

nominee is not the nominating security holder, a member of the nominating security holder group, or a member of the immediate family of the nominating security holder or any member of the nominating security holder group;

(ii) If the nominating security holder or any member of the nominating security holder group is an entity, neither the nominee nor any immediate family member of the nominee has been an employee of the nominating security holder or any member of the nominating security holder group during the then-current calendar year nor during the immediately preceding calendar year;

(iii) Neither the nominee nor any immediate family member of the nominee has accepted during the then-current calendar year or during the immediately preceding calendar year directly or indirectly any consulting, advisory, or other compensatory fee from the nominating security holder or any member of the nominating security holder group or any affiliate of any such holder or any such member, provided that compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the nominating security holder or nominating security holder group member (provided that such compensation is not contingent in any way on continued service); and

(iv) Such nominee:

(A) Is not an executive officer or director (or person performing similar functions) of the nominating security holder or any member of the nominating security holder group, or of an affiliate of such holder or any such member; and

(B) Does not control the nominating security holder or any member of the nominating security holder group (or in the case of a holder or member that is an investment company, an interested person of such holder or any such member as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(19));

*Instruction to paragraph (c)(3).* For purposes of paragraph (c)(3) of this section, "immediate family" shall include any person related to the nominee by blood, marriage, or adoption, not more remote than first cousin.

(4) In the case of a registrant other than an investment company, a representation that the nominee meets the objective criteria for "independence" of the national securities exchange or national securities association rules applicable to the registrant, if any, and, in the case of a registrant that is an investment company, a representation that 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 paragraph (c)(4).* For this purpose, the nominee would be required to meet the definition of "independence" that generally is 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), that standard would not have to be satisfied.

(5) A representation that neither the nominee nor the nominating security holder or, where there is a nominating security holder group, the members of the nominating security holder group, has a direct or indirect agreement with the registrant regarding the nomination of the nominee;

(6) In the case of a registrant that is not an open-end investment company registered under the Investment Company Act of 1940, a copy of the Schedule 13G (§ 240.13d-102) filed by the nominating security holder or nominating security holder group in satisfaction of the requirement in paragraph (b)(4) of this section;

(7) A statement from the nominee 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, for inclusion in the registrant's proxy statement;

(8) Disclosure about the nominee providing all of the information necessary to comply with the disclosure requirements of Item 7(a), (b) and (c) and, for investment companies, Item 22(b) of Schedule 14A (§ 240.14a-101), as applicable, for inclusion in the registrant's proxy statement;

(9) 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 Schedule 13G (§ 240.13d-102), for inclusion in the registrant's proxy statement:

(i) Name and business address;

(ii) 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;

(iii) The amount of each class of securities of the registrant that the individual owns beneficially, directly or indirectly, determined in accordance with § 240.13d-3; and

(iv) 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 (§ 229.10 of this chapter);

*Instruction to paragraph (c)(9).* Where the nominating security holder is a general or limited partnership, syndicate or other group, the information called for in § 240.14a-11(c)(9) must be given with respect to (i) each partner of the general partnership; (ii) each partner who is, or functions as, a general partner of the limited partnership; (iii) each member of the syndicate or group; and (iv) each person controlling the partner or member. If the nominating security holder is a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for in § 240.14a-11(c)(9) 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.

(10) The methods by which the nominating security holder or nominating security holder group may solicit security holders, including, at the election of the nominating security holder or nominating security holder group, any Web site address on which the nominating security holder or nominating security holder group may publish soliciting materials; and

(11) In the case of a registrant that is an open-end investment company registered under the Investment Company Act of 1940, the following information with regard to each nominating security holder or member of a nominating security holder group, in addition to the information required by paragraph (c)(9) of this section:

(i) The percentage of each class of securities of the registrant that the individual owns beneficially, directly or indirectly, determined in accordance with § 240.13d-3, and the number of shares as to which the person has:

(A) Sole power to vote or to direct the vote;