reimbursed—taxes and insurance. Provide the total amount of any unpaid escrow amounts advanced by the servicer that were reimbursed to the servicer.

(vi) Servicer advanced amount reimbursed—corporate. Provide the total amount of any outstanding advances of property inspection and preservation expenses made by the servicer that were reimbursed to the servicer.

(vii) REO management fees. If the loan is in REO, provide the total amount of REO management fees (including auction fees) paid over the life of the loan.

(viii) Cash for keys/cash for deed. Provide the total amount paid to the obligor or tenants in exchange for vacating the property, or the payment to the obligor to accelerate a deed-in-lieu process or complete a redemption period.

(ix) Performance incentive fees. Provide the total amount paid to the servicer in exchange for carrying out a deed-in-lieu or short sale or similar activities.

(2) [Reserved]

(u) *Information related to mortgage insurance claims.* If a mortgage insurance claim (MI claim) has been submitted to the primary mortgage insurance company for reimbursement, provide the following additional information:

(1) MI claim filed date. Provide the date on which the servicer filed an MI claim.

(2) MI claim amount. Provide the amount of the MI claim filed by the servicer.

(3) MI claim paid date. If the MI claim has been paid, provide the date on which the MI company paid the MI claim.

(4) MI claim paid amount. If the MI claim has been decided, provide the amount of the claim paid by the MI company.

(5) MI claim denied/rescinded date. If the MI claim has been denied or rescinded, provide the final MI denial date after all servicer appeals.

(6) Marketable title transferred date. If the deed for the property has been conveyed to the MI company, provide the date of actual title conveyance to the MI company.

(v) *Information related to delinquent loans.* (1) Non-pay status. Indicate the code that describes the delinquency status of the loan.

(2) Reporting action code. Further indicate the code that defines the default/delinquent status of the loan.

Item 2. Commercial mortgages. If the asset pool includes commercial mortgages, provide the following data for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Group ID. Indicate the alpha-numeric code assigned to each loan group within a securitization.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the commercial mortgage.* (1) Originator. Identify the name or MERS organization number of the originator entity.

(2) Origination date. Provide the date the loan was originated.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan term. Indicate the term of the loan in months at the time the loan was originated.

(5) Maturity date. Indicate the date the final scheduled payment is due per the loan documents.

(6) Original amortization term. Indicate the number of months that would have been required to retire the loan through regular payments, as determined at the origination date of the loan.

(7) Original interest rate. Provide the rate of interest at the time the loan was originated.

(8) Interest rate at securitization. Indicate the annual gross interest rate used to calculate interest for the loan as of securitization.

(9) Interest accrual method. Provide the code that indicates the "number of days" convention used to calculate interest.

(10) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable, step or other.

(11) Original interest-only term. Indicate the number of months in which the obligor is permitted to pay only interest on the loan.

(12) First loan payment due date. Provide the date on which the borrower must pay the first full interest and/or principal payment due on the mortgage in accordance with the loan documents.

(13) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(14) Lien position at securitization. Indicate the code that describes the lien position for the loan as of securitization.

(15) Loan structure. Indicate the code that describes the type of loan structure including the seniority of participated mortgage loan components. The code relates to the loan within the securitization.

(16) Payment type. Indicate the code that describes the type or method of payment for a loan.

(17) Periodic principal and interest payment at securitization. Provide the total amount of principal and interest due on the loan in effect as of securitization.

(18) Scheduled principal balance at securitization. Indicate the outstanding scheduled principal balance of the loan as of securitization.

(19) Payment frequency. Indicate the code that describes the frequency mortgage loan payments are required to be made.

(20) Number of properties at securitization. Provide the number of properties which serve as mortgage collateral for the loan as of securitization.

(21) Number of properties. Provide the number of properties which serve as mortgage collateral for the loan as of the end of the reporting period.

(22) Grace days allowed. Provide the number of days after a mortgage payment is due in which the lender will not require a late payment charge in accordance with the loan documents. Does not include penalties associated with default interest.

(23) Interest only indicator. Indicate yes or no whether this is a loan for which scheduled interest only is payable, whether for a temporary basis or until the full loan balance is due.

(24) Balloon indicator. Indicate yes or no whether the loan documents require a lump-sum payment of principal at maturity.

(25) Prepayment premium indicator. Indicate yes or no whether the obligor is subject to prepayment penalties.

(26) Negative amortization indicator. Indicate yes or no whether negative amortization (interest shortage) amounts are permitted to be added back to the unpaid principal balance of the loan if monthly payments should fall below the true amortized amount.

(27) Modification indicator. Indicate yes or no whether the loan has been modified from its original terms.

(28) Information related to ARMs. If the loan is an ARM, provide the following additional information for each loan:

(i) ARM index. Specify the code that describes the index on which an adjustable interest rate is based.

(ii) First rate adjustment date. Provide the date on which the first interest rate adjustment becomes effective (subsequent to loan securitization).

(iii) First payment adjustment date. Provide the date on which the first adjustment to the regular payment amount becomes effective (after securitization).

(iv) ARM margin. Indicate the spread added to the index of an ARM loan to determine the interest rate at securitization.

(v) Lifetime rate cap. Indicate the maximum interest rate that can be in effect during the life of the loan.

(vi) Lifetime rate floor. Indicate the minimum interest rate that can be in effect during the life of the loan.

(vii) Periodic rate increase limit. Provide the maximum amount the interest rate can increase from any period to the next.

(viii) Periodic rate decrease limit. Provide the maximum amount the interest rate can decrease from any period to the next.

(ix) Periodic pay adjustment maximum amount. Provide the maximum amount the principal and interest constant can increase or decrease on any adjustment date.

(x) Periodic pay adjustment maximum percentage. Provide the maximum percentage amount the payment can increase or decrease from any period to the next.

(xi) Rate reset frequency. Indicate the code describing the frequency which the periodic mortgage rate is reset due to an adjustment in the ARM index.

(xii) Pay reset frequency. Indicate the code describing the frequency which the periodic mortgage payment will be adjusted.

(xiii) Index look back in days. Provide the number of days prior to an interest rate adjustment effective date used to determine the appropriate index rate.

(29) Information related to prepayment penalties. If the obligor is subject to prepayment penalties, provide the following additional information for each loan:

(i) Prepayment lock-out end date. Provide the effective date after which the lender allows prepayment of a loan.

(ii) Yield maintenance end date. Provide the date after which yield maintenance prepayment penalties are no longer effective.

