

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 200, 232, 240 and 249

[Release Nos. 33-9136; 34-62764; IC-29384; File No. S7-10-09]

RIN 3235-AK27

FACILITATING SHAREHOLDER DIRECTOR NOMINATIONS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting changes to the federal proxy rules to facilitate the effective exercise of shareholders' traditional state law rights to nominate and elect directors to company boards of directors. The new rules will require, under certain circumstances, a company's proxy materials to provide shareholders with information about, and the ability to vote for, a shareholder's, or group of shareholders', nominees for director. We believe that these rules will benefit shareholders by improving corporate suffrage, the disclosure provided in connection with corporate proxy solicitations, and communication between shareholders in the proxy process. The new rules apply only where, among other things, relevant state or foreign law does not prohibit shareholders from nominating directors. The new rules will require that specified disclosures be made concerning nominating shareholders or groups and their nominees. In addition, the new rules provide that companies must include in their proxy materials, under certain circumstances, shareholder proposals that seek to establish a procedure in the company's governing documents for the inclusion of one or more shareholder director nominees in the company's proxy materials. We also are adopting related changes to certain of our other rules and regulations, including the existing solicitation exemptions from our proxy rules and the

beneficial ownership reporting requirements.

EFFECTIVE DATE: [insert date 60 days after the date of publication in the Federal Register]

COMPLIANCE DATES: [insert date 60 days after the date of publication in the Federal Register], except that companies that qualify as “smaller reporting companies” (as defined in § 17 CFR 240.12b-2) as of the effective date of the rule amendments will not be subject to Rule 14a-11 until three years after the effective date.

FOR FURTHER INFORMATION CONTACT: Lillian Brown, Tamara Brightwell, or Ted Yu, Division of Corporation Finance, at (202) 551-3200, or, with regard to investment companies, Kieran G. Brown, Division of Investment Management, at (202) 551-6784, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adding new Rule 82a of Part 200 Subpart D – Information and Requests,¹ and new Rules 14a-11,² and 14a-18,³ and new Regulation 14N⁴ and Schedule 14N,⁵ and amending Rule 13⁶ of Regulation S-T,⁷ Rules 13a-11,⁸ 13d-1,⁹ 14a-2,¹⁰ 14a-4,¹¹ 14a-5,¹² 14a-6,¹³ 14a-8,¹⁴ 14a-9,¹⁵ 14a-12,¹⁶ and 15d-11,¹⁷ Schedule 13G,¹⁸ Schedule 14A,¹⁹

¹ 17 CFR 200.82a.

² 17 CFR 240.14a-11.

³ 17 CFR 240.14a-18.

⁴ 17 CFR 240.14n et seq.

⁵ 17 CFR 240.14n-101.

⁶ 17 CFR 232.13.

⁷ 17 CFR 232.10 et seq.

⁸ 17 CFR 240.13a-11.

⁹ 17 CFR 240.13d-1.

¹⁰ 17 CFR 240.14a-2.

¹¹ 17 CFR 240.14a-4.

and Form 8-K,²⁰ under the Securities Exchange Act of 1934.²¹ Although we are not amending Schedule 14C²² under the Exchange Act, the amendments will affect the disclosure provided in Schedule 14C, as Schedule 14C requires disclosure of some items contained in Schedule 14A.

¹² 17 CFR 240.14a-5.

¹³ 17 CFR 240.14a-6.

¹⁴ 17 CFR 240.14a-8.

¹⁵ 17 CFR 240.14a-9.

¹⁶ 17 CFR 240.14a-12.

¹⁷ 17 CFR 240.15d-11.

¹⁸ 17 CFR 240.13d-102.

¹⁹ 17 CFR 240.14a-101.

²⁰ 17 CFR 249.308.

²¹ 15 U.S.C. 78a et seq. (the “Exchange Act”). Part 200 Subpart D – Information and Requests and Regulation S-T are also promulgated under the Securities Act of 1933 [15 U.S.C. 77a et seq.] (the “Securities Act”).

²² 17 CFR 240.14c-101.

company size, as was proposed.¹⁰⁹⁸ The purpose of the rules is to facilitate the exercise of shareholders' traditional state law rights to nominate and elect directors to company boards of directors and thereby enable shareholders to participate more meaningfully in the nomination and election of directors at the companies in which they invest. We believe that shareholders of smaller reporting companies should be able to exercise these rights to the same extent as shareholders of larger reporting companies. Therefore, we are not persuaded that exempting smaller reporting companies from the final rules would be consistent with this goal.

Nonetheless, as discussed above, we recognize that smaller reporting companies may have had less experience with existing forms of shareholder involvement in the proxy process and may have less-developed infrastructures for managing these matters. The final rules therefore include a phase-in period that delays the compliance date of Rule 14a-11 for smaller reporting companies for three years from the effective date of the rule.

VII. STATUTORY AUTHORITY AND TEXT OF THE AMENDMENTS

The amendments are made pursuant to Sections 3(b), 13, 14, 15, 23(a) and 36 of the Securities Exchange Act of 1934, as amended, Sections 10, 20(a) and 38 of the Investment Company Act of 1940, as amended, and Sections 971 (a) and (b) of the Dodd-Frank Act.

List of Subjects

17 CFR Parts 200

Freedom of information, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 232, 240, and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Securities and Exchange Commission is amending Title 17, chapter II of the Code of Federal Regulations as follows:

¹⁰⁹⁸ See Section II.B.3.f. above.

PART 200 – ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart D – Information and Requests

1. The authority citation for Part 200, Subpart D, continues to read, in part, as follows:

Authority: 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a-37, 80a-44(a), 80a-44(b), 80b-10(a), and 80b-11.

* * * * *

2. Add § 200.82a to read as follows:

§ 200.82a Public availability of materials filed pursuant to § 240.14a-11(g) and related materials.

Materials filed with the Commission pursuant to Rule 14a-11(g) under the Securities Exchange Act of 1934 (17 CFR 240.14a-11(g)), written communications related thereto received from interested persons, and each related no-action letter or other written communication issued by the staff of the Commission, shall be made available to any person upon request for inspection or copying.

PART 232 – REGULATION S-T – GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

3. The authority citation for Part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

* * * * *

4. Amend § 232.13 by revising paragraph (a)(4) (the note remains unchanged) to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) * * *

(4) Notwithstanding paragraph (a)(2) of this section, a Form 3, 4 or 5 (§§ 249.103, 249.104, and 249.105 of this chapter) or a Schedule 14N (§ 240.14n-101 of this chapter) submitted by direct transmission on or before 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the same business day.

* * * * *

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201, et seq.; and 18 U.S.C. 1350 and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

6. Amend § 240.13a-11 by revising paragraph (b) to read as follows:

§ 240.13a-11 Current reports on Form 8-K (§ 249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to § 240.13a-16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30b1-1 of this chapter under the Investment Company Act of 1940, except where such an investment company is required to file:

(1) Notice of a blackout period pursuant to § 245.104 of this chapter;

(2) Disclosure pursuant to Instruction 2 to § 240.14a-11(b)(1) of information concerning outstanding shares and voting; or

(3) Disclosure pursuant to Instruction 2 to § 240.14a-11(b)(10) of the date by which a nominating shareholder or nominating shareholder group must submit the notice required pursuant to § 240.14a-11(b)(10).

* * * * *

7. Amend § 240.13d-1 by revising paragraphs (b)(1)(i) and (c)(1) and adding Instruction 1 to paragraph (b)(1) and Instruction 1 to paragraph (c)(1) to read as follows:

§ 240.13d-1 Filing of Schedules 13D and 13G.

* * * * *

(b)(1) * * *

(i) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to § 240.13d-3(b), other than activities solely in connection with a nomination under § 240.14a-11; and

* * * * *

Instruction 1 to paragraph (b)(1). For purposes of paragraph (b)(1)(i) of this section, the exception for activities solely in connection with a nomination under § 240.14a-11 will not be available after the election of directors.

* * * * *

(c) * * *

(1) Has not acquired the securities with any purpose, or with the effect, of changing or

influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any transaction subject to § 240.13d-3(b), other than activities solely in connection with a nomination under § 240.14a-11;

* * * * *

Instruction 1 to paragraph (c)(1). For purposes of paragraph (c)(1) of this section, the exception for activities solely in connection with a nomination under § 240.14a-11 will not be available after the election of directors.

* * * * *

8. Amend § 240.13d-102 by revising the sentences following the introductory text in Items 10(a) and (c) as follows:

§ 240.13d-102 Schedule 13G – Information to be included in statements filed pursuant to § 240.13d-1(b), (c), and (d) and amendments thereto filed pursuant to § 240.13d-2.

* * * * *

Item 10. Certifications

(a) * * *

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect, other than activities solely in connection with a nomination under § 240.14a-11.

* * * * *

(c) * * *

By signing below I certify that, to the best of my knowledge and belief, the securities

referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect, other than activities solely in connection with a nomination under § 240.14a-11.

* * * * *

9. Amend § 240.14a-2 by:

- a. Revising paragraph (b) introductory text; and
- b. Adding paragraphs (b)(7) and (b)(8) and Instructions to those paragraphs.

The revision and additions read as follows:

§ 240.14a-2 Solicitations to which § 240.14a-3 to § 240.14a-15 apply.

