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4. Written materials. Attach written material required to be submitted pursuant to Rule 14a-6(g)(1) [§ 240.14a-6(g)(1)].

[57 FR 48294, Oct. 22, 1992]

§ 240.14a-104 Notice of Exempt Preliminary Roll-up Communication. Information regarding ownership interests and any potential conflicts of interest to be included in statements submitted by or on behalf of a person pursuant to § 240.14a-2(b)(4) and § 240.14a-6(n).

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

Notice of Exempt Preliminary Roll-Up Communication

- 1. Name of registrant appearing on Securities Act of 1933 registration statement for the roll-up transaction (or, if registration statement has not been filed, name of entity into which partnerships are to be rolled up):
2. Name of partnership that is the subject of the proposed roll-up transaction:
3. Name of person relying on exemption:
4. Address of person relying on exemption:
5. Ownership interest of security holder in partnership that is the subject of the proposed roll-up transaction:

NOTE: To the extent that the holder owns securities in any other entities involved in this roll-up transaction, disclosure of these interests also should be made.

- 6. Describe any and all relations of the holder to the parties to the transaction or to the transaction itself:
a. The holder is engaged in the business of buying and selling limited partnership interests in the secondary market would be adversely affected if the roll-up transaction were completed.
b. The holder would suffer direct (or indirect) material financial injury if the roll-up transaction were completed since it is a service provider to an affected limited partnership.
c. The holder is engaged in another transaction that may be competitive with the pending roll-up transaction.

d. Any other relations to the parties involved in the transaction or to the transaction itself, or any benefits enjoyed by the holder not shared on a pro rata basis by all other holders of the same class of securities of the partnership that is the subject of the proposed roll-up transaction.

[59 FR 63685, Dec. 8, 1994]

§ 240.14b-1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

(a) Definitions. Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in § 240.14a-1 thereunder and, with respect to information statements, as in § 240.14c-1 thereunder. In addition, as used in this section, the term "registrant" means:

- (1) The issuer of a class of securities registered pursuant to section 12 of the Act; or
(2) An investment company registered under the Investment Company Act of 1940.

(b) Dissemination and beneficial owner information requirements. A broker or dealer registered under Section 15 of the Act shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants.

- (1) The broker or dealer shall respond, by first class mail or other equally prompt means, directly to the registrant no later than seven business days after the date it receives an inquiry made in accordance with § 240.14a-13(a) or § 240.14c-7(a) by indicating, by means of a search card or otherwise:
(i) The approximate number of customers of the broker or dealer who are beneficial owners of the registrant's securities that are held of record by the broker, dealer, or its nominee;
(ii) The number of customers of the broker or dealer who are beneficial owners of the registrant's securities who have objected to disclosure of

their names, addresses, and securities positions if the registrant has indicated, pursuant to § 240.14a-13(a)(1)(ii)(A) or § 240.14c-7(a)(1)(ii)(A), that it will distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to paragraph (b)(3) of this section; and

(iii) The identity of the designated agent of the broker or dealer, if any, acting on its behalf in fulfilling its obligations under paragraph (b)(3) of this section; *Provided, however*, that if the broker or dealer has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, receipt for purposes of paragraph (b)(1) of this section shall mean receipt by such designated office(s) or department(s).

(2) The broker or dealer shall, upon receipt of the proxy, other proxy soliciting material, information statement, and/or annual reports to security holders, forward such materials to its customers who are beneficial owners of the registrant's securities no later than five business days after receipt of the proxy material, information statement or annual reports.

NOTE TO PARAGRAPH (b)(2): At the request of a registrant, or on its own initiative so long as the registrant does not object, a broker or dealer may, but is not required to, deliver one annual report, proxy statement or information statement to more than one beneficial owner sharing an address if the requirements set forth in § 240.14a-3(e)(1) (with respect to annual reports and proxy statements) and § 240.14c-3(c) (with respect to annual reports and information statements) applicable to registrants, with the exception of § 240.14a-3(e)(1)(i)(E), are satisfied instead by the broker or dealer.

(3) The broker or dealer shall, through its agent or directly:

(i) Provide the registrant, upon the registrant's request, with the names, addresses, and securities positions, compiled as of a date specified in the registrant's request which is no earlier than five business days after the date the registrant's request is received, of its customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of such information; *Provided, however*, that if the broker or dealer has in-

formed the registrant that a designated office(s) or department(s) is to receive such requests, receipt shall mean receipt by such designated office(s) or department(s); and

(ii) Transmit the data specified in paragraph (b)(3)(i) of this section to the registrant no later than five business days after the record date or other date specified by the registrant.