(iii) Prepayment premium end date. Provide the effective date after which prepayment premiums are no longer effective.

(30) Information related to negative amortization. If the loan allows for negative amortization, provide the following additional information for each loan:

(i) Maximum negative amortization allowed (% of original balance). Provide the maximum percentage of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(ii) Maximum negative amortization allowed. Provide the maximum amount of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(iii) Negative amortization/deferred interest capitalized amount. Indicate the amount for the reporting period that was capitalized (added to) the principal balance.

(iv) Deferred interest—cumulative. Indicate the cumulative deferred interest for the reporting period and prior reporting cycles net of any deferred interest collected.

(v) Deferred interest collected. Indicate the amount of deferred interest collected during the reporting period.

(d) *Information related to the property.* Provide the following information for each of the properties that collateralizes a loan identified above:

(1) Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with "defeased."

(2) Property address. Specify the address of the property which serves as mortgage collateral. If multiple properties, then print "various." If the property has been defeased then leave field empty. For substituted properties, populate with the new property information.

(3) Property city. Specify the city name where the property which serves as mortgage collateral is located. If the property has been defeased, then leave field empty.

(4) Property state. Indicate the two character abbreviated code representing the state in which the property which serves as mortgage collateral is located.

(5) Property zip code. Indicate the zip (or postal) code for the property which serves as mortgage collateral.

(6) Property county. Indicate the county in which the property which serves as mortgage collateral is located.

(7) Property type. Indicate the code that describes how the property is being used.

(8) Net rentable square feet. Provide the net rentable square feet area of the property.

(9) Net rentable square feet at securitization. Provide the net rentable square feet area of the property as determined at the time the property is contributed to the pool as collateral.

(10) Number of units/beds/rooms. If the property type is multifamily, self-storage, healthcare, lodging or mobile home park, provide the number of units/beds/rooms of the property.

(11) Number of units/beds/rooms at securitization. If the property type is multifamily, self-storage, healthcare, lodging or mobile home park, provide the number of units/beds/rooms of the property at securitization.

(12) Year built. Provide the year that the property was built.

(13) Year last renovated. Provide the year that the last major renovation/new construction was completed on the property.

(14) Valuation amount at securitization. Provide the valuation amount of the property as of the valuation date at securitization.

(15) Valuation source at securitization. Specify the code that identifies the source of the property valuation.

(16) Valuation date at securitization. Provide the date the valuation amount at securitization was determined.

(17) Most recent value. If an additional property valuation was obtained by any transaction party or its affiliates after the valuation obtained at securitization, provide the most recent valuation amount.

(18) Most recent valuation date. Provide the date of the most recent valuation.

(19) Most recent valuation source. Specify the code that identifies the source of the most recent property valuation.

(20) Physical occupancy at securitization. Provide the percentage of rentable space occupied by tenants.

(21) Most recent physical occupancy. Provide the most recent available percentage of rentable space occupied by tenants.

(22) Property status. Provide the code that describes the status of the property.

(23) Defeasance option start date. Provide the date when the defeasance option becomes available.

(24) Defeasance status. Provide the code that indicates if a loan has or is able to be defeased.

(25) Largest tenant.

(i) Largest tenant. Identify the tenant that leases the largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(25)(i): If the tenant is not occupying the space but is still paying rent, print "Dark" after tenant name. If tenant has sub-leased the space, print "Sub-leased/name" after tenant name.

(ii) Square feet of largest tenant. Provide total number of square feet leased by the largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.

(26) Second largest tenant.

(i) Second largest tenant. Identify the tenant that leases the second largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(26)(i): If the tenant is not occupying the space but is still paying rent, print "Dark" after tenant name. If tenant has sub-leased the space, print "Sub-leased/name" after tenant name.

(ii) Square feet of second largest tenant. Provide the total number of square feet leased by the second largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.

(27) Third largest tenant.

(i) Third largest tenant. Identify the tenant that leases the third largest square feet of the property based on the most recent annual lease rollover review.

Instruction to paragraph (d)(27)(i): If the tenant is not occupying the space but is still paying rent, print "Dark" after tenant name. If tenant has sub-leased the space, print "Sub-leased/name" after tenant name.

(ii) Square feet of third largest tenant. Provide the total number square feet leased by the third largest tenant based on the most recent annual lease rollover review.

(iii) Date of lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.

(28) Financial information related to the property. Provide the following information as of the most recent date available:

(i) Date of financials as of securitization. Provide the date of the operating statement for the property used to underwrite the loan.

(ii) Most recent financial as of start date. Specify the first date of the period for the most recent, hard copy operating statement (e.g., year-to-date or trailing 12 months).

(iii) Most recent financial as of end date. Specify the last day of the period for the most recent, hard copy operating statement (e.g., year-to-date or trailing 12 months).

(iv) Revenue at securitization. Provide the total underwritten revenue amount from all sources for a property as of securitization.

(v) Most recent revenue. Provide the total revenues for the most recent operating statement reported.

(vi) Operating expenses at securitization. Provide the total underwritten operating expenses as of securitization. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance. Exclude capital expenditures, tenant improvements, and leasing commissions.

(vii) Operating expenses. Provide the total operating expenses for the most recent operating statement. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance. Exclude capital expenditures, tenant improvements, and leasing commissions.

(viii) Net operating income at securitization. Provide the total underwritten revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties as of securitization.

(ix) Most recent net operating income. Provide the total revenues less total operating expenses before capital items and debt service per the most recent operating statement.

(x) Net cash flow at securitization. Provide the total underwritten revenue less total underwritten operating expenses and capital costs as of securitization.

(xi) Most recent net cash flow. Provide the total revenue less the total operating expenses and capital costs but before debt service per the most recent operating statement.

(xii) Net operating income or net cash flow indicator at securitization. Indicate the code that describes the method used to calculate at securitization net operating income or net cash flow.

(xiii) Net operating income or net cash flow indicator. Indicate the code that describes the method used to calculate net operating income or net cash flow.

(xiv) Most recent debt service amount. Provide the amount of total scheduled or actual payments that cover the same number of months as the most recent financial operating statement.

(xv) Debt service coverage ratio (net operating income) at securitization. Provide the ratio of underwritten net operating income to debt service as of securitization.

(xvi) Most recent debt service coverage ratio (net operating income). Provide the ratio of net operating income to debt service during the most recent operating statement reported.

(xvii) Debt service coverage ratio (net cash flow) at securitization. Provide the ratio of underwritten net cash flow to debt service as of securitization.