* * * * *

(b) Sections 240.14a-3 to 240.14a-6 (other than paragraphs 14a-6(g) and 14a-6(p)), § 240.14a-8, § 240.14a-10, and §§ 240.14a-12 to 240.14a-15 do not apply to the following:

* * * * *

(7) Any solicitation by or on behalf of any shareholder in connection with the formation of a nominating shareholder group pursuant to § 240.14a-11, provided that:

(i) The soliciting shareholder is not holding the registrant's securities with the purpose, or with the effect, of changing control of the registrant or to gain a number of seats on the board of directors that exceeds the maximum number of nominees that the registrant could be required to include under § 240.14a-11(d);

(ii) Each written communication includes no more than:

(A) A statement of each soliciting shareholder's intent to form a nominating shareholder group in order to nominate one or more directors under § 240.14a-11;

(B) Identification of, and a brief statement regarding, the potential nominee or nominees or, where no nominee or nominees have been identified, the characteristics of the nominee or nominees that the shareholder intends to nominate, if any;

(C) The percentage of voting power of the registrant's securities that are entitled to be voted on the election of directors that each soliciting shareholder holds or the aggregate percentage held by any group to which the shareholder belongs; and

(D) The means by which shareholders may contact the soliciting party.

(iii) Any written soliciting material published, sent or given to shareholders in accordance with this paragraph must be filed by the shareholder with the Commission, under the registrant's Exchange Act file number, or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), under the registrant's Investment Company Act file number, no later than the date the material is first published, sent or given to shareholders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14N (§ 240.14n-101) and the appropriate box on the cover page must be marked.

(iv) In the case of an oral solicitation made in accordance with the terms of this section, the nominating shareholder must file a cover page in the form set forth in Schedule 14N (§ 240.14n-101), with the appropriate box on the cover page marked, under the registrant's Exchange Act file number (or in the case of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), under the registrant's Investment Company Act file number), no later than the date of the first such communication.

Instruction to paragraph (b)(7). The exemption provided in paragraph (b)(7) of this section shall not apply to a shareholder that subsequently engages in soliciting or other nominating activities outside the scope of § 240.14a-2(b)(8) and § 240.14a-11 in connection with the subject election of directors or is or becomes a member of any other group, as determined under section 13(d)(3) of the Act (15 U.S.C. 78m(d)(3) and § 240.13d-5(b)), or otherwise, with persons engaged in soliciting or other nominating activities in connection with the subject election of directors.

(8) Any solicitation by or on behalf of a nominating shareholder or nominating shareholder group in support of its nominee that is included or that will be included on the registrant's form of proxy in accordance with § 240.14a-11 or for or against the registrant's nominee or nominees, provided that:

(i) The soliciting party does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a shareholder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization;

(ii) Any written communication includes:

(A) The identity of each nominating shareholder and a description of his or her direct or indirect interests, by security holdings or otherwise;

(B) A prominent legend in clear, plain language advising shareholders that a shareholder nominee is or will be included in the registrant's proxy statement and that they should read the registrant's proxy statement when available because it includes important information (or, if the registrant's proxy statement is publicly available, advising shareholders of that fact and encouraging shareholders to read the registrant's proxy statement because it includes important

information). The legend also must explain to shareholders that they can find the registrant's proxy statement, other soliciting material, and any other relevant documents at no charge on the Commission's Web site; and

(iii) Any written soliciting material published, sent or given to shareholders in accordance with this paragraph must be filed by the nominating shareholder or nominating shareholder group with the Commission, under the registrant's Exchange Act file number, or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), under the registrant's Investment Company Act file number, no later than the date the material is first published, sent or given to shareholders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14N (§ 240.14n-101) and the appropriate box on the cover page must be marked.

Instruction 1 to paragraph (b)(8). A nominating shareholder or nominating shareholder group may rely on the exemption provided in paragraph (b)(8) of this section only after receiving notice from the registrant in accordance with § 240.14a-11(g)(1) or § 240.14a-11(g)(3)(iv) that the registrant will include the nominating shareholder's or nominating shareholder group's nominee or nominees in its form of proxy.

Instruction 2 to paragraph (b)(8). Any solicitation by or on behalf of a nominating shareholder or nominating shareholder group in support of its nominee included or to be included on the registrant's form of proxy in accordance with § 240.14a-11 or for or against the registrant's nominee or nominees must be made in reliance on the exemption provided in paragraph (b)(8) of this section and not on any other exemption.

Instruction 3 to paragraph (b)(8). The exemption provided in paragraph (b)(8) of this section shall not apply to a person that subsequently engages in soliciting or other nominating activities outside the scope of § 240.14a-11 in connection with the subject election of directors or is or becomes a member of any other group, as determined under section 13(d)(3) of the Act (15 U.S.C. 78m(d)(3) and § 240.13d-5(b)), or otherwise, with persons engaged in soliciting or other nominating activities in connection with the subject election of directors.

* * * * *

10. Amend § 240.14a-4 by:

- a. Revising the first sentence of paragraph (b)(2) introductory text; and
- b. Adding a sentence to the end of the undesignated paragraph following paragraph (b)(2)(iv).

The revision and addition read as follows:

§ 240.14a-4 Requirements as to proxy.

* * * * *

(b) * * *

(2) A form of proxy that provides for the election of directors shall set forth the names of persons nominated for election as directors, including any person whose nomination by a shareholder or shareholder group satisfies the requirements of § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials. * * *

* * * * *

(iv) * * *

* * * Means to grant authority to vote for any nominees as a group or to withhold

authority for any nominees as a group may not be provided if the form of proxy includes one or more shareholder nominees in accordance with § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials.

* * * * *

11. Amend § 240.14a-5 by:

- a. Revising paragraph (e)(1) to remove “and” at the end of the paragraph;
- b. Revising paragraph (e)(2) to remove the period at the end of the paragraph and add in its place “; and”; and
- c. Adding paragraph (e)(3) to read as follows:

§ 240.14a-5 Presentation of information in proxy statement.

* * * * *

(e) * * *

(3) The deadline for submitting nominees for inclusion in the registrant's proxy statement and form of proxy pursuant to § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials for the registrant's next annual meeting of shareholders.

* * * * *

12. Amend § 240.14a-6 by:

- a. Redesignating paragraphs (a)(4), (a)(5), (a)(6), and (a)(7) as paragraphs (a)(5), (a)(6), (a)(7), and (a)(8) respectively;
- b. Adding new paragraph (a)(4);

- c. Adding a sentence at the end of Note 3; and
- d. Adding paragraph (p).

The revisions and additions read as follows:

§ 240.14a-6 Filing requirements.

(a) * * *

(4) A shareholder nominee for director included pursuant to § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials.

* * * * *

Note 3. * * * The inclusion of a shareholder nominee in the registrant's proxy materials pursuant to § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials does not constitute a "solicitation in opposition" for purposes of Rule 14a-6(a) (§ 240.14a-6(a)), even if the registrant opposes the shareholder nominee and solicits against the shareholder nominee and in favor of a registrant nominee.

* * * * *

(p) Solicitations subject to § 240.14a-11. Any soliciting material that is published, sent or given to shareholders in connection with § 240.14a-2(b)(7) or (b)(8) must be filed with the Commission as specified in that section.

- 13. Amend § 240.14a-8 by revising paragraph (i)(8) as follows:

§ 240.14a-8 Shareholder proposals.

* * * * *

(i) * * *

(8) Director elections: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

* * * * *

14. Amend § 240.14a-9 by adding a paragraph (c), removing the authority citation following the section, and redesignating notes (a), (b), (c), and (d) as a., b., c., and d.

The addition reads as follows:

§ 240.14a-9 False or misleading statements.

* * * * *

(c) No nominee, nominating shareholder or nominating shareholder group, or any member thereof, shall cause to be included in a registrant's proxy materials, either pursuant to the federal proxy rules, an applicable state or foreign law provision, or a registrant's governing documents as they relate to including shareholder nominees for director in a registrant's proxy materials, include in a notice on Schedule 14N (§ 240.14n-101), or include in any other related communication, any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to a solicitation for

the same meeting or subject matter which has become false or misleading.

* * * * *

15. Add § 240.14a-11 to read as follows:

§ 240.14a-11 Shareholder nominations.

(a) Applicability. In connection with an annual (or a special meeting in lieu of an annual) meeting of shareholders, or a written consent in lieu of such meeting, at which directors are elected, a registrant will be required to include in its proxy statement and form of proxy the name of a person or persons nominated by a shareholder or group of shareholders for election to the board of directors and include in its proxy statement the disclosure about such nominee or nominees and the nominating shareholder or members of the nominating shareholder group as specified in Item 5 of Schedule 14N (§ 240.14n-101), provided that the conditions set forth in paragraph (b) of this section are satisfied. This rule will not apply to a registrant if:

(1) The registrant is subject to the proxy rules solely because it has a class of debt securities registered under section 12 of the Exchange Act (15 U.S.C. 78l); or

(2) Applicable state or foreign law or a registrant's governing documents prohibit the registrant's shareholders from nominating a candidate or candidates for election as director.