NOTE 1: Where a broker or dealer employs a designated agent to act on its behalf in performing the obligations imposed on the broker or dealer by paragraph (b)(3) of this section, the five business day time period for determining the date as of which the beneficial owner information is to be compiled is calculated from the date the designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraph (b)(3) of this section, a broker or dealer need only supply the registrant with the names, addresses, and securities positions of non-objecting beneficial owners.

NOTE 2: If a broker or dealer receives a registrant's request less than five business days before the requested compilation date, it must provide a list compiled as of a date that is no more than five business days after receipt and transmit the list within five business days after the compilation date.

(c) *Exceptions to dissemination and beneficial owner information requirements.* A broker or dealer registered under section 15 of the Act shall be subject to the following with respect to its dissemination and beneficial owner information requirements.

(1) With regard to beneficial owners of exempt employee benefit plan securities, the broker or dealer shall:

(i) Not include information in its response pursuant to paragraph (b)(1) of this section or forward proxies (or in lieu thereof requests for voting instructions), proxy soliciting material, information statements, or annual reports to security holders pursuant to paragraph (b)(2) of this section to such beneficial owners; and

(ii) Not include in its response, pursuant to paragraph (b)(3) of this section, data concerning such beneficial owners.

(2) A broker or dealer need not satisfy:

(i) Its obligations under paragraphs (b)(2) and (b)(3) of this section if a registrant does not provide assurance of

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reimbursement of the broker's or dealer's reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2) and (b)(3) of this section; or

(ii) Its obligation under paragraph (b)(2) of this section to forward annual reports to non-objecting beneficial owners identified by the broker or dealer, through its agent or directly, pursuant to paragraph (b)(3) of this section if the registrant notifies the broker or dealer pursuant to § 240.14a-13(c) or § 240.14c-7(c) that the registrant will mail the annual report to such non-objecting beneficial owners identified by the broker or dealer and delivered in a list to the registrant pursuant to paragraph (b)(3) of this section.

(3) In its response pursuant to paragraph (b)(1) of this section, a broker or dealer shall not include information about annual reports, proxy statements or information statements that will not be delivered to security holders sharing an address because of the broker or dealer's reliance on the procedures referred to in the Note to paragraph (b)(2) of this section.

[57 FR 1099, Jan. 10, 1992, as amended at 65 FR 65751, Nov. 2, 2000]

**§ 240.14b-2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.**

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in § 240.14a-1 thereunder and, with respect to information statements, as in § 240.14c-1 thereunder. In addition, as used in this section, the following terms shall apply:

(1) The term *bank* means a bank, association, or other entity that exercises fiduciary powers.

(2) The term *beneficial owner* includes any person who has or shares, pursuant to an instrument, agreement, or otherwise, the power to vote, or to direct the voting of a security.

NOTE 1: If more than one person shares voting power, the provisions of the instrument

creating that voting power shall govern with respect to whether consent to disclosure of beneficial owner information has been given.

NOTE 2: If more than one person shares voting power or if the instrument creating that voting power provides that such power shall be exercised by different persons depending on the nature of the corporate action involved, all persons entitled to exercise such power shall be deemed beneficial owners; *Provided, however,* that only one such beneficial owner need be designated among the beneficial owners to receive proxies or requests for voting instructions, other proxy soliciting material, information statements, and/or annual reports to security holders, if the person so designated assumes the obligation to disseminate, in a timely manner, such materials to the other beneficial owners.

(3) The term *registrant* means:

(i) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(ii) An investment company registered under the Investment Company Act of 1940.

(b) *Dissemination and beneficial owner information requirements.* A bank shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants.

(1) The bank shall:

(i) Respond, by first class mail or other equally prompt means, directly to the registrant, no later than one business day after the date it receives an inquiry made in accordance with § 240.14a-13(a) or § 240.14c-7(a) by indicating the name and address of each of its respondent banks that holds the registrant's securities on behalf of beneficial owners, if any; and

(ii) Respond, by first class mail or other equally prompt means, directly to the registrant no later than seven business days after the date it receives an inquiry made in accordance with § 240.14a-13(a) or § 240.14c-7(a) by indicating, by means of a search card or otherwise:

(A) The approximate number of customers of the bank who are beneficial owners of the registrant's securities that are held of record by the bank or its nominee;

(B) If the registrant has indicated, pursuant to § 240.14a-13(a)(1)(ii)(A) or