(xviii) Most recent debt service coverage ratio (net cash flow). Provide the ratio of net cash flow to debt service for the most recent financial operating statement.

(xix) Debt service coverage ratio indicator at securitization. If there are multiple properties underlying the loan, indicate the code that describes how the debt service coverage ratio was calculated.

(xx) Most recent debt service coverage ratio indicator. Indicate the code that describes how the debt service coverage ratio was calculated for the most recent financial operating statement.

(xxi) Date of the most recent annual lease rollover review. Provide the date of the most recent annual lease rollover review.

(e) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (e)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under §230.424 of this chapter is filed.

(2) Modification indicator—reporting period. Indicate yes or no whether the loan was modified during the reporting period.

(3) Reporting period beginning scheduled loan balance. Indicate the scheduled balance as of the beginning of the reporting period.

(4) Total scheduled principal and interest due. Provide the total amount of principal and interest due on the loan in the month corresponding to the current distribution date.

(5) Reporting period interest rate. Indicate the annualized gross interest rate used to calculate the scheduled interest amount due for the reporting period.

(6) Servicer and trustee fee rate. Indicate the sum of annual fee rates payable to the servicers and trustee.

(7) Scheduled interest amount. Provide the amount of gross interest payment that was scheduled to be collected during the reporting period.

(8) Other interest adjustment. Indicate any unscheduled interest adjustments during the reporting period.

(9) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(10) Unscheduled principal collections. Provide the principal prepayments and other unscheduled payments of principal received on the loan during the reporting period.

(11) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period, which are not considered unscheduled principal collections and are not scheduled principal amounts.

(12) Reporting period ending actual balance. Indicate the outstanding actual balance of the loan as of the end of the reporting period.

(13) Reporting period ending scheduled balance. Indicate the scheduled or stated principal balance for the loan (as defined in the servicing agreement) as of the end of the reporting period.

(14) Paid through date. Provide the date the loan's scheduled principal and interest is paid through as of the end of the reporting period.

(15) Hyper-amortizing date. Provide the date after which principal and interest may amortize at an accelerated rate, and/or interest expense to the mortgagor increases substantially.

(16) Information related to servicer advances.

(i) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are advanced by the servicer.

(ii) Non-recoverability determined. Indicate yes or no whether the master servicer/special servicer has ceased advancing principal and interest and/or servicing the loan.

(iii) Total principal and interest advance outstanding. Provide the total outstanding principal and interest advances made (or scheduled to be made by the distribution date) by the servicer(s).

(iv) Total taxes and insurance advances outstanding. Provide the total outstanding tax and insurance advances made by the servicer(s) as of the end of the reporting period.

(v) Other expenses advance outstanding. Provide the total outstanding other or miscellaneous advances made by the servicer (s) as of the end of the reporting period.

(17) Payment status of loan. Provide the code that indicates the payment status of the loan.

(18) Information related to activity on ARM loans. If the loan is an ARM, provide the following additional information:

(i) ARM index rate. Provide the index rate used to determine the gross interest for the reporting period.

(ii) Next interest rate. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.

(iii) Next interest rate change adjustment date. Provide the next date that the interest rate is scheduled to change.

(iv) Next payment adjustment date. Provide the date that the amount of scheduled principal and/or interest is next scheduled to change.

(f) *Information related to servicers.* (1) Primary servicer. Identify the name of the entity that services or will have the right to service the asset.

(2) Most recent special servicer transfer date. Provide the date the transfer letter, email, etc. provided by the master servicer is accepted by the special servicer.

(3) Most recent master servicer return date. Provide the date of the return letter, email, etc. provided by the special servicer which is accepted by the master servicer.

(g) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, indicate the code that describes the status of the repurchase demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan from the pool.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase.

(h) *Realized loss to trust.* Indicate the difference between net proceeds (after liquidation expenses) and the scheduled or stated principal of the loan as of the beginning of the reporting period.

(i) *Information related to prepayments.* If a prepayment was received, provide the following additional information for each loan:

(1) Liquidation/Prepayment code. Indicate the code assigned to any unscheduled principal payments or liquidation proceeds received during the reporting period.

(2) Liquidation/Prepayment date. Provide the effective date on which an unscheduled principal payment or liquidation proceeds were received.

(3) Prepayment premium/yield maintenance received. Indicate the amount received from a borrower during the reporting period in exchange for allowing a borrower to pay off a loan prior to the maturity or anticipated repayment date.

(j) *Workout strategy.* Indicate the code that best describes the steps being taken to resolve the loan.

(k) *Information related to modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Date of last modification. Indicate the date of the most recent modification. A modification includes any material change to the loan document, excluding assumptions.

(2) Modification code. Indicate the code that describes the type of loan modification.

(3) Post-modification interest rate. Indicate the new initial interest rate to which the loan was modified.

(4) Post-modification payment amount. Indicate the new initial principal and interest payment amount to which the loan was modified.

(5) Post-modification maturity date. Indicate the new maturity date of the loan after the modification.

(6) Post-modification amortization period. Indicate the new amortization period in months after the modification.

Item 3. Automobile loans. If the asset pool includes automobile loans, provide the following data for each loan in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the automobile loan.* (1) Originator. Identify the name of the entity that originated the loan.

(2) Origination date. Provide the date the loan was originated.

(3) Original loan amount. Indicate the amount of the loan at the time the loan was originated.

(4) Original loan term. Indicate the term of the loan in months at the time the loan was originated.

(5) Loan maturity date. Indicate the month and year in which the final payment on the loan is scheduled to be made.

(6) Original interest rate. Provide the rate of interest at the time the loan was originated.

(7) Interest calculation type. Indicate whether the interest rate calculation method is simple or other.

(8) Original interest rate type. Indicate whether the interest rate on the loan is fixed, adjustable or other.

(9) Original interest-only term. Indicate the number of months from origination in which the obligor is permitted to pay only interest on the loan beginning from when the loan was originated.

(10) Original first payment date. Provide the date of the first scheduled payment that was due after the loan was originated.

(11) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(12) Grace period. Indicate the number of months during which interest accrues but no payments are due from the obligor.

(13) Payment type. Specify the code indicating how often payments are required or if a balloon payment is due.

(14) Subvented. Indicate yes or no to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the buyer.

(d) *Information related to the vehicle.* (1) Vehicle manufacturer. Provide the name of the manufacturer of the vehicle.

(2) Vehicle model. Provide the name of the model of the vehicle.

(3) New or used. Indicate whether the vehicle financed is new or used at the time of origination.