(b) Eligibility. A shareholder nominee or nominees shall be included in a registrant's proxy statement and form of proxy if the following requirements are satisfied:

(1) The nominating shareholder individually, or the nominating shareholder group in the aggregate, holds at least 3% of the total voting power of the registrant's securities that are entitled to be voted on the election of directors at the annual (or a special meeting in lieu of the annual) meeting of shareholders or on a written consent in lieu of such meeting, on the date the nominating shareholder or nominating shareholder group files the notice on Schedule 14N (§

240.14n-101) with the Commission and transmits the notice to the registrant;

(2) The nominating shareholder or each member of the nominating shareholder group has held the amount of securities that are used for purposes of satisfying the minimum ownership requirement of paragraph (b)(1) of this section continuously for at least three years as of the date the notice on Schedule 14N (§ 240.14n-101) is filed with the Commission and transmitted to the registrant and must continue to hold that amount of securities through the date of the subject election of directors;

(3) The nominating shareholder or each member of the nominating shareholder group provides proof of ownership of the amount of securities that are used for purposes of satisfying the ownership and holding period requirements of paragraphs (b)(1) and (b)(2) of this section. If the nominating shareholder or each member of the nominating shareholder group is not the registered holder of the securities, the nominating shareholder or each member of the nominating shareholder group must provide proof of ownership in the form of one or more written statements from the registered holder of the nominating shareholder's securities (or the brokers or banks through which those securities are held) verifying that, as of a date within seven calendar days prior to filing the notice on Schedule 14N (§ 240.14n-101) with the Commission and transmitting the notice to the registrant, the nominating shareholder or each member of the nominating shareholder group, continuously held the amount of securities being used to satisfy the ownership threshold for a period of at least three years. The written statement or statements proving ownership must be attached as an appendix to Schedule 14N on the date the notice is filed with the Commission and transmitted to the registrant, and provide the information specified in Item 4 of Schedule 14N. In the alternative, if the nominating shareholder or member of the nominating shareholder group has filed a Schedule 13D (§ 240.13d-101), Schedule 13G (§

240.13d-102), 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, reflecting ownership of the securities as of or before the date on which the three-year eligibility period begins, the nominating shareholder or member of the nominating shareholder group may attach the filing as an appendix to the Schedule 14N or incorporate the filing by reference into the Schedule 14N;

(4) The nominating shareholder or each member of the nominating shareholder group provides a statement, as specified in Item 4(b) of Schedule 14N (§ 240.14n-101), on the date the notice on Schedule 14N is filed with the Commission and transmitted to the registrant, that the nominating shareholder or each member of the nominating shareholder group intends to continue to hold the amount of securities that are used for purposes of satisfying the minimum ownership requirement of paragraph (b)(1) of this section through the date of the meeting;

(5) The nominating shareholder or each member of the nominating shareholder group provides a statement, as specified in Item 4(b) of Schedule 14N (§ 240.14n-101), on the date the notice on Schedule 14N is filed with the Commission and transmitted to the registrant, regarding the nominating shareholder's or group's intent with respect to continued ownership of the registrant's securities after the election;

(6) The nominating shareholder (or where there is a nominating shareholder group, each member of the nominating shareholder group) is not holding any of the registrant's securities with the purpose, or with the effect, of changing control of the registrant or to gain a number of seats on the board of directors that exceeds the maximum number of nominees that the registrant could be required to include under paragraph (d) of this section;

(7) Neither the nominee nor the nominating shareholder (or where there is a nominating shareholder group, any member of the nominating shareholder group) has an agreement with the registrant regarding the nomination of the nominee;

(8) The nominee's candidacy or, if elected, board membership would not violate controlling federal law, state law, foreign law, or rules of a national securities exchange or national securities association (other than rules regarding director independence) or, in the case that the nominee's candidacy or, if elected, board membership would violate such laws or rules, such violation could not be cured by the time provided in paragraph (g)(2) of this section;

(9) In the case of a registrant other than an investment company, the nominee meets the objective criteria for "independence" of the national securities exchange or national securities association rules applicable to the registrant, if any, or, in the case of a registrant that is an investment company, the nominee is not an "interested person" of the registrant as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19));

(10) The nominating shareholder or nominating shareholder group provides notice to the registrant on Schedule 14N (§ 240.14n-101), as specified by § 240.14n-1, of its intent to require that the registrant include that shareholder's or group's nominee in the registrant's proxy statement and form of proxy. This notice must be transmitted to the registrant on the date it is filed with the Commission. The notice must be filed with the Commission and transmitted to the registrant no earlier than 150 calendar days, and no later than 120 calendar days, before the anniversary of the date that the registrant mailed its proxy materials for the prior year's annual meeting, except that, if the registrant did not hold an annual meeting during the prior year, or if the date of the meeting has changed by more than 30 calendar days from the prior year, or if the registrant is holding a special meeting or conducting an election of directors by written consent,

then the nominating shareholder or nominating shareholder group must transmit the notice to the registrant and file its notice with the Commission a reasonable time before the registrant mails its proxy materials, as specified by the registrant in a Form 8-K (§ 249.308 of this chapter) filed pursuant to Item 5.08 of Form 8-K; and

(11) The nominating shareholder or nominating shareholder group provides the certifications required by Schedule 14N (§ 240.14n-101) on the date the notice on Schedule 14N is filed with the Commission and transmitted to the registrant.

Instruction to paragraph (b). A registrant will not be required to include a nominee or nominees submitted by a nominating shareholder or nominating shareholder group pursuant to this section if the nominating shareholder or any member of the nominating shareholder group also submits any other nomination to that registrant and/or is participating in more than one nominating shareholder group for that registrant. In addition, a registrant will not be required to include a nominee or nominees if a nominating shareholder or member of a nominating shareholder group:

a. Is or becomes a member of any other group, as determined under section 13(d)(3) of the Act (15 U.S.C. 78m(d)(3) and § 240.13d-5(b)), or otherwise, with persons engaged in soliciting or other nominating activities in connection with the subject election of directors;

b. Is separately conducting a solicitation in connection with the subject election of directors other than a solicitation subject to § 240.14a-2(b)(8) in relation to those nominees it has nominated pursuant to this section or for or against the registrant's nominees; or

c. Is acting as a participant in another person's solicitation in connection with the subject election of directors.

Instruction 1 to paragraph (b)(1). In the case of a registrant other than an investment

company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), for purposes of (b)(1) of this section, in determining the total voting power of the registrant's securities that are entitled to be voted on the election of directors, the nominating shareholder or nominating shareholder group may rely on 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 this Act, unless the nominating shareholder or nominating shareholder group knows or has reason to know that the information contained therein is inaccurate. In the case of a registrant that is an investment company registered under the Investment Company Act of 1940, for purposes of (b)(1) of this section, in determining the total voting power of the registrant's securities that are entitled to be voted on the election of directors, the nominating shareholder or nominating shareholder group may rely on information set forth in the following documents, unless the nominating shareholder or nominating shareholder group knows or has reason to know that the information contained therein is inaccurate:

a. In the case of a registrant that is a series company as defined in Rule 18f-2(a) under the Investment Company Act of 1940 (§ 270.18f-2(a) of this chapter), the Form 8-K (§ 249.308 of this chapter) described in Instruction 2 to paragraph (b)(1) of this section; or

b. In the case of other investment companies, the registrant's most recent annual or semi-annual report filed with the Commission on Form N-CSR (§ 249.331 and § 274.128 of this chapter).

Instruction 2 to paragraph (b)(1). If the registrant is an investment company that is a series company (as defined in § 270.18f-2(a) of this chapter), the registrant must disclose pursuant to Item 5.08 of Form 8-K (§ 249.308 of this chapter) the total number of shares of the registrant outstanding and entitled to be voted (or if the votes are to be cast on a basis other than

one vote per share, then the total number of votes entitled to be voted and the basis for allocating such votes) on the election of directors as of the end of the most recent calendar quarter.

Instruction 3 to paragraph (b)(1).

a. When determining the total voting power of the registrant's securities, which is the denominator in the calculation of the percentage of voting power held by the nominating shareholder individually or the nominating shareholder group in the aggregate, calculate the aggregate number of votes derived from all classes of securities of the registrant that are entitled to vote on the election of directors regardless of whether solicitation of a proxy with respect to those securities would require compliance with Exchange Act Regulation 14A (§240.14a-1 et seq.).

b. When determining the total voting power of the registrant's securities held by the nominating shareholder or any member of the nominating shareholder group, which is the numerator in the calculation of the percentage:

1. Calculate the number of votes derived only from securities with respect to which solicitation of a proxy would require compliance with Exchange Act Regulation 14A (§ 240.14a-1 et seq.) and over which the nominating shareholder or any the member of the nominating shareholder group, as the case may be, has voting power and investment power, either directly or through any person acting on their behalf;

2. Notwithstanding the voting power calculation specified in paragraph b.1. of this instruction, add to the result of the calculation specified in paragraph b.1. of this instruction any votes attributable to securities with respect to which solicitation of a proxy would require compliance with Exchange Act Regulation 14A (§ 240.14a-1 et seq.) that have been loaned by or on behalf of the nominating shareholder or any member of the nominating shareholder group to

another person, if the nominating shareholder or member of the nominating shareholder group, as the case may be, or any person acting on their behalf, has the right to recall the loaned securities, and will recall the loaned securities upon being notified that any of the nominating shareholder's or group's nominees will be included in the registrant's proxy statement and proxy card; and

3. Subtract from the result of the calculation specified in paragraphs b.1. and b.2. of this instruction the number of votes attributable to securities of the registrant entitled to vote on the election of directors, regardless of whether solicitation of a proxy with respect to those securities would require compliance Exchange Act Regulation 14A (§ 240.14a-1 et seq.), that the nominating shareholder or any member of the nominating shareholder group, as the case may be, or any person acting on their behalf, has sold in a short sale, as defined in 17 CFR 242.200(a), that is not closed out, or has borrowed for purposes other than a short sale.

c. For purposes of the voting power calculation in paragraph b.1. of this instruction:

1. A shareholder has voting power directly only when the shareholder has the power to vote or direct the voting, and investment power directly only when the shareholder has the power to dispose or direct the disposition, of the securities; and

2. A securities intermediary (as defined in § 240.17Ad-20(b)) shall not have voting power or investment power over securities for purposes of paragraph b.1. of this instruction solely because such intermediary holds such securities by or on behalf of another person, notwithstanding that pursuant to the rules of a national securities exchange such intermediary may vote or direct the voting of such securities without instruction.

