

Securities and Exchange Commission

§ 260.3(4)-3

14c-3 (a) and (b) under the Securities Exchange Act of 1934.

(c) For the purpose of this rule, the term *forward-looking statement* shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S-K (§229.303 of this chapter) or Item 5 of Form 20-F; or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraphs (c) (1), (2), or (3) of this section.

(d) For the purpose of this rule the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Trust Indenture Act of 1939 and other acts referred to in section 323(b) thereof or the rules or regulations promulgated thereunder.

[46 FR 19458, Mar. 31, 1981, as amended at 47 FR 54790, Dec. 26, 1982; 56 FR 30077, July 1, 1991; 64 FR 53925, Oct. 5, 1999]

RULES UNDER SECTION 303

§ 260.3(4)-1 Definition of "commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commissions" in section 303(4), for certain transactions.

(a) The term *commission* in section 303(4) shall include such remuneration, commonly known as a spread, as may be received by a distributor or dealer as a consequence of reselling securities bought from an underwriter or dealer

at a price below the offering price of such securities, where such resales afford the distributor or dealer a margin of profit not in excess of what is usual and customary in such transactions.

(b) The term *commission from an underwriter or dealer* in section 303(4) shall include commissions paid by an underwriter or dealer affiliated with the issuer.

(c) The term *usual and customary distributors' or sellers' commission* in section 303(4) shall mean a commission or remuneration, commonly known as a spread, paid to or received by any person selling securities either for his own account or for the account of others, which is not in excess of the amount usual and customary in the distribution and sale of issues of similar type and size, and not in excess of the amount allowed to other persons, if any, for comparable service in the distribution of the particular issue; but such term shall not include amounts paid to any person whose function is the management of the distribution of all of a substantial part of the particular issue, or who performs the functions normally performed by an underwriter or underwriting syndicate.

§ 260.3(4)-2 Definition of "distribution" in section 303(4) for certain transactions.

A person, the chief part of the business of which consists in the purchase of the securities of any one issuer and/or its affiliate and in the sale of its own securities to furnish the proceeds with which to acquire the securities of such issuer and/or affiliate, is to be regarded as engaged in the distribution of the securities of such issuer and/or affiliate within the meaning of section 303(4).

§ 260.3(4)-3 Definitions of "participates" and "participation" as used in section 303(4), in relation to certain transactions.

(a) The terms *participates* and *participation* in section 303(4) shall not include the interest of a person (1) who is neither in privity of contract with the issuer nor affiliated with the issuer, and (2) who has no association with any principal underwriter of the securities being distributed, and (3) whose function in the distribution is confined to

§ 260.4a-1

an undertaking to purchase all or some specified proportion of the securities remaining unsold after the lapse of some specified period of time, and (4) who purchases such securities for investment and not with a view to distribution.

(b) As used in this section:

(1) The term *association* shall include a relationship between two persons under which one (i) is affiliated with the other, or (ii) has, in common with the other, one or more partners, directors, officers, trustees, branch managers, or other persons occupying a similar status or performing similar functions or (iii) has a participation, direct or indirect, in the profits of the other, or has a financial stake, by debtor-creditor relationship, stock ownership, contract or otherwise, in the income or business of the other.

(2) The term *principal underwriter* means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

RULES UNDER SECTION 304

§ 260.4a-1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been or will be issued otherwise than under an indenture. The same issuer may not claim this exemption within a period of twelve consecutive months for more than \$5,000,000 aggregate principal amount of any securities.

[57 FR 36501, Aug. 13, 1992]

§ 260.4a-2 Exempted securities under section 304(d).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been issued or will be issued in accordance with the provisions of Regulation A (17 CFR 230.251 *et seq.*) under the Securities Act of 1933.

[57 FR 36501, Aug. 13, 1992]

§ 260.4a-3 Exempted securities under section 304(a)(9).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securi-

17 CFR Ch. II (4-1-03 Edition)

ties at any time outstanding thereunder to \$10,000,000 or less, but this exemption shall not be applied within a period of thirty-six consecutive months to more than \$10,000,000 aggregate principal amount of securities of the same issuer.

(Secs. 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939, (sec. 302, Pub. L. 96-477; secs. 304(a)(8), 304(a)(9), 53 Stat. 1153; 15 U.S.C. 77ddd(a)(8), 77ddd(a)(9))

[46 FR 63256, Dec. 31, 1981. Redesignated and amended at 57 FR 36501, Aug. 13, 1992]

§ 260.4c-1 Form for applications under section 304(c).

Form T-4 shall be used for applications for exemption filed pursuant to section 304(c) of the act.

[6 FR 981, Feb. 15, 1941]

§ 260.4c-2 General requirements as to form and content of applications.

Sections 260.7a-15 to 260.7a-38 shall be applicable to applications on Form T-4.

[6 FR 981, Feb. 15, 1941]

§ 260.4c-3 Number of copies; filing; signatures; binding.

(a) Three copies of every application and of every amendment thereto shall be filed with the Commission at its principal office.

(b) At least the original of each application or amendment filed with the Commission shall be signed in the manner prescribed by Form T-4 (§ 269.4 of this chapter).

(c) The application proper and the exhibits thereto shall be bound on the left side in one or more parts, but without stiff covers.

[16 FR 8737, Aug. 29, 1951]

§ 260.4c-4 Applications under section 304(c)(1).

(a) An applicant under section 304(c)(1) may, if it so desires, waive a hearing and request the Commission to decide the application without a formal hearing on the basis of the application and such other information and documents as the Commission shall designate as a part of the record. However, a hearing may be called upon order of the Commission notwithstanding that the applicant shall have