(4) Model year. Indicate the model year of the vehicle.

(5) Vehicle type. Indicate the code describing the vehicle type.

(6) Vehicle value. Indicate the value of the vehicle at the time of origination.

(7) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(e) *Information related to the obligor.* (1) Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor during the loan origination process.

(2) Obligor credit score. Provide the standardized credit score of the obligor used to evaluate the obligor during the loan origination process.

(3) Obligor income verification level. Indicate the code describing the extent to which the obligor's income was verified during the loan origination process.

(4) Obligor employment verification. Indicate the code describing the extent to which the obligor's employment was verified during the loan origination process.

(5) Co-obligor present indicator. Indicate whether the loan has a co-obligor.

(6) Payment-to-income ratio. Provide the scheduled monthly payment amount as a percentage of the total monthly income of the obligor and any other obligor at the origination date. Provide the methodology for determining monthly income in the prospectus.

(7) Geographic location of obligor. Specify the location of the obligor by providing the current U.S. state or territory.

(f) *Information related to activity on the loan.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (f)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under §230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the loan maturity date.

(3) Modification indicator—reporting period. Indicates yes or no whether the asset was modified from its original terms during the reporting period.

(4) Servicing advance method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent loans.

(5) Reporting period beginning loan balance. Indicate the outstanding principal balance of the loan as of the beginning of the reporting period.

(6) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(7) Reporting period interest rate. Indicate the current interest rate for the loan in effect during the reporting period.

(8) Next interest rate. For loans that have not been paid off, indicate the interest rate that is in effect for the next reporting period.

(9) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(10) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(11) Other loan-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by loan administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(12) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(13) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(14) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(15) Other principal adjustments. Indicate any other amounts that caused the principal balance of the loan to be decreased or increased during the reporting period.

(16) Reporting period ending actual balance. Indicate the actual balance of the loan as of the end of the reporting period.

(17) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees).

(18) Total actual amount paid. Indicate the total payment paid to the servicer during the reporting period.

(19) Actual interest collected. Indicate the gross amount of interest collected during the reporting period, whether or not from the obligor.

(20) Actual principal collected. Indicate the amount of principal collected during the reporting period, whether or not from the obligor.

(21) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period, whether or not from the obligor.

(22) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(23) Interest paid through date. Provide the date through which interest is paid with the payment received during the reporting period, which is the effective date from which interest will be calculated for the application of the next payment.

(24) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan:

(i) Zero balance effective date. Provide the date on which the loan balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the loan's balance was reduced to zero.

(25) Current delinquency status. Indicate the number of days the obligor is delinquent past the obligor's payment due date, as determined by the governing transaction agreement.

(g) *Information related to servicers.* (1) Primary loan servicer. Provide the name of the entity that services or will have the right to service the loan.

(2) Most recent servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(h) *Asset subject to demand.* Indicate yes or no whether during the reporting period the loan was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the loan is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the loan.

(3) Demand resolution date. Indicate the date the loan repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(i) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charged-off principal amount. Specify the amount of uncollected principal charged off.

(2) Amounts recovered. If the loan was previously charged off, specify any amounts received after charge-off.

(j) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Modification type. Indicate the code that describes the reason the asset was modified during the reporting period.

(2) Payment extension. Provide the number of months the loan was extended during the reporting period.

(k) *Repossessed.* Indicate yes or no whether the vehicle has been repossessed. If the vehicle has been repossessed, provide the following additional information:

(1) Repossession proceeds. Provide the total amount of proceeds received on disposition (net of repossession fees and expenses).

(2) [Reserved]

Item 4. Automobile leases. If the asset pool includes automobile leases, provide the following data for each lease in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the unique ID number of the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the automobile lease.* (1) Originator. Identify the name of the entity that originated the lease.

(2) Origination date. Provide the date the lease was originated.

(3) Acquisition cost. Provide the original acquisition cost of the lease.

(4) Original lease term. Indicate the term of the lease in months at the time the lease was originated.

(5) Scheduled termination date. Indicate the month and year in which the final lease payment is scheduled to be made.

(6) Original first payment date. Provide the date of the first scheduled payment after origination.

(7) Underwriting indicator. Indicate whether the lease met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(8) Grace period. Indicate the number of months during the term of the lease when no payments are due from the lessee.

(9) Payment type. Specify the code indicating the payment frequency of the lease.

(10) Subvented. Indicate yes or no whether a form of subsidy is received on the lease, such as cash incentives or favorable financing for the lessee.

(d) *Information related to the vehicle.* (1) Vehicle manufacturer. Provide the name of the manufacturer of the leased vehicle.

(2) Vehicle model. Provide the name of the model of the leased vehicle.

(3) New or used. Indicate whether the leased vehicle is new or used.

(4) Model year. Indicate the model year of the leased vehicle.

(5) Vehicle type. Indicate the code describing the vehicle type.

(6) Vehicle value. Indicate the value of the vehicle at the time of origination.

(7) Source of vehicle value. Specify the code that describes the source of the vehicle value.

(8) Base residual value. Provide the securitized residual value of the leased vehicle.

(9) Source of base residual value. Specify the code that describes the source of the base residual value.

(10) Contractual residual value. Provide the residual value, as stated on the contract, that the lessee would need to pay to purchase the vehicle at the end of the lease term.

(e) *Information related to the lessee.* (1) Lessee credit score type. Specify the type of the standardized credit score used to evaluate the lessee during the lease origination process.

(2) Lessee credit score. Provide the standardized credit score of the lessee used to evaluate the lessee during the lease origination process.

(3) Lessee income verification level. Indicate the code describing the extent to which the lessee's income was verified during the lease origination process.

(4) Lessee employment verification. Indicate the code describing the extent to which the lessee's employment was verified during the lease origination process.

(5) Co-lessee present indicator. Indicate whether the lease has a co-lessee.

(6) Payment-to-income ratio. Provide the scheduled monthly payment amount as a percentage of the total monthly income of the lessee and any other co-lessee at the origination date. Provide the methodology for determining monthly income in the prospectus.

(7) Geographic location of lessee. Specify the location of the lessee by providing the current U.S. state or territory.

(f) *Information related to activity on the lease.* (1) Asset added indicator. Indicate yes or no whether the asset was added during the reporting period.

Instruction to paragraph (f)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under §230.424 of this chapter is filed.

(2) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the lease maturity date.

(3) Modification indicator—reporting period. Indicates yes or no whether the asset was modified from its original terms during the reporting period.