Instruction 4 to paragraph (b)(1). If a registrant has more than one class of outstanding securities entitled to vote on the election of directors and those classes do not vote together in the

election of all directors, then the voting power of the registrant's securities for purposes of the calculation of both the numerator and denominator specified in Instruction 3 to paragraph (b)(1) should be determined only on the basis of the voting power of the class or classes of securities that would be voting together on the election of the person or persons sought to be nominated by the nominating shareholder or the nominating shareholder group.

Instruction to paragraph (b)(2). To determine whether the amount of securities that are used for purposes of satisfying the minimum ownership requirement of paragraph (b)(1) has been held continuously during the three year period prior to the date the Schedule 14N (§ 240.14n-101) is filed and during the period after the Schedule 14N is filed through the date of the subject election of directors, and with respect to all points in time during those periods:

a. Include only the amount of securities with respect to which a solicitation of a proxy would require compliance with Exchange Act Regulation 14A (§ 240.14a-1 et seq.) and over which the nominating shareholder or the member of the nominating shareholder group, as the case may be, has voting power and investment power, either directly or through any person acting on their behalf;

b. Notwithstanding the voting power determination specified in paragraph a. of this instruction, include the amount of securities that have been loaned by or on behalf of the nominating shareholder or any member of the nominating shareholder group to another person, if the nominating shareholder or member of the nominating shareholder group, as the case may be, or any person acting on their behalf:

1. Has the right to recall the loaned securities; and
2. With respect to the period from the date the Schedule 14N (§ 240.14n-101) is filed through the date of the subject election of directors, will recall the loaned securities upon being

notified that any of the person's nominees will be included in the registrant's proxy statement and proxy card;

c. Reduce the amount of securities held by the amount of securities, on a class basis, that the nominating shareholder or any member of the nominating shareholder group, as the case may be, or any person acting on their behalf, sold in a short sale, as defined in 17 CFR 242.200(a), during the periods, or borrowed for purposes other than a short sale; and

d. Adjust the amount of securities held to give effect to any changes in the amount of securities during the periods resulting from stock splits, reclassifications or other similar adjustments by the registrant.

Instruction to paragraph (b)(3). If the nominating shareholder or member of the nominating shareholder group must provide proof of ownership in the form of a written statement with respect to securities held through a broker or bank that is a participant in the Depository Trust Company or other clearing agency acting as a securities depository, then a statement from such broker or bank will satisfy the requirements of paragraph (b)(3) of this section. If the securities are held through a broker or bank (e.g., in an omnibus account) that is not a participant in a clearing agency acting as a securities depository, the nominating shareholder or member of the nominating shareholder group must also obtain and submit a separate written statement specified in the Instruction to Item 4 of Schedule 14N (§ 240.14n-101).

Instruction to paragraph (b)(7). Negotiations between the nominee, the nominating shareholder or nominating shareholder group and the nominating committee or board of the registrant to have the nominee included in the registrant's proxy statement and form of proxy as a registrant nominee, where those negotiations are unsuccessful, or negotiations that are limited

to whether the registrant is required to include the shareholder nominee in the registrant's proxy statement and form of proxy in accordance with this section, will not represent a direct or indirect agreement with the registrant.

Instruction to paragraph (b)(9). For purposes of this provision, the nominee would be required to meet the definition of "independence" that is generally applicable to directors of the registrant and not any particular definition of independence applicable to members of the audit committee of the registrant's board of directors. To the extent a national securities exchange or national securities association rule imposes a standard regarding independence that requires a subjective determination by the board or a group or committee of the board (for example, requiring that the board of directors or any group or committee of the board of directors make a determination regarding the existence of factors material to a determination of a nominee's independence), the nominee would not be required to meet the subjective determination of independence as part of the shareholder nomination process.

Instruction 1 to paragraph (b)(10). If the registrant held a meeting the previous year and the date of the current year's annual meeting has not changed by more than 30 calendar days from the date of the previous year's annual meeting, the window period for filing a notice on Schedule 14N (§ 240.14n-101) with the Commission and transmitting that notice to the registrant should be calculated by determining the release date disclosed in the registrant's previous year's proxy statement, increasing the year by one, and counting back 150 calendar days and 120 calendar days for the beginning and end of the window period, respectively. Where the 120 calendar day deadline falls on a Saturday, Sunday or holiday, the deadline will be treated as the first business day following the Saturday, Sunday or holiday.

Instruction 2 to paragraph (b)(10). If the registrant did not hold an annual meeting the

previous year, or if the date of the current year's annual meeting has been changed by more than 30 calendar days from the date of the previous year's annual meeting, or if the registrant is holding a special meeting or conducting the election of directors by written consent, the registrant must disclose pursuant to Item 5.08 of Form 8-K (§ 249.308 of this chapter) the date by which a shareholder or group must submit the notice required pursuant to paragraph (b)(10) of this section, which date shall be a reasonable time prior to the date the registrant mails its proxy materials for the meeting.

(c) Statement of support. A registrant will be required to include a statement of support submitted by a nominating shareholder or nominating shareholder group in Item 5(i) of the notice on Schedule 14N (§ 240.14n-101), provided that the statement of support does not exceed 500 words per nominee. If a statement of support submitted by a nominating shareholder or nominating shareholder group exceeds 500 words per nominee, the registrant will be required to include the nominee or nominees, provided that the eligibility requirements and other conditions of the rule are satisfied, but the registrant may exclude the supporting statement(s).

(d) Maximum number of shareholder nominees. (1) A registrant will be required to include in its proxy statement and form of proxy one shareholder nominee or the number of nominees that represents 25% of the total number of the registrant's board of directors, whichever is greater, submitted by a nominating shareholder or nominating shareholder group pursuant to this section, subject to the limitations in paragraphs (d)(2), (d)(3), (d)(4), and (d)(5) of this section. A registrant may exclude a nominee or nominees if including the nominee or nominees would result in the registrant exceeding the maximum number of nominees it is required to include in its proxy statement and form of proxy pursuant to this provision.

(2) Where the registrant has one or more directors currently serving on its board of directors who were elected as a shareholder nominee pursuant to this section, and the term of that director or directors extends past the election of directors for which it is soliciting proxies, the registrant will not be required to include in the proxy statement and form of proxy more shareholder nominees than could result in the total number of directors who were elected as shareholder nominees pursuant to this section and serving on the board being more than one shareholder nominee or 25% of the total number of the registrant's board of directors, whichever is greater.

(3) Where the registrant has multiple classes of securities and each class is entitled to elect a specified number of directors, the registrant will be required to include the lesser of the number of nominees that the nominating shareholder's or group's class is entitled to elect or 25% of the registrant's board of directors, but in no case less than one nominee.

(4) Where the registrant agrees to include in its proxy statement and form of proxy, as an unopposed registrant nominee, the nominee or nominees of the nominating shareholder or nominating shareholder group that otherwise would be eligible under this section to have its nominees included in the registrant's proxy materials, the nominee will be considered a shareholder nominee for purposes of calculating the maximum number of shareholder nominees that must be included in the registrant's proxy statement and form of proxy, provided that the nominating shareholder or nominating shareholder group filed its notice on Schedule 14N (§ 240.14n-101) before beginning communications with the registrant about the nomination.

(5) A nominee included in a registrant's proxy statement and form of proxy as a result of an agreement between the nominee or nominating shareholder (or where there is a nominating shareholder group, any member of the nominating shareholder group) and the registrant, other

than as specified in paragraph (d)(4) of this section, will not be counted as a shareholder nominee for purposes of calculating the maximum number of shareholder nominees that the registrant is required to include in its proxy statement and form of proxy.

Instruction to paragraph (d)(1). Depending on board size, 25% of the board may not result in a whole number. In those instances, the registrant will round down to the closest whole number below 25% to determine the maximum number of shareholder nominees for director that the registrant is required to include in its proxy statement and form of proxy.

