

## Securities and Exchange Commission

## § 250.103A

(a) The term *Commission* means the Securities and Exchange Commission.

(b) The term *act* means the Public Utility Holding Company Act of 1935.

(c) The term *section* refers to a section of the act.

(d) The term *rule* includes *rule* and *regulation*, as those words are used in the Act and refers to the rules prescribed by the Commission pursuant to the Act. All forms and instructions thereto shall be deemed rules and regulations adopted by the Commission pursuant to the Act.

(e) Any definition of a term contained in the act shall be applicable to such term as used in the rules.

(f) The term *parent* or *parent company* of a specified company means a company of which such specified company is a subsidiary, whether by virtue of direct or indirect ownership or control of securities.

(g) The phrase *direct subsidiary* of a specified company means a company of which such specified company itself directly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities, and directly owns a greater percentage of such voting securities than are owned by any other company.

(h) The phrase “any person having a bona fide interest as used in sections 11(d), 11(f), and 11(g) (49 Stat. 820; 15 U.S.C. 79k), shall, with respect to the reorganization of any company, be deemed to include such company; any creditor or stockholder of such company or any authorized representative thereof; any receiver or trustee of such company; any trustee under an indenture pursuant to which securities of such company are outstanding; any State commission having regulatory jurisdiction over such company; any person authorized to prepare a plan by any court before which a reorganization proceeding is pending; and any other person found by the Commission to have a substantial interest in the reorganization.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 30 FR 4129, Mar. 30, 1965]

### § 250.103A Liability for certain statements by issuers.

(a) A statement within the coverage of paragraph (b) of this section which is

made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This rule applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10-Q and Form 10-QSB, §249.308a of this chapter, or in an annual report to shareholders meeting the requirements of Rules 14a-3 (b) and (c) or 14c-3(a) and (b) under the Securities Exchange Act of 1934, a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10-Q and Form 10-QSB, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement: *Provided, That*;

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K and Form 10-KSB; or, if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940; and

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(2) Information which is disclosed in a document filed with the Commission, in part I of a quarterly report on Form 10-Q and Form 10-QSB or in an annual report to shareholders meeting the requirements of Rules 14a-3 (b) and (c) or 14c-3 (a) and (b) under the Securities Exchange Act of 1934 and which relates to:

(i) The effects of changing prices on the business enterprise, presented voluntarily or pursuant to Item 303 of Regulation S-K (§ 229.303 of this chapter), "Management's discussion and analysis of financial condition and results of operations," or Item 302 of Regulation S-K (§ 229.302 of this chapter), "Supplementary financial information," or

(ii) The value of proved oil and gas reserves (such as a standardized measure of discounted future net cash flows relating to proved oil and gas reserves as set forth in paragraphs 30-34 of Statement of Financial Accounting Standards No. 69) presented voluntarily or pursuant to Item 302 of Regulation S-K (§ 229.302 of this chapter).

(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

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (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 Public Utility Holding Company Act of 1935 and other acts referred to in section 16(b) thereof or the rules or regulations promulgated thereunder.

[46 FR 13991, Feb. 25, 1981, as amended at 46 FR 19457, Mar. 31, 1981; 47 FR 11474, Mar. 16, 1982; 47 FR 57915, Dec. 29, 1982]

### § 250.104 Public disclosure of information and objections thereto.

PRELIMINARY NOTE: If any person wishes to object to the public disclosure of any information contained in a filing with the Commission under any provision of the Act then that portion thereof which contains such information shall be submitted in paper format only, whether or not the filer is an electronic filer.

(a) *General provision.* Unless otherwise directed by the Commission, all information contained in any notification, statement, application, declaration, report, or other document filed with the Commission shall be available to the public, and copies of any or all information filed in connection with or as a part of any of the above documents will be furnished to any person upon request and upon the payment of the charge therefor.

(b) *Confidential treatment.* If any person filing a notification, statement, application, declaration, report, or other document with the Commission under any provision of the act, or of any rules or order of the Commission thereunder, wishes to object to the public disclosure of any information contained therein, he shall file that portion thereof which contains such information separately from the remainder and shall plainly mark it "Confidential Treatment". There shall also be filed with such information written objection to its public disclosure which (1) shall identify that portion of the notification, statement, application, declaration, report or other document to the public disclosure of which objection is made, (2) shall state the reasons why public disclosure thereof is not necessary or appropriate in the public