(4) Servicing advance method. Specify the code that indicates a servicer's responsibility for advancing principal or interest on delinquent leases.

(5) Reporting period securitization value. Provide the sum of the present values, as of the beginning of the reporting period, of the remaining scheduled monthly payment amounts and the base residual value of the leased vehicle, computed using the securitization value discount rate.

(6) Securitization value discount rate. Provide the discount rate of the lease for the securitization transaction.

(7) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(8) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(9) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers.

(10) Other lease-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by lease administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc.).

(11) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the lessee.

(12) Reporting period ending actual balance. Indicate the actual balance of the lease as of the end of the reporting period.

(13) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period (including all fees).

(14) Total actual amount paid. Indicate the total lease payment received during the reporting period.

(15) Actual other amounts collected. Indicate the total of any amounts, other than the scheduled lease payment, collected during the reporting period, whether or not from the lessee.

(16) Reporting period ending actual securitization value. Provide the sum of the present values, as of the end of the reporting period, of the remaining scheduled monthly payment amounts and the base residual value of the leased vehicle, computed using the securitization value discount rate.

(17) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(18) Paid through date. Provide the date through which scheduled payments have been made with the payment received during the reporting period, which is the effective date from which amounts due will be calculated for the application of the next payment.

(19) Zero balance leases. If the lease balance was reduced to zero during the reporting period, provide the following additional information about the lease:

(i) Zero balance effective date. Provide the date on which the lease balance was reduced to zero.

(ii) Zero balance code. Provide the code that indicates the reason the lease's balance was reduced to zero.

(20) Current delinquency status. Indicate the number of days the lessee is delinquent past the lessee's payment due date, as determined by the governing transaction agreement.

(g) *Information related to servicers.* (1) Primary lease servicer. Provide the name of the entity that services or will have the right to service the lease.

(2) Most recent servicing transfer received date. If a lease's servicing has been transferred, provide the effective date of the most recent servicing transfer.

(h) *Asset subject to demand.* Indicate yes or no whether during the reporting period the lease was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the lease is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the lease from the pool.

(3) Demand resolution date. Indicate the date the lease repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

(i) *Information related to loans that have been charged off.* If the loan has been charged off, provide the following additional information:

(1) Charge-off amounts. Provide the amount charged off on the lease.

(2) [Reserved]

(j) *Information related to loan modifications.* If the loan has been modified from its original terms, provide the following additional information about the most recent loan modification:

(1) Modification type. Indicate the code that describes the reason the lease was modified during the reporting period.

(2) Lease extension. Provide the number of months the lease was extended during the reporting period.

(k) *Information related to lease terminations.* If the lease was terminated, provide the following additional information:

(1) Termination indicator. Specify the code that describes the reason why the lease was terminated.

(2) Excess fees. Specify the amount of excess fees received upon return of the vehicle, such as excess wear and tear or excess mileage.

(3) Liquidation proceeds. Provide the liquidation proceeds net of repossession fees, auction fees and other expenses in accordance with standard industry practice.

Item 5. Debt securities. If the asset pool includes debt securities, provide the following data for each security in the asset pool:

(a) *Asset numbers.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(2) Asset number. Provide the standard industry identifier assigned to the asset. If a standard industry identifier is not assigned to the asset, provide a unique ID number for the asset.

Instruction to paragraph (a)(2): The asset number must reference a single asset within the pool and should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)). If an asset is removed and replaced with another asset, the asset added to the pool should be assigned a unique asset number applicable to only that asset.

(3) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(b) *Reporting period.* (1) Reporting period begin date. Specify the beginning date of the reporting period.

(2) Reporting period end date. Specify the ending date of the reporting period.

(c) *General information about the underlying security.* (1) Issuer. Provide the name of the issuer.

(2) Original issuance date. Provide the date the underlying security was issued. For revolving asset master trusts, provide the issuance date of the receivable that will be added to the asset pool.

(3) Original security amount. Indicate the amount of the underlying security at the time the underlying security was issued.

(4) Original security term. Indicate the initial number of months between the month the underlying security was issued and the security's maturity date.

(5) Security maturity date. Indicate the month and year in which the final payment on the underlying security is scheduled to be made.

(6) Original amortization term. Indicate the number of months in which the underlying security would be retired if the amortizing principal and interest payment were to be paid each month.

(7) Original interest rate. Provide the rate of interest at the time the underlying security was issued.

(8) Accrual type. Provide the code that describes the method used to calculate interest on the underlying security.

(9) Interest rate type. Indicate the code that indicates whether the interest rate on the underlying security is fixed, adjustable, step or other.

(10) Original interest-only term. Indicate the number of months from the date the underlying security was issued in which the obligor is permitted to pay only interest on the underlying security.

(11) First payment date from issuance. Provide the date of the first scheduled payment.

(12) Underwriting indicator. Indicate whether the loan or asset met the criteria for the first level of solicitation, credit-granting or underwriting criteria used to originate the pool asset.

(13) Title of underlying security. Specify the title of the underlying security.

(14) Denomination. Give the minimum denomination of the underlying security.

(15) Currency. Specify the currency of the underlying security.

(16) Trustee. Specify the name of the trustee.

(17) Underlying SEC file number. Specify the registration statement file number of the registration of the offer and sale of the underlying security.

(18) Underlying CIK number. Specify the CIK number of the issuer of the underlying security.

(19) Callable. Indicate whether the security is callable.

(20) Payment frequency. Indicate the code describing the frequency of payments that will be made on the underlying security.

(21) Zero coupon indicator. Indicate yes or no whether an underlying security or agreement is interest bearing.

(d) *Information related to activity on the underlying security.* (1) Asset added indicator. Indicate yes or no whether the underlying security was added to the asset pool during the reporting period.

Instruction to paragraph (d)(1): A response to this data point is required only when assets are added to the asset pool after the final prospectus under §230.424 of this chapter is filed.

(2) Modification indicator. Indicates yes or no whether the underlying security was modified from its original terms.

(3) Reporting period beginning asset balance. Indicate the outstanding principal balance of the underlying security as of the beginning of the reporting period.

(4) Reporting period beginning scheduled asset balance. Indicate the scheduled principal balance of the underlying security as of the beginning of the reporting period.

(5) Reporting period scheduled payment amount. Indicate the total payment amount that was scheduled to be collected during the reporting period.

(6) Reporting period interest rate. Indicate the interest rate in effect on the underlying security.

(7) Total actual amount paid. Indicate the total payment paid to the servicer during the reporting period.