Instruction to paragraph (d)(5). Negotiations between the nominee, the nominating shareholder or nominating shareholder group and the nominating committee or board of the registrant to have the nominee included in the registrant's proxy statement and form of proxy as a registrant nominee, where those negotiations are unsuccessful, or negotiations that are limited to whether the registrant is required to include the shareholder nominee in the registrant's proxy statement and form of proxy in accordance with this section, will not represent a direct or indirect agreement with the registrant.

(e) Order of priority for shareholder nominees. (1) In the event that more than one eligible shareholder or group of shareholders submits a nominee or nominees for inclusion in the registrant's proxy materials pursuant to this section, the registrant shall include in the proxy statement and form of proxy the nominee or nominees of the nominating shareholder or nominating shareholder group with the highest qualifying voting power percentage disclosed as of the date of filing the Schedule 14N (§ 240.14n-101) (as determined in calculating ownership to satisfy the requirement as specified in paragraph (b)(1) of this section) from which the registrant received a notice filed and transmitted as specified in paragraph (b)(10) of this section, up to and including the total number of nominees required to be included by the registrant

pursuant to this section. Where the nominating shareholder or nominating shareholder group with the highest qualifying voting power percentage that is otherwise eligible to rely on this section and that filed and transmitted the notice as specified in paragraph (b)(10) of this section does not nominate the maximum number of individuals required to be included by the registrant, the nominee or nominees of the nominating shareholder or nominating shareholder group with the next highest qualifying voting power percentage from which the registrant received the notice filed and transmitted as specified in paragraph (b)(10) of this section would be included in the registrant's proxy statement and form of proxy, if any, up to and including the total number required to be included by the registrant. This process would continue until the registrant has included the maximum number of nominees it is required to include in its proxy statement and form of proxy pursuant to paragraph (d) of this section or the registrant exhausts the list of eligible nominees.

(2) Prior to the time a registrant has commenced printing its proxy statement and form of proxy, if a nominating shareholder or nominating shareholder group withdraws or is disqualified, a registrant will be required to include in its proxy statement and form of proxy the nominee or nominees of the nominating shareholder or nominating shareholder group with the next highest qualifying voting power percentage, disclosed as of the date of filing the Schedule 14N (§ 240.14n-101) (as determined in calculating ownership to satisfy the requirement as specified in paragraph (b)(1) of this section), from which the registrant received a notice filed and transmitted as specified in paragraph (b)(10) of this section, if any, up to and including the total number required to be included by the registrant. This process would continue until the registrant included the maximum number of nominees it is required to include in its proxy statement and form of proxy pursuant to paragraph (d) of this section or the registrant exhausts the list of

eligible nominees. If the registrant has commenced printing its proxy statement and form of proxy, the registrant will not be required to include a nominee or nominees in its proxy statement and form of proxy in place of a nominee or nominees that has withdrawn or has been disqualified.

(3) If a nominee or nominees withdraws or is disqualified after the registrant provides notice to the nominating shareholder or nominating shareholder group of the registrant's intent to include the nominee or nominees in its proxy statement and form of proxy, the registrant will be required to include in its proxy statement and form of proxy any other eligible nominee submitted by that nominating shareholder or nominating shareholder group. If that nominating shareholder or nominating shareholder group did not include any other eligible nominees in its notice filed on Schedule 14N (§ 240.14n-101), then the registrant will be required to include the nominee or nominees of the nominating shareholder or nominating shareholder group with the next highest voting power percentage, disclosed as of the date of filing the Schedule 14N (§ 240.14n-101) (as determined in calculating ownership to satisfy the requirement as specified in paragraph (b)(1) of this section), from which the registrant received a notice filed and transmitted as specified in paragraph (b)(10) of this section, if any, up to and including the total number required to be included by the registrant. This process would continue until the registrant included the maximum number of nominees it is required to include in its proxy statement and form of proxy pursuant to paragraph (d) of this section or the registrant exhausts the list of eligible nominees. If the registrant has commenced printing its proxy statement and form of proxy, the registrant will not be required to include a nominee or nominees in its proxy statement and form of proxy in place of a nominee or nominees that has withdrawn or has been disqualified.

(4) Notwithstanding the other provisions of this paragraph, if a registrant has multiple classes of securities and each class is entitled to elect a specified number of directors, and nominating shareholders or groups of nominating shareholders of more than one of those classes submit a number of eligible nominees for inclusion in the registrant's proxy materials pursuant to this section that is greater than 25% of the total number of the registrant's board of directors, the registrant shall include in the proxy statement and form of proxy the nominee or nominees of the nominating shareholders or groups on the basis of the proportion of total voting power in the election of directors attributable to each class, rounding to the closest whole number, if necessary, and otherwise in accordance with paragraph (e) of this section.

Instruction 1 to paragraph (e). In determining the priority of the nominee or nominees to be included in the registrant's proxy materials, the registrant will be required to consider only the nominee or nominees that would otherwise be required to be included under the provisions of this section.

Instruction 2 to paragraph (e). If the registrant is including shareholder director nominees from more than one nominating shareholder or nominating shareholder group, as described in this paragraph, and including all of the shareholder director nominees of the nominating shareholder or nominating shareholder group that is last in priority would result in exceeding the maximum number required under paragraph (d) of this section, the nominating shareholder or nominating shareholder group that is last in priority may specify which of its nominees are to be included in the registrant's proxy materials.

(f) False or misleading statements. The registrant is not responsible for any information in the notice from the nominating shareholder or nominating shareholder group submitted as required by paragraph (b)(10) of this section or otherwise provided by the nominating

shareholder or nominating shareholder group that is included in the registrant's proxy materials.

(g) Determinations regarding eligibility. (1) If the registrant determines that it will include a shareholder nominee, it must notify the nominating shareholder or nominating shareholder group (or their authorized representative) upon making this determination. In no event should the notification be postmarked or transmitted electronically later than 30 calendar days before it files its definitive proxy statement and form of proxy with the Commission.

(2) If the registrant determines that it may exclude a shareholder nominee pursuant to a provision in paragraph (a), (b), (d), or (e) of this section, or exclude a statement of support pursuant to paragraph (c) of this section, the registrant must notify in writing the nominating shareholder or nominating shareholder group (or their authorized representative) of this determination. This notice must be postmarked or transmitted electronically to the nominating shareholder or nominating shareholder group (or their authorized representative) no later than 14 calendar days after the close of the period for submission specified in paragraph (b)(10) of this section.

(i) The registrant's notice to the nominating shareholder or nominating shareholder group (or their authorized representative) that it has determined that it may exclude a shareholder nominee or statement of support must include an explanation of the registrant's basis for determining that it may exclude the nominee or statement of support.

(ii) The nominating shareholder or nominating shareholder group shall have 14 calendar days after receipt of the registrant's notice pursuant to paragraph (g)(2)(i) of this section to respond to the registrant's notice and correct any eligibility or procedural deficiencies identified in that notice. The nominating shareholder's or nominating shareholder group's response must

be postmarked or transmitted electronically to the registrant no later than 14 calendar days after receipt of the registrant's notice.

(3) If the registrant intends to exclude a shareholder nominee or statement of support, after providing the requisite notice of and time for the nominating shareholder or nominating shareholder group to remedy any eligibility or procedural deficiencies in the nomination or statement, the registrant must provide notice of the basis for its determination to the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The Commission staff may permit the registrant to make its submission later than 80 calendar days before the registrant files its definitive proxy statement and form of proxy if the registrant demonstrates good cause for missing the deadline.

(i) The registrant's notice to the Commission shall include:

(A) Identification of the nominating shareholder or each member of the nominating shareholder group, as applicable;

(B) The name of the nominee or nominees;

(C) An explanation of the registrant's basis for determining that the registrant may exclude the nominee or nominees or a statement of support; and

(D) A supporting opinion of counsel when the registrant's basis for excluding a nominee or nominees relies on a matter of state or foreign law.

(ii) The registrant must file its notice to the Commission and simultaneously provide a copy to the nominating shareholder or each member of the nominating shareholder group (or their authorized representative). At the time the registrant files its notice, the registrant also may seek an informal statement of the Commission staff's views with regard to its determination to exclude from its proxy materials a nominee or nominees or a statement of support. The

Commission staff may provide an informal statement of its views to the registrant along with a copy to the nominating shareholder or nominating shareholder group (or their authorized representative);

(iii) The nominating shareholder or nominating shareholder group may submit a response to the registrant's notice to the Commission. This response must be postmarked or transmitted electronically to the Commission no later than 14 calendar days after the nominating shareholder's or nominating shareholder group's receipt of the registrant's notice to the Commission. The nominating shareholder or nominating shareholder group must simultaneously provide to the registrant a copy of its response to the Commission.

(iv) If the registrant seeks an informal statement of the Commission staff's views with regard to its determination to exclude a shareholder nominee or nominees, the registrant shall provide the nominating shareholder or nominating shareholder group (or their authorized representative) with notice, either postmarked or transmitted electronically, promptly following receipt of the staff's response, of whether it will include or exclude the shareholder nominee; and

(v) The exclusion of a shareholder nominee or a statement of support by a registrant where that exclusion is not permissible under paragraph (a), (b), (c), (d), or (e) of this section shall be a violation of this section.

