

- A representation that the nominating security holder or each member of the nominating security holder group was eligible to report its security ownership on Exchange Act Schedule 13G in reliance on Exchange Act Rule 13d-1(b) or (c);¹²³
- A representation that more than 5% of the appropriate class of the company's securities, as reflected in the Exchange Act Schedule 13G of the nominating security holder or nominating security holder group, have been held continuously for at least two years and that the nominating security holder or nominating security holder group intends to continue to own those securities through the date of the subject election of directors;¹²⁴
- A statement from the nominee that the nominee consents to be named in the company's proxy statement and to serve on the board if elected, for inclusion in the company's proxy statement;¹²⁵
- Disclosure about the nominee complying with the requirements of Item 7(a), (b) and (c) and, for investment companies, Item 22(b) of Exchange Act Schedule 14A, for inclusion in the company's proxy statement;¹²⁶

the security holder's notice to the fund pursuant to proposed Exchange Act Rule 14a-11(c)(11). *See* Section II.A.12., below.

¹²³ Proposed Exchange Act Rule 14a-11(b)(3) requires that the nominating security holder or nominating security holder group satisfy this standard. This representation would be included in the nominating security holder's notice pursuant to proposed Exchange Act Rule 14a-11(c)(2). This requirement would not apply in the case of a company that is a mutual fund because security holders of mutual funds are not required to file Exchange Act Schedule 13G. *See* Exchange Act Rules 13d-1(a) and (i); Section II.A.12., below.

¹²⁴ Proposed Exchange Act Rules 14a-11(b)(1) and 14a-11(b)(2) require that the nominating security holder meet these standards. This representation would be included in the nominating security holder's notice pursuant to proposed Exchange Act Rule 14a-11(c)(2). For companies that are mutual funds, this representation is modified to reflect the fact that security holders of mutual funds are not required to file Exchange Act Schedule 13G. *See* Exchange Act Rules 13d-1(a) and (i); Section II.A.12., below.

¹²⁵ This statement would be included in the nominating security holder's notice pursuant to proposed Exchange Act Rule 14a-11(c)(7).

¹²⁶ This information would be included in the nominating security holder's notice pursuant to proposed Exchange Act Rule 14a-11(c)(8). This information would identify the nominee, describe certain legal proceedings, if any, related to the nominee, and describe certain of the nominee's transactions and relationships with the company. *See* paragraphs (a), (b), and (c) of Item 7 of Exchange Act Schedule 14A. With respect to a nominee for director of a fund, the disclosure would include certain basic information about the nominee and any arrangement or understanding between the nominee and any other person pursuant to which he was selected as a nominee; information about the positions, interests, and transactions and relationships of the nominee and his immediate family members with the fund and

- Any of the following information with regard to each nominating security holder or member of a nominating security holder group that is not included in the Exchange Act Schedule 13G, for inclusion in the company's proxy statement:¹²⁷
 - Name and business address;
 - Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on;
 - The amount of each class of securities of the company that the individual owns beneficially, directly or indirectly, determined in accordance with Exchange Act Rule 13d-3;¹²⁸
 - Whether or not, during the past ten years, the individual has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, the dates, the nature of the conviction, the name or other disposition of the case; and whether the individual has been involved in any other legal proceeding during the past five years, as specified in Item 401(f) of Regulation S-K;¹²⁹ and
 - The methods by which the

nominating security holder or nominating security holder group may solicit security holders, including any Web site address on which the nominating security holder or nominating security holder group may publish soliciting materials.¹³⁰

b. Filing With the Commission

The nominating security holder or the nominating security holder group would be required to file the notice described in the preceding section, excluding the

persons related to the fund; information about the amount of equity securities of funds in a fund complex owned by the nominee; and information describing certain legal proceedings related to the nominee, including legal proceedings in which the nominee is a party adverse to, or has a material interest adverse to, the fund or any of its affiliated persons. *See* paragraph (b) of Item 22 of Exchange Act Schedule 14A.

¹²⁷ This information would be included in the nominating security holder's notice pursuant to proposed Exchange Act Rule 14a-11(c)(9). Where the nominating security holder is an entity rather than an individual, the required disclosure would be provided with regard to the control persons of the entity. For example, if the nominating security holder is a corporation, the information called for in Exchange Act Rule 14a-11(c)(9) must be given with respect to each executive officer and director of the corporation, each person controlling the corporation, and each executive officer and director of any corporation or other person ultimately in control of the corporation. *See* the Instruction to proposed Exchange Act Rule 14a-11(c)(9).

¹²⁸ 17 CFR 240.13d-3.

¹²⁹ 17 CFR 229.401(f).

¹³⁰ This information would be included in the nominating security holder's notice pursuant to proposed Exchange Act Rule 14a-11(c)(10).

already-filed Exchange Act Schedule 13G, with the Commission. This notice would be viewed as soliciting material of the nominating security holder or nominating security holder group, in that much of the information included in the notice would ultimately be disseminated to security holders in the company's proxy statement. Accordingly, the notice as filed with the Commission would be subject to the provisions of Exchange Act Rule 14a-9. We contemplate that this solicitation would be made in accordance with the exemption set out in proposed Exchange Act Rule 14a-11(f)(2). The notice would be filed with the Commission in the following manner:¹³¹

- The filing would include a cover page in the form set forth in Exchange Act Schedule 14A, as proposed to be amended, with the appropriate box on the cover page marked;
- The filing would be made under the subject company's Exchange Act file number;¹³² and
- The nominating security holder or nominating security holder group would be required to make the filing no later than two business days after providing the notice to the company.

c. Questions

H.1. Are the proposed content requirements of the notice appropriate? Are there matters included in the notice that should be eliminated? Are there additional matters that should be included? For example, is there additional information that should be included with regard to the nominating security holder or nominating security holder group (e.g., disclosure similar to that required from participants in solicitations in opposition with regard to contracts, arrangements or understandings relating to the company's securities), or with regard to the security holder nominee?

H.2. Are the required representations appropriate? Should there be additional representations? Should any of the proposed representations be eliminated?

H.3. Is it appropriate to require that the notice (other than the copy of the Exchange Act Schedule 13G included in that notice) be filed with the Commission? Should additional or lesser information be filed with the Commission and be made publicly available? Is the proposed filing requirement appropriate? For example, should the notice be filed as an exhibit

¹³¹ The requirement to file this information with the Commission is set forth in proposed Exchange Act Rule 14a-6(q).

¹³² For a fund, the filing would be made under the subject company's Investment Company Act file number. *See* Section II.A.12., below.