(8) Actual interest collected. Indicate the gross amount of interest collected during the reporting period.

(9) Actual principal collected. Indicate the amount of principal collected during the reporting period.

(10) Actual other amounts collected. Indicate the total of any amounts, other than principal and interest, collected during the reporting period.

(11) Other principal adjustments. Indicate any other amounts that caused the principal balance of the underlying security to be decreased or increased during the reporting period.

(12) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(13) Scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected during the reporting period.

(14) Scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected during the reporting period.

(15) Reporting period ending actual balance. Indicate the actual balance of the underlying security as of the end of the reporting period.

(16) Reporting period ending scheduled balance. Indicate the scheduled principal balance of the underlying security as of the end of the reporting period.

(17) Servicing fee—percentage. If the servicing fee is based on a percentage, provide the percentage used to calculate the aggregate servicing fee.

(18) Servicing fee—flat-fee. If the servicing fee is based on a flat-fee amount, indicate the monthly servicing fee paid to all servicers as an amount.

(19) Zero balance loans. If the loan balance was reduced to zero during the reporting period, provide the following additional information about the loan:

(i) Zero balance code. Provide the code that indicates the reason the underlying security's balance was reduced to zero.

(ii) Zero balance effective date. Provide the date on which the underlying security's balance was reduced to zero.

(20) Remaining term to maturity. Indicate the number of months from the end of the reporting period to the maturity date of the underlying security.

(21) Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.

(22) Number of days payment is past due. If the obligor has not made the full scheduled payment, indicate the number of days since the scheduled payment date.

(23) Number of payments past due. Indicate the number of payments the obligor is past due as of the end of the reporting period.

(24) Next reporting period payment amount due. Indicate the total payment due to be collected in the next reporting period.

(25) Next due date. For assets that have not been paid off, indicate the next payment due date on the underlying security.

(e) *Information related to servicers.* (1) Primary servicer. Indicate the name or MERS organization number of the entity that serviced the underlying security during the reporting period.

(2) Most recent servicing transfer received date. If the servicing of the underlying security has been transferred, provide the effective date of the most recent servicing transfer.

(f) *Asset subject to demand.* Indicate yes or no whether during the reporting period the asset was the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee. If the asset is the subject of a demand to repurchase or replace for breach of representations and warranties, including investor demands upon a trustee, provide the following additional information:

(1) Status of asset subject to demand. Indicate the code that describes the status of the repurchase or replacement demand as of the end of the reporting period.

(2) Repurchase amount. Provide the amount paid to repurchase the underlying security from the pool.

(3) Demand resolution date. Indicate the date the underlying security repurchase or replacement demand was resolved.

(4) Repurchaser. Specify the name of the repurchaser.

(5) Repurchase or replacement reason. Indicate the code that describes the reason for the repurchase or replacement.

Item 6. Resecuritizations.

(a) If the asset pool includes asset-backed securities, provide the asset-level information specified in Item 5. Debt Securities in this Schedule AL for each security in the asset pool.

(b) If the asset pool includes asset-backed securities issued after November 23, 2016, provide the asset-level information specified in §229.1111(h) for the assets backing each security in the asset pool.

[79 FR 57316, Sept. 24, 2014; 79 FR 58674, Sept. 30, 2014]

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Subpart 229.1200—Disclosure by Registrants Engaged in Oil and Gas Producing Activities

SOURCE: 74 FR 2193, Jan. 14, 2009, unless otherwise noted.

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§229.1201 (Item 1201) General instructions to oil and gas industry-specific disclosures.

(a) If oil and gas producing activities are material to the registrant's or its subsidiaries' business operations or financial position, the disclosure specified in this Subpart 229.1200 should be included under appropriate captions (with cross references, where applicable, to related information disclosed in financial statements). However, limited partnerships and joint ventures that conduct, operate, manage, or report upon oil and gas drilling or income programs, that acquire properties either for drilling and production, or for production of oil, gas, or geothermal steam or water, need not include such disclosure.

(b) To the extent that Items 1202 through 1208 (§§229.1202-229.1208) call for disclosures in tabular format, as specified in the particular Item, a registrant may modify such format for ease of presentation, to add information or to combine two or more required tables.

(c) The definitions in Rule 4-10(a) of Regulation S-X (17 CFR 210.4-10(a)) shall apply for purposes of this Subpart 229.1200.

(d) For purposes of this Subpart 229.1200, the term *by geographic area* means, as appropriate for meaningful disclosure in the circumstances:

(1) By individual country;

(2) By groups of countries within a continent; or

(3) By continent.

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§229.1202 (Item 1202) Disclosure of reserves.

(a) *Summary of oil and gas reserves at fiscal year end.* (1) Provide the information specified in paragraph (a)(2) of this Item in tabular format as provided below:

SUMMARY OF OIL AND GAS RESERVES AS OF FISCAL-YEAR END BASED ON AVERAGE FISCAL-YEAR PRICES

Reserves category	Reserves				
	Oil (mbbls)	Natural gas (mmcf)	Synthetic oil (mbbls)	Synthetic gas (mmcf)	Product A (measure)
PROVED					
Developed:					
Continent A					
Continent B					
Country A					
Country B					
Other Countries in Continent B					

Undeveloped:					
Continent A					
Continent B					
Country A					
Country B					
Other Countries in Continent B					
TOTAL PROVED					
PROBABLE					
Developed					
Undeveloped					
POSSIBLE					
Developed					
Undeveloped					

(2) Disclose, in the aggregate and by geographic area and for each country containing 15% or more of the registrant's proved reserves, expressed on an oil-equivalent-barrels basis, reserves estimated using prices and costs under existing economic conditions, for the product types listed in paragraph (a)(4) of this Item, in the following categories:

(i) Proved developed reserves;

(ii) Proved undeveloped reserves;

(iii) Total proved reserves;

(iv) Probable developed reserves (optional);

(v) Probable undeveloped reserves (optional);

(vi) Possible developed reserves (optional); and

(vii) Possible undeveloped reserves (optional).

Instruction 1 to paragraph (a)(2): Disclose updated reserves tables as of the close of each fiscal year.

Instruction 2 to paragraph (a)(2): The registrant is permitted, but not required, to disclose probable or possible reserves pursuant to paragraphs (a)(2)(iv) through (a)(2)(vii) of this Item.

Instruction 3 to paragraph (a)(2): If the registrant discloses amounts of a product in barrels of oil equivalent, disclose the basis for such equivalency.