Instruction 1 to paragraph (g). When a registrant must provide a notice to a nominating shareholder, member of a nominating shareholder group, or authorized representative of a nominating shareholder group, the registrant is responsible for providing the notice in a manner that evidences timely transmission. Where a nominating shareholder, member of a nominating shareholder group, or authorized representative of a nominating shareholder group responds to a notice, the nominating shareholder, member of a nominating shareholder group, or authorized

representative of a nominating shareholder group is responsible for providing the response in a manner that evidences timely transmission.

Instruction 2 to paragraph (g). Neither the composition of the nominating shareholder group nor the shareholder nominee may be changed as a means to correct a deficiency identified in the registrant's notice to the nominating shareholder or nominating shareholder group under paragraph (g)(2) of this section; however, where a nominating shareholder or nominating shareholder group submits a number of nominees that exceeds the maximum number required to be included by the registrant under the circumstances set forth in paragraph (d) of this section, the nominating shareholder or nominating shareholder group may specify which nominee or nominees are not to be included in the registrant's proxy materials.

Instruction 3 to paragraph (g). Unless otherwise indicated in this section, the burden is on the registrant to demonstrate that it may exclude a nominee or statement of support.

16. Amend § 240.14a-12 by removing the heading following paragraph (c)(2)(iii) "Instructions to § 240.14a-12"; by removing the numbers 1. and 2. of instructions 1 and 2 to § 240.14a-12 and adding in their places the phrases "Instruction 1 to § 240.14a-12." and "Instruction 2 to § 240.14a-12.", respectively; and adding Instruction 3 to § 240.14a-12 to read as follows:

§ 240.14a-12 Solicitation before furnishing a proxy statement.

* * * * *

Instruction 3 to § 240.14a-12. Inclusion of a nominee pursuant to § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials, or solicitations by a nominating shareholder or nominating shareholder group that are made in connection with

that nomination constitute solicitations in opposition subject to § 240.14a-12(c), except for purposes of § 240.14a-6(a).

17. Add § 240.14a-18 to read as follows:

§ 240.14a-18 Disclosure regarding nominating shareholders and nominees submitted for inclusion in a registrant's proxy materials pursuant to applicable state or foreign law, or a registrant's governing documents.

To have a nominee included in a registrant's proxy materials pursuant to a procedure set forth under applicable state or foreign law, or the registrant's governing documents addressing the inclusion of shareholder director nominees in the registrant's proxy materials, the nominating shareholder or nominating shareholder group must provide notice to the registrant of its intent to do so on a Schedule 14N (§ 240.14n-101) and file that notice, including the required disclosure, with the Commission on the date first transmitted to the registrant. This notice shall be postmarked or transmitted electronically to the registrant by the date specified by the registrant's advance notice provision or, where no such provision is in place, no later than 120 calendar days before the anniversary of the date that the registrant mailed its proxy materials for the prior year's annual meeting, except that, if the registrant did not hold an annual meeting during the prior year, or if the date of the meeting has changed by more than 30 calendar days from the prior year, then the nominating shareholder or nominating shareholder group must provide notice a reasonable time before the registrant mails its proxy materials, as specified by the registrant in a Form 8-K (§ 249.308 of this chapter) filed pursuant to Item 5.08 of Form 8-K.

Instruction to § 240.14a-18. The registrant is not responsible for any information provided in the Schedule 14N (§ 240.14n-101) by the nominating shareholder or nominating shareholder group, which is submitted as required by this section or otherwise provided by the nominating shareholder or nominating shareholder group that is included in the registrant's

proxy materials.

18. Amend § 240.14a-101 by:

a. Revising Item 7 as follows:

i. Redesignating paragraph (e) as paragraph (g); and

ii. Adding new paragraph (e) and paragraph (f); and

b. Adding paragraphs (18) and (19) to Item 22(b).

The additions read as follows:

§ 240.14a-101 – Schedule 14A. Information required in proxy statement.

SCHEDULE 14A INFORMATION

* * * * *

Item 7. * * *

* * * * *

(e) If a shareholder nominee or nominees are submitted to the registrant for inclusion in the registrant's proxy materials pursuant to § 240.14a-11 and the registrant is not permitted to exclude the nominee or nominees pursuant to the provisions of § 240.14a-11, the registrant must include in its proxy statement the disclosure required from the nominating shareholder or nominating shareholder group under Item 5 of § 240.14n-101 with regard to the nominee or nominees and the nominating shareholder or nominating shareholder group.

Instruction to Item 7(e). The information disclosed pursuant to paragraph (e) of this Item will not be deemed incorporated by reference into any filing under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), except to the extent that the registrant specifically incorporates that information by reference.

(f) If a registrant is required to include a shareholder nominee or nominees submitted to the registrant for inclusion in the registrant's proxy materials pursuant to a procedure set forth under applicable state or foreign law, or the registrant's governing documents providing for the inclusion of shareholder director nominees in the registrant's proxy materials, the registrant must include in its proxy statement the disclosure required from the nominating shareholder or nominating shareholder group under Item 6 of § 240.14n-101 with regard to the nominee or nominees and the nominating shareholder or nominating shareholder group.

Instruction to Item 7(f). The information disclosed pursuant to paragraph (f) of this Item will not be deemed incorporated by reference into any filing under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), except to the extent that the registrant specifically incorporates that information by reference.

* * * * *

Item 22. Information required in investment company proxy statement.

* * * * *

(b) * * *

(18) If a shareholder nominee or nominees are submitted to the Fund for inclusion in the Fund's proxy materials pursuant to § 240.14a-11 and the Fund is not permitted to exclude the nominee or nominees pursuant to the provisions of § 240.14a-11, the Fund must include in its proxy statement the disclosure required from the nominating shareholder or nominating shareholder group under Item 5 of § 240.14n-101 with regard to the nominee or nominees and the nominating shareholder or nominating shareholder group.

Instruction to paragraph (b)(18). The information disclosed pursuant to paragraph (b)(18)

of this Item will not be deemed incorporated by reference into any filing under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), except to the extent that the Fund specifically incorporates that information by reference.

(19) If a Fund is required to include a shareholder nominee or nominees submitted to the Fund for inclusion in the Fund's proxy materials pursuant to a procedure set forth under applicable state or foreign law or the Fund's governing documents providing for the inclusion of shareholder director nominees in the Fund's proxy materials, the Fund must include in its proxy statement the disclosure required from the nominating shareholder or nominating shareholder group under Item 6 of § 240.14n-101 with regard to the nominee or nominees and the nominating shareholder or nominating shareholder group.

Instruction to paragraph (b)(19). The information disclosed pursuant to paragraph (b)(19) of this Item will not be deemed incorporated by reference into any filing under the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), except to the extent that the Fund specifically incorporates that information by reference.

* * * * *

19. Amend Part 240 by adding an undesignated center heading and §§ 240.14n-1 through 240.14n-3 and § 240.14n-101 to read as follows:

REGULATION 14N: FILINGS REQUIRED BY CERTAIN NOMINATING SHAREHOLDERS

§ 240.14n-1 Filing of Schedule 14N.

(a) A shareholder or group of shareholders that submits a nominee or nominees in accordance with § 240.14a-11 or a procedure set forth under applicable state or foreign law, or a

registrant's governing documents providing for the inclusion of shareholder director nominees in the registrant's proxy materials shall file with the Commission a statement containing the information required by Schedule 14N (§ 240.14n-101) and simultaneously provide the notice on Schedule 14N to the registrant.

(b)(1) Whenever two or more persons are required to file a statement containing the information required by Schedule 14N (§ 240.14n-101), only one statement need be filed. The statement must identify all such persons, contain the required information with regard to each such person, indicate that the statement is filed on behalf of all such persons, and include, as an appendix, their agreement in writing that the statement is filed on behalf of each of them. Each person on whose behalf the statement is filed is responsible for the timely filing of that statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing.

(2) If the group's members elect to make their own filings, each filing should identify all members of the group but the information provided concerning the other persons making the filing need only reflect information which the filing person knows or has reason to know.

§ 240.14n-2 Filing of amendments to Schedule 14N.

(a) If any material change occurs with respect to the nomination, or in the disclosure or certifications set forth in the Schedule 14N (§ 240.14n-101) required by § 240.14n-1(a), the person or persons who were required to file the statement shall promptly file or cause to be filed with the Commission an amendment disclosing that change.

(b) An amendment shall be filed within 10 calendar days of the final results of the election being announced by the registrant stating the nominating shareholder's or the

nominating shareholder group's intention with regard to continued ownership of their shares.

§ 240.14n-3 Dissemination.

One copy of Schedule 14N (§ 240.14n-101) filed pursuant to §§ 240.14n-1 and 240.14n-2 shall be mailed by registered or certified mail or electronically transmitted to the registrant at its principal executive office. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

§ 240.14n-101 Schedule 14N – Information to be included in statements filed pursuant to § 240.14n-1 and amendments thereto filed pursuant to § 240.14n-2.

