

the material is first published, sent or given to security holders. The soliciting material must include a cover page in the form set forth in Schedule 14A (§ 240.14a-101) and the appropriate box on the cover page must be marked; and

(2) Any solicitation by or on behalf of a nominating security holder or nominating security holder group in support of a nominee placed on the registrant's proxy card in accordance with § 240.14a-11, provided that:

(i) The soliciting party does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization;

(ii) Each written communication includes:

(A) The identity of each nominating security holder and a description of his or her direct or indirect interests, by security holdings or otherwise;

(B) A prominent legend in clear, plain language advising security holders that a security holder nominee is or will be included in the registrant's proxy statement and to read the registrant's proxy statement when it becomes available because it includes important information (or, if the registrant's proxy statement is publicly available, advising security holders of that fact and encouraging security holders to read the registrant's proxy statement because it includes important information). The legend also must explain to security holders that they can find the registrant's proxy statement, and any other relevant documents, at no charge on the Commission's Web site; and

(iii) Any soliciting material published, sent or given to security holders in accordance with this paragraph must be filed by the nominating security holder with the Commission, under the registrant's Exchange Act file number, or, in the case of a registrant that is an investment company registered under the Investment Company Act of 1940, under the registrant's Investment Company Act file number, no later than the date the material is first published, sent or given to security holders. Three copies of the material must at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. The soliciting material must include a cover page in the form set forth in Schedule 14A (§ 240.14a-101) and the appropriate box on the cover page must be marked.

*Instruction to paragraph (f)(2).* If the information required by paragraph (f)(2)(ii)(A) is presented in a Schedule 13G filed electronically with the Commission, the written communication will be deemed to satisfy the requirements of that paragraph if it states that the information is presented in a Schedule 13G, presents the file number and file date for the Schedule 13G, and presents a direct Internet address where that Schedule 13G may be located.

11. By amending § 240.14a-12 to add Instruction 3 to read as follows:

**§ 240.14a-12 Solicitation before furnishing a proxy statement.**

\* \* \* \* \*

*Instructions to § 240.14a-12:*

\* \* \* \* \*

3. Solicitations by a nominating security holder or nominating security holder group that are made in connection with a § 240.14a-11 nomination will not be deemed a solicitation in opposition subject to § 240.14a-12(c).

12. Amend § 240.14a-101 by:

- a. Adding on the cover page two boxes before the box "Soliciting Material under § 240.14a-12";
- b. Adding paragraph (i) to Item 7; and
- c. Revising the reference "paragraphs (d)(3), (f) and (g)" in the introductory text of paragraph (b) of Item 22 to read "paragraphs (d)(2), (d)(3), (f), (g), (h), and (i)".

The additions and revision read as follows:

**§ 240.14a-101—Schedule 14A. Information required in proxy statement.**

**SCHEDULE 14A INFORMATION**

\* \* \* \* \*

[ ] Soliciting Material under § 240.14a-11

[ ] Nominating Security Holder Notice Under § 240.14a-11(c)

\* \* \* \* \*

*Item 7. Directors and executive officers.* \* \* \*

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(i) If a security holder nominee or nominees are submitted to the registrant and the registrant is not permitted to exclude the nominee or nominees pursuant to the provisions of § 240.14a-11, the registrant must include the disclosure required from the nominating security holder under § 240.14a-11(c)(7), (c)(8), (c)(9), (c)(10) and (c)(11), with regard to the nominee and the nominating security holder. In addition, if the registrant includes a statement supporting the registrant nominee(s) and/or opposing the security holder

nominee, the registrant must also include, at the election of the nominating security holder or nominating security holder group, a statement of support for the security holder nominee, of a length not to exceed 500 words, in accordance with § 240.14a-11.

*Instruction to Item 7(i).* The information disclosed pursuant to paragraph (i) will not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates that information by reference.

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13. Section 240.15d-11 is amended by revising paragraph (b) to read as follows:

**§ 240.15d-11 Current reports on Form 8-K (§ 249.308 of this chapter).**

\* \* \* \* \*

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6-K (17 CFR 249.306) pursuant to § 240.15d-16, issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to § 270.30b1-1 of this chapter under the Investment Company Act of 1940, except where such an investment company is required to file:

- (1) Notice of a blackout period pursuant to § 245.104 of this chapter; or
- (2) Disclosure pursuant to Instruction 5 to § 240.14a-11(a) of the date by which a security holder or security holder group must submit the notice required pursuant to § 240.14a-11(c).

14. By amending § 240.16a-1 to revise paragraph (a)(1) and add "Note to Paragraph (a)(1)(ii)(K)" to read as follows:

**§ 240.16a-1 Definition of terms.**

(a) \* \* \*

(1) (i) Solely for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered pursuant to section 12 of the Act (15 U.S.C. 78l), the term "beneficial owner" means any person who is deemed a beneficial owner pursuant to Section 13(d) of the Act (15 U.S.C 78m) and the rules thereunder, except that the institutions or persons specified in paragraph (a)(1)(ii) of this section are not deemed the beneficial owner of securities of such class:

(A) That are acquired by such institutions or persons without the purpose or effect of changing or influencing control of the issuer or engaging in any arrangement subject to § 240.13d-3(b); and