Instruction 4 to paragraph (a)(2): A registrant need not provide disclosure of the reserves in a country containing 15% or more of the registrant's proved reserves if that country's government prohibits disclosure of reserves in that country. In addition, a registrant need not provide disclosure of the reserves in a country containing 15% or more of the registrant's proved reserves if that country's government prohibits disclosure in a particular field and disclosure of reserves in that country would have the effect of disclosing reserves in particular fields.

(3) Reported total reserves shall be simple arithmetic sums of all estimates for individual properties or fields within each reserves category. When probabilistic methods are used, reserves should not be aggregated probabilistically beyond the field or property level; instead, they should be aggregated by simple arithmetic summation.

(4) Disclose separately material reserves of the following product types:

(i) Oil;

(ii) Natural gas;

(iii) Synthetic oil;

(iv) Synthetic gas; and

(v) Sales products of other non-renewable natural resources that are intended to be upgraded into synthetic oil and gas.

(5) If the registrant discloses probable or possible reserves, discuss the uncertainty related to such reserves estimates.

(6) If the registrant has not previously disclosed reserves estimates in a filing with the Commission or is disclosing material additions to its reserves estimates, the registrant shall provide a general discussion of the technologies used to establish the appropriate level of certainty for reserves estimates from material properties included in the total reserves disclosed. The particular properties do not need to be identified.

(7) *Preparation of reserves estimates or reserves audit.* Disclose and describe the internal controls the registrant uses in its reserves estimation effort. In addition, disclose the qualifications of the technical person primarily responsible for overseeing the preparation of the reserves estimates and, if the registrant represents that a third party conducted a reserves audit, disclose the qualifications of the technical person primarily responsible for overseeing such reserves audit.

(8) *Third party reports.* If the registrant represents that a third party prepared, or conducted a reserves audit of, the registrant's reserves estimates, or any estimated valuation thereof, or conducted a process review, the registrant shall file a report of the third party as an exhibit to the relevant registration statement or other Commission filing. If the report relates to the preparation of, or a reserves audit of, the registrant's reserves estimates, it must include the following disclosure, if applicable to the type of filing:

(i) The purpose for which the report was prepared and for whom it was prepared;

(ii) The effective date of the report and the date on which the report was completed;

(iii) The proportion of the registrant's total reserves covered by the report and the geographic area in which the covered reserves are located;

(iv) The assumptions, data, methods, and procedures used, including the percentage of the registrant's total reserves reviewed in connection with the preparation of the report, and a statement that such assumptions, data, methods, and procedures are appropriate for the purpose served by the report;

(v) A discussion of primary economic assumptions;

(vi) A discussion of the possible effects of regulation on the ability of the registrant to recover the estimated reserves;

(vii) A discussion regarding the inherent uncertainties of reserves estimates;

(viii) A statement that the third party has used all methods and procedures as it considered necessary under the circumstances to prepare the report;

(ix) A brief summary of the third party's conclusions with respect to the reserves estimates; and

(x) The signature of the third party.

(9) For purposes of this Item 1202, the term *reserves audit* means the process of reviewing certain of the pertinent facts interpreted and assumptions underlying a reserves estimate prepared by another party and the rendering of an opinion about the appropriateness of the methodologies employed, the adequacy and quality of the data relied upon, the depth and thoroughness of the reserves estimation process, the classification of reserves appropriate to the relevant definitions used, and the reasonableness of the estimated reserves quantities.

(b) *Reserves sensitivity analysis (optional).* (1) The registrant may, but is not required to, provide the information specified in paragraph (b)(2) of this Item in tabular format as provided below:

SENSITIVITY OF RESERVES TO PRICES BY PRINCIPAL PRODUCT TYPE AND PRICE SCENARIO

	Proved reserves					Probable reserves					Possible reserves				
	Oil	Gas	Syn. oil	Syn. gas	Product A	Oil	Gas	Syn. oil	Syn. gas	Product A	Oil	Gas	Syn. oil	Syn. gas	Product A
Price case	mbbls	mmcf	mbbls	mmcf	measure	mbbls	mmcf	mbbls	mmcf	measure	mbbls	mmcf	mbbls	mmcf	measure
Scenario 1															
Scenario 2															

(2) The registrant may, but is not required to, disclose, in the aggregate, an estimate of reserves estimated for each product type based on different price and cost criteria, such as a range of prices and costs that may reasonably be achieved, including standardized futures prices or management's own forecasts.

(3) If the registrant provides disclosure under this paragraph (b), disclose the price and cost schedules and assumptions on which the disclosed values are based.

Instruction to Item 1202: Estimates of oil or gas resources other than reserves, and any estimated values of such resources, shall not be disclosed in any document publicly filed with the Commission, unless such information is required to be disclosed in the document by foreign or state law; provided, however, that where such estimates previously have been provided to a person (or any of its affiliates) that is offering to acquire, merge, or consolidate with the registrant or otherwise to acquire the registrant's securities, such estimate may be included in documents related to such acquisition.

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§229.1203 (Item 1203) Proved undeveloped reserves.

(a) Disclose the total quantity of proved undeveloped reserves at year end.

(b) Disclose material changes in proved undeveloped reserves that occurred during the year, including proved undeveloped reserves converted into proved developed reserves.

(c) Discuss investments and progress made during the year to convert proved undeveloped reserves to proved developed reserves, including, but not limited to, capital expenditures.

(d) Explain the reasons why material amounts of proved undeveloped reserves in individual fields or countries remain undeveloped for five years or more after disclosure as proved undeveloped reserves.

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§229.1204 (Item 1204) Oil and gas production, production prices and production costs.

(a) For each of the last three fiscal years disclose production, by final product sold, of oil, gas, and other products. Disclosure shall be made by geographical area and for each country and field that contains 15% or more of the registrant's total proved reserves expressed on an oil-equivalent-barrels basis unless prohibited by the country in which the reserves are located.

(b) For each of the last three fiscal years disclose, by geographical area:

(1) The average sales price (including transfers) per unit of oil, gas and other products produced; and

(2) The average production cost, not including ad valorem and severance taxes, per unit of production.

Instruction 1 to Item 1204: Generally, net production should include only production that is owned by the registrant and produced to its interest, less royalties and production due others. However, in special situations (e.g., foreign production) net production before any royalties may be provided, if more appropriate. If "net before royalty" production figures are furnished, the change from the usage of "net production" should be noted.