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

Schedule 14N

Under the Securities Exchange Act of 1934

(Amendment No. __)*

(Name of Issuer)

(Title of Class of Securities)

(CUSIP Number)

☐ Solicitation pursuant to § 240.14a-2(b)(7)

☐ Solicitation pursuant to § 240.14a-2(b)(8)

☐ Notice of Submission of a Nominee or Nominees in Accordance with § 240.14a-11

[] Notice of Submission of a Nominee or Nominees in Accordance with Procedures Set Forth Under Applicable State or Foreign Law, or the Registrant's Governing Documents

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

(1) Names of reporting persons: _____

(2) Mailing address and phone number of each reporting person (or, where applicable, the authorized representative): _____

(3) Amount of securities held that are entitled to be voted on the election of directors held by each reporting person (and, where applicable, amount of securities held in the aggregate by the nominating shareholder group), but including loaned securities and net of securities sold short or borrowed for purposes other than a short sale: _____

(4) Number of votes attributable to the securities entitled to be voted on the election of directors represented by amount in Row (3) (and, where applicable, aggregate number of votes attributable to the securities entitled to be voted on the election of directors held by group):

Instructions for Cover Page:

(1) Names of Reporting Persons – Furnish the full legal name of each person for whom the report is filed – i.e., each person required to sign the schedule itself – including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person.

(3) and (4) Amount Held by Each Reporting Person – Rows (3) and (4) are to be completed in accordance with the provisions of Item 3 of Schedule 14N.

Notes: Attach as many copies of parts one through three of the cover page as are needed, one reporting person per copy.

Filing persons may, in order to avoid unnecessary duplication, answer items on Schedule 14N by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as “filed” for purposes of Section 18 of the Act or otherwise subject to the liabilities of that section of the Act.

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 14N

Under Sections 14 and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this Schedule. The information will be used for the primary purpose of determining and disclosing the holdings and interests of a nominating shareholder or nominating shareholder group. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory

organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Failure to disclose the information requested by this schedule may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder, or in some cases, exclusion of the nominee from the registrant's proxy materials.

General instructions to item requirements

The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be prepared so as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

Item 1(a). Name of registrant

Item 1(b). Address of registrant's principal executive offices

Item 2(a). Name of person filing

Item 2(b). Address or principal business office or, if none, residence

Item 2(c). Title of class of securities

Item 2(d). CUSIP No.

Item 3. Ownership

Provide the following information, in accordance with Instruction 3 to § 240.14a-11(b)(1):

(a) Amount of securities held and entitled to be voted on the election of directors (and, where applicable, amount of securities held in the aggregate by the nominating shareholder group): _____.

(b) The number of votes attributable to the securities referred to in paragraph (a) of this Item: _____.

(c) The number of votes attributable to securities that have been loaned but which the reporting person:

(i) has the right to recall; and

(ii) will recall upon being notified that any of the nominees will be included in the registrant's proxy statement and proxy card: _____.

(d) The number of votes attributable to securities that have been sold in a short sale that is not closed out, or that have been borrowed for purposes other than a short sale: _____.

(e) The sum of paragraphs (b) and (c), minus paragraph (d) of this Item, divided by the aggregate number of votes derived from all classes of securities of the registrant that are entitled to vote on the election of directors, and expressed as a percentage: _____.

Item 4. Statement of Ownership from a Nominating Shareholder or Each Member of a Nominating Shareholder Group Submitting this Notice Pursuant to § 240.14a-11

(a) If the nominating shareholder, or each member of the nominating shareholder group, is the registered holder of the shares, please so state. Otherwise, attach to the Schedule 14N one or more written statements from the persons (usually brokers or banks) through which the nominating shareholder's securities are held, verifying that, within seven calendar days prior to filing the shareholder notice on Schedule 14N with the Commission and transmitting the notice to the registrant, the nominating shareholder continuously held the amount of securities being used to satisfy the ownership threshold for a period of at least three years. In the alternative, if the nominating shareholder has filed a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), 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, reflecting ownership of the securities as of or before the date on which the three-year eligibility period begins, so state and incorporate that filing or amendment by reference.

(b) Provide a written statement that the nominating shareholder, or each member of the nominating shareholder group, intends to continue to hold the amount of securities that are used for purposes of satisfying the minimum ownership requirement of § 240.14a-11(b)(1) through the date of the meeting of shareholders, as required by § 240.14a-11(b)(4). Additionally, provide a written statement from the nominating shareholder or each member of the nominating shareholder group regarding the nominating shareholder's or nominating shareholder group member's intent with respect to continued ownership after the election of directors, as required by § 240.14a-11(b)(5).

Instruction to Item 4. If the nominating shareholder or any member of the nominating shareholder group is not the registered holder of the securities and is not proving ownership for purposes of § 240.14a-11(b)(3) by providing previously filed Schedules 13D or 13G or Forms 3, 4, or 5, and the securities are held in an account with a broker or bank that is a participant in the Depository Trust Company ("DTC") or other clearing agency acting as a securities depository, a written statement or statements from that participant or participants in the following form will satisfy § 240.14a-11(b)(3):

As of [date of this statement], [name of nominating shareholder or member of the nominating shareholder group] held at least [number of securities owned continuously for at least three years] of the [registrant's] [class of securities], and has held at least this amount of such securities continuously for [at least three years]. [Name of clearing agency participant] is a participant in [name of clearing agency] whose nominee name is [nominee name].

[name of clearing agency participant]

By: [name and title of representative]

Date:

If the securities are held through a broker or bank (e.g. in an omnibus account) that is not a participant in a clearing agency acting as a securities depository, the nominating shareholder or member of the nominating shareholder group must (a) obtain and submit a written statement or statements (the “initial broker statement”) from the broker or bank with which the nominating shareholder or member of the nominating shareholder group maintains an account that provides the information about securities ownership set forth above and (b) obtain and submit a separate written statement from the clearing agency participant through which the securities of the nominating shareholder or member of the nominating shareholder group are held, that (i) identifies the broker or bank for whom the clearing agency participant holds the securities, and (ii) states that the account of such broker or bank has held, as of the date of the separate written statement, at least the number of securities specified in the initial broker statement, and (iii) states that this account has held at least that amount of securities continuously for at least three years.

If the securities have been held for less than three years at the relevant entity, provide written statements covering a continuous period of three years and modify the language set forth above as appropriate.

For purposes of complying with § 240.14a-11(b)(3), loaned securities may be included in the amount of securities set forth in the written statements.

Item 5. Disclosure Required for Shareholder Nominations Submitted Pursuant to § 240.14a-11

If a nominating shareholder or nominating shareholder group is submitting this notice in

connection with the inclusion of a shareholder nominee or nominees for director in the registrant's proxy materials pursuant to § 240.14a-11, provide the following information:

(a) A statement that the nominee consents to be named in the registrant's proxy statement and form of proxy and, if elected, to serve on the registrant's board of directors;

(b) Disclosure about the nominee as would be provided in response to the disclosure requirements of Items 4(b), 5(b), 7(a), (b) and (c) and, for investment companies, Item 22(b) of Schedule 14A (§ 240.14a-101), as applicable;

(c) Disclosure about the nominating shareholder or each member of a nominating shareholder group as would be required of a participant in response to the disclosure requirements of Items 4(b) and 5(b) of Schedule 14A (§ 240.14a-101), as applicable;

(d) Disclosure about whether the nominating shareholder or any member of a nominating shareholder group has been involved in any legal proceeding during the past ten years, as specified in Item 401(f) of Regulation S-K (§ 229.10 of this chapter). Disclosure pursuant to this paragraph need not be provided if provided in response to Item 5(c) of this section;

Instruction 1 to Item 5 (c) and (d). Where the nominating shareholder is a general or limited partnership, syndicate or other group, the information called for in paragraphs (c) and (d) of this Item must be given with respect to:

- a. Each partner of the general partnership;
- b. Each partner who is, or functions as, a general partner of the limited partnership;
- c. Each member of the syndicate or group; and
- d. Each person controlling the partner or member.

Instruction 2 to Item 5 (c) and (d). If the nominating shareholder is a corporation or if a person referred to in a., b., c. or d. of Instruction 1 to paragraphs (c) and (d) of this Item is a

corporation, the information called for in paragraphs (c) and (d) of this Item must be given with respect to:

- a. Each executive officer and director of the corporation;
- b. Each person controlling the corporation; and
- c. Each executive officer and director of any corporation or other person ultimately in control of the corporation.

(e) Disclosure about whether, to the best of the nominating shareholder's or group's knowledge, the nominee meets the director qualifications, if any, set forth in the registrant's governing documents;

(f) A statement that, to the best of the nominating shareholder's or group's knowledge, in the case of a registrant other than an investment company, the nominee meets the objective criteria for "independence" of the national securities exchange or national securities association rules applicable to the registrant, if any, or, in the case of a registrant that is an investment company, the nominee is not an "interested person" of the registrant as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19)).

Instruction to Item 5(f). For this purpose, the nominee would be required to meet the definition of "independence" that is generally applicable to directors of the registrant and not any particular definition of independence applicable to members of the audit committee of the registrant's board of directors. To the extent a national securities exchange or national securities association rule imposes a standard regarding independence that requires a subjective determination by the board or a group or committee of the board (for example, requiring that the board of directors or any group or committee of the board of directors make a determination regarding the existence of factors material to a determination of a nominee's independence), the

nominee would not be required to meet the subjective determination of independence as part of the shareholder nomination process.

