

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

5. The authority citation for Part 229 is amended by adding the following citations in numerical order to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll(d), 78mm, 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a) and 80b-11, unless otherwise noted.

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Section 229.401 is also issued under secs. 3(a) and 407, Pub. L. 107-204, 116 Stat. 745.

Section 229.406 is also issued under secs. 3(a) and 406, Pub. L. 107-204, 116 Stat. 745.

Section 229.601 is also issued under secs. 3(a) and 406, Pub. L. 107-204, 116 Stat. 745.

6. Amend § 229.401 by adding paragraph (h) to read as follows:

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

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(h) *Audit committee financial expert.*
(1)(i) Disclose that the registrant's board of directors has determined that the registrant either:

(A) Has at least one audit committee financial expert serving on its audit committee; or

(B) Does not have an audit committee financial expert serving on its audit committee.

(ii) If the registrant provides the disclosure required by paragraph (h)(1)(i)(A) of this Item, it must disclose the name of the audit committee financial expert and whether that person is *independent*, as that term is used in Item 7(d)(3)(iv) of Schedule 14A (240.14a-101 of this chapter) under the Exchange Act.

(iii) If the registrant provides the disclosure required by paragraph (h)(1)(i)(B) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to paragraph (h)(1) of Item 401.
If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to Item 401(h)(1)(ii).

(2) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(i) An understanding of generally accepted accounting principles and financial statements;

(ii) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(iii) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(iv) An understanding of internal controls and procedures for financial reporting; and

(v) An understanding of audit committee functions.

(3) A person shall have acquired such attributes through:

(i) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(ii) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(iii) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(iv) Other relevant experience.

(4) *Safe Harbor.* (i) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 401.

(ii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(iii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 401(h). 1. The registrant need not provide the disclosure required by this Item 401(h) in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction G(3) to Form 10-K.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (h)(3)(iv) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under paragraph (e) of this Item 401 (§ 229.401(e) or this chapter).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 401(h), the term *board of directors* means the supervisory or non-management board. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (h)(2)(i) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a-14(g) and § 240.15d-14(g) of this chapter) is not required to disclose the information required by this Item 401(h).

7. Add § 229.406 to read as follows:

§ 229.406 (Item 406) Code of ethics.

(a) Disclose whether the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this Item 406, the term *code of ethics* means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must:

(1) File with the Commission a copy of its code of ethics that applies to the registrant's principal executive officer,