Instruction 2 to Item 1204: Production of natural gas should include only marketable production of natural gas on an "as sold" basis. Production will include dry, residue, and wet gas, depending on whether liquids have been extracted before the registrant transfers title. Flared gas, injected gas, and gas consumed in operations should be omitted. Recovered gas-lift gas and reproduced gas should not be included until sold. Synthetic gas, when marketed as such, should be included in natural gas sales.

Instruction 3 to Item 1204: If any product, such as bitumen, is sold or custody is transferred prior to conversion to synthetic oil or gas, the product's production, transfer prices, and production costs should be disclosed separately from all other products.

Instruction 4 to Item 1204: The transfer price of oil and gas (natural and synthetic) produced should be determined in accordance with FASB ASC paragraph 932-235-50-24 (Extractive Activities—Oil and Gas Topic).

Instruction 5 to Item 1204: The average production cost, not including ad valorem and severance taxes, per unit of production should be computed using production costs disclosed pursuant to FASB ASC Topic 932, *Extractive Activities—Oil and Gas.* Units of production should be expressed in common units of production with oil, gas, and other products converted to a common unit of measure on the basis used in computing amortization.

[74 FR 2193, Jan. 14, 2009, as amended at 76 FR 50121, Aug. 12, 2011]

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§229.1205 (Item 1205) Drilling and other exploratory and development activities.

(a) For each of the last three fiscal years, by geographical area, disclose:

(1) The number of net productive and dry exploratory wells drilled; and

(2) The number of net productive and dry development wells drilled.

(b) *Definitions.* For purposes of this Item 1205, the following terms shall be defined as follows:

(1) A *dry well* is an exploratory, development, or extension well that proves to be incapable of producing either oil or gas in sufficient quantities to justify completion as an oil or gas well.

(2) A *productive well* is an exploratory, development, or extension well that is not a dry well.

(3) *Completion* refers to installation of permanent equipment for production of oil or gas, or, in the case of a dry well, to reporting to the appropriate authority that the well has been abandoned.

(4) The *number of wells drilled* refers to the number of wells completed at any time during the fiscal year, regardless of when drilling was initiated.

(c) Disclose, by geographic area, for each of the last three years, any other exploratory or development activities conducted, including implementation of mining methods for purposes of oil and gas producing activities.

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§229.1206 (Item 1206) Present activities.

(a) Disclose, by geographical area, the registrant's present activities, such as the number of wells in the process of being drilled (including wells temporarily suspended), waterfloods in process of being installed, pressure maintenance operations, and any other related activities of material importance.

(b) Provide the description of present activities as of a date at the end of the most recent fiscal year or as close to the date that the registrant files the document as reasonably possible.

(c) Include only those wells in the process of being drilled at the "as of" date and express them in terms of both gross and net wells.

(d) Do not include wells that the registrant plans to drill, but has not commenced drilling unless there are factors that make such information material.

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§229.1207 (Item 1207) Delivery commitments.

(a) If the registrant is committed to provide a fixed and determinable quantity of oil or gas in the near future under existing contracts or agreements, disclose material information concerning the estimated availability of oil and gas from any principal sources, including the following:

(1) The principal sources of oil and gas that the registrant will rely upon and the total amounts that the registrant expects to receive from each principal source and from all sources combined;

(2) The total quantities of oil and gas that are subject to delivery commitments; and

(3) The steps that the registrant has taken to ensure that available reserves and supplies are sufficient to meet such commitments for the next one to three years.

(b) Disclose the information required by this Item:

(1) In a form understandable to investors; and

(2) Based upon the facts and circumstances of the particular situation, including, but not limited to:

(i) Disclosure by geographic area;

(ii) Significant supplies dedicated or contracted to the registrant;

(iii) Any significant reserves or supplies subject to priorities or curtailments which may affect quantities delivered to certain classes of customers, such as customers receiving services under low priority and interruptible contracts;

(iv) Any priority allocations or price limitations imposed by Federal or State regulatory agencies, as well as other factors beyond the registrant's control that may affect the registrant's ability to meet its contractual obligations (the registrant need not provide detailed discussions of price regulation);

(v) Any other factors beyond the registrant's control, such as other parties having control over drilling new wells, competition for the acquisition of reserves and supplies, and the availability of foreign reserves and supplies, which may affect the registrant's ability to acquire additional reserves and supplies or to maintain or increase the availability of reserves and supplies; and

(vi) Any impact on the registrant's earnings and financing needs resulting from its inability to meet short-term or long-term contractual obligations. (See Items 303 and 1209 of Regulation S-K (§§229.303 and 229.1209).)

(c) If the registrant has been unable to meet any significant delivery commitments in the last three years, describe the circumstances concerning such events and their impact on the registrant.

(d) For purposes of this Item, *available reserves* are estimates of the amounts of oil and gas which the registrant can produce from current proved developed reserves using presently installed equipment under existing economic and operating conditions and an estimate of amounts that others can deliver to the registrant under long-term contracts or agreements on a per-day, per-month, or per-year basis.

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§229.1208 (Item 1208) Oil and gas properties, wells, operations, and acreage.

(a) Disclose, as of a reasonably current date or as of the end of the fiscal year, the total gross and net productive wells, expressed separately for oil and gas (including synthetic oil and gas produced through wells) and the total gross and net developed acreage (*i.e.*, acreage assignable to productive wells) by geographic area.

(b) Disclose, as of a reasonably current date or as of the end of the fiscal year, the amount of undeveloped acreage, both leases and concessions, if any, expressed in both gross and net acres by geographic area, together with an indication of acreage concentrations, and, if material, the minimum remaining terms of leases and concessions.

(c) *Definitions.* For purposes of this Item 1208, the following terms shall be defined as indicated:

(1) A *gross well or acre* is a well or acre in which the registrant owns a working interest. The number of gross wells is the total number of wells in which the registrant owns a working interest. Count one or more completions in the same bore hole as one well. In a footnote, disclose the number of wells with multiple completions. If one of the multiple completions in a well is an oil completion, classify the well as an oil well.

(2) A *net well or acre* is deemed to exist when the sum of fractional ownership working interests in gross wells or acres equals one. The number of net wells or acres is the sum of the fractional working interests owned in gross wells or acres expressed as whole numbers and fractions of whole numbers.

(3) *Productive wells* include producing wells and wells mechanically capable of production.

(4) *Undeveloped acreage* encompasses those leased acres on which wells have not been drilled or completed to a point that would permit the production of economic quantities of oil or gas regardless of whether such acreage contains proved reserves. Do not confuse undeveloped acreage with undrilled acreage held by production under the terms of the lease.

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