(g) The following information regarding the nature and extent of the relationships between the nominating shareholder or nominating shareholder group, the nominee, and/or the registrant or any affiliate of the registrant:

(1) Any direct or indirect material interest in any contract or agreement between the nominating shareholder or any member of the nominating shareholder group, the nominee, and/or the registrant or any affiliate of the registrant (including any employment agreement, collective bargaining agreement, or consulting agreement);

(2) Any material pending or threatened legal proceeding in which the nominating shareholder or any member of the nominating shareholder group and/or the nominee is a party or a material participant, and that involves the registrant, any of its executive officers or directors, or any affiliate of the registrant; and

(3) Any other material relationship between the nominating shareholder or any member of the nominating shareholder group, the nominee, and/or the registrant or any affiliate of the registrant not otherwise disclosed;

Note to Item 5(g)(3). Any other material relationship of the nominating shareholder or any member of the nominating shareholder group or nominee with the registrant or any affiliate of the registrant may include, but is not limited to, whether the nominating shareholder or any member of the nominating shareholder group currently has, or has had in the past, an employment relationship with the registrant or any affiliate of the registrant (including consulting arrangements).

(h) The Web site address on which the nominating shareholder or nominating

shareholder group may publish soliciting materials, if any; and

(i) Any statement in support of the shareholder nominee or nominees, which may not exceed 500 words for each nominee, if the nominating shareholder or nominating shareholder group elects to have such statement included in the registrant's proxy materials.

Item 6. Disclosure Required by § 240.14a-18

If a nominating shareholder or nominating shareholder group is submitting this notice in connection with the inclusion of a shareholder nominee or nominees for director in the registrant's proxy materials pursuant to a procedure set forth under applicable state or foreign law, or the registrant's governing documents provide the following disclosure:

(a) A statement that the nominee consents to be named in the registrant's proxy statement and form of proxy and, if elected, to serve on the registrant's board of directors;

(b) Disclosure about the nominee as would be provided in response to the disclosure requirements of Items 4(b), 5(b), 7(a), (b) and (c) and, for investment companies, Item 22(b) of Schedule 14A (§ 240.14a-101), as applicable;

(c) Disclosure about the nominating shareholder or each member of a nominating shareholder group as would be required in response to the disclosure requirements of Items 4(b) and 5(b) of Schedule 14A (§ 240.14a-101), as applicable;

(d) Disclosure about whether the nominating shareholder or any member of a nominating shareholder group has been involved in any legal proceeding during the past ten years, as specified in Item 401(f) of Regulation S-K (§ 229.10 of this chapter). Disclosure pursuant to this paragraph need not be provided if provided in response to Item 6(c) of this section;

Instruction 1 to Item 6(c) and (d). Where the nominating shareholder is a general or limited partnership, syndicate or other group, the information called for in paragraphs (c) and (d)

of this Item must be given with respect to:

- a. Each partner of the general partnership;
- b. Each partner who is, or functions as, a general partner of the limited partnership;
- c. Each member of the syndicate or group; and
- d. Each person controlling the partner or member.

Instruction 2 to Item 6(c) and (d). If the nominating shareholder is a corporation or if a person referred to in a., b., c. or d. of Instruction 1 to paragraphs (c) and (d) of this Item is a corporation, the information called for in paragraphs (c) and (d) of this Item must be given with respect to:

- a. Each executive officer and director of the corporation;
- b. Each person controlling the corporation; and
- c. Each executive officer and director of any corporation or other person ultimately in control of the corporation.

(e) The following information regarding the nature and extent of the relationships between the nominating shareholder or nominating shareholder group, the nominee, and/or the registrant or any affiliate of the registrant:

(1) Any direct or indirect material interest in any contract or agreement between the nominating shareholder or any member of the nominating shareholder group, the nominee, and/or the registrant or any affiliate of the registrant (including any employment agreement, collective bargaining agreement, or consulting agreement);

(2) Any material pending or threatened legal proceeding in which the nominating shareholder or any member of the nominating shareholder group and/or nominee is a party or a material participant, involving the registrant, any of its executive officers or directors, or any

affiliate of the registrant; and

(3) Any other material relationship between the nominating shareholder or any member of the nominating shareholder group, the nominee, and/or the registrant or any affiliate of the registrant not otherwise disclosed; and

Instruction to Item 6(e)(3). Any other material relationship of the nominating shareholder or any member of the nominating shareholder group with the registrant or any affiliate of the registrant may include, but is not limited to, whether the nominating shareholder or any member of the nominating shareholder group currently has, or has had in the past, an employment relationship with the registrant or any affiliate of the registrant (including consulting arrangements).

(f) The Web site address on which the nominating shareholder or nominating shareholder group may publish soliciting materials, if any.

Item 7. Notice of Dissolution of Group or Termination of Shareholder Nomination

Notice of dissolution of a nominating shareholder group or the termination of a shareholder nomination shall state the date of the dissolution or termination.

Item 8. Signatures

(a) The following certifications shall be provided by the filing person submitting this notice pursuant to § 240.14a-11, or in the case of a group, each filing person whose securities are being aggregated for purposes of meeting the ownership threshold set out in § 240.14a-11(b)(1) exactly as set forth below:

I, [identify the certifying individual], after reasonable inquiry and to the best of my knowledge and belief, certify that:

(1) I [or if signed by an authorized representative, the name of the nominating

shareholder or each member of the nominating shareholder group, as appropriate] am [is] not holding any of the registrant's securities with the purpose, or with the effect, of changing control of the registrant or to gain a number of seats on the board of directors that exceeds the maximum number of nominees that the registrant could be required to include under § 240.14a-11(d);

(2) I [or if signed by an authorized representative, the name of the nominating shareholder or each member of the nominating shareholder group, as appropriate] otherwise satisfy [satisfies] the requirements of § 240.14a-11(b), as applicable;

(3) The nominee or nominees satisfies the requirements of § 240.14a-11(b), as applicable; and

(4) The information set forth in this notice on Schedule 14N is true, complete and correct.

(b) The following certification shall be provided by the filing person or persons submitting this notice in connection with the submission of a nominee or nominees in accordance with procedures set forth under applicable state or foreign law or the registrant's governing documents:

I, [identify the certifying individual], after reasonable inquiry and to the best of my knowledge and belief, certify that the information set forth in this notice on Schedule 14N is true, complete and correct.

Dated: _____

Signature: _____

Name/Title: _____

The original statement shall be signed by each person on whose behalf the statement is

filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative other than an executive officer or general partner of the filing person, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, provided, however, that a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

Attention: Intentional misstatements or omissions of fact constitute Federal criminal violations (see 18 U.S.C. 1001).

20. Amend § 240.15d-11 by revising paragraph (b) to read as follows:

§ 240.15d-11 Current reports on Form 8-K (§ 249.308 of this chapter).

* * * * *

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to § 240.15d-16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30b1-1 of this chapter under the Investment Company Act of 1940, except where such an investment company is required to file:

- (1) Notice of a blackout period pursuant to § 245.104 of this chapter;
- (2) Disclosure pursuant to Instruction 2 to § 240.14a-11(b)(1) of information concerning outstanding shares and voting; or
- (3) Disclosure pursuant to Instruction 2 to § 240.14a-11(b)(10) of the date by which a nominating shareholder or nominating shareholder group must submit the notice required pursuant to § 240.14a-11(b)(10).

* * * * *

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

21. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

22. Amend Form 8-K (referenced in § 249.308) by:

- a. Adding a sentence at the end of General Instruction B.1;
- b. Removing the phrase “Section 5.06” in the heading and adding in its place “Item 5.06”; and
- c. Adding Item 5.08.

The additions read as follows:

Note: The text of Form 8-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8-K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

B. Events to be Reported and Time for Filing Reports

1. * * * A report pursuant to Item 5.08 is to be filed within four business days after the registrant determines the anticipated meeting date.

* * * * *

Item 5.08 Shareholder Director Nominations

(a) If the registrant did not hold an annual meeting the previous year, or if the date of this year’s annual meeting has been changed by more than 30 calendar days from the date of the

previous year's meeting, then the registrant is required to disclose the date by which a nominating shareholder or nominating shareholder group must submit the notice on Schedule 14N (§ 240.14n-101) required pursuant to § 240.14a-11(b)(10), which date shall be a reasonable time before the registrant mails its proxy materials for the meeting. Where a registrant is required to include shareholder director nominees in the registrant's proxy materials pursuant to either an applicable state or foreign law provision, or a provision in the registrant's governing documents, then the registrant is required to disclose the date by which a nominating shareholder or nominating shareholder group must submit the notice on Schedule 14N required pursuant to § 240.14a-18.

(b) If the registrant is a series company as defined in Rule 18f-2(a) under the Investment Company Act of 1940 (§ 270.18f-2 of this chapter), then the registrant is required to disclose in connection with the election of directors at an annual meeting of shareholders (or, in lieu of such an annual meeting, a special meeting of shareholders) the total number of shares of the registrant outstanding and entitled to be voted (or if the votes are to be cast on a basis other than one vote per share, then the total number of votes entitled to be voted and the basis for allocating such votes) on the election of directors at such meeting of shareholders as of the end of the most recent calendar quarter.

* * * * *

By the Commission.

Elizabeth M. Murphy
Secretary

Date: August 25, 2010