

Securities and Exchange Commission

§ 240.14b-1

§ 240.14a-104 Notice of Exempt Preliminary Roll-up Communication. Information regarding ownership interests and any potential conflicts of interest to be included in statements submitted by or on behalf of a person pursuant to § 240.14a-2(b)(4) and § 240.14a-6(n).

securities of the partnership that is the subject of the proposed roll-up transaction.

United States Securities and Exchange Commission Washington, D.C. 20549

[59 FR 63685, Dec. 8, 1994]

Notice of Exempt Preliminary Roll-Up Communication

§ 240.14b-1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

- 1. Name of registrant appearing on Securities Act of 1933 registration statement for the roll-up transaction...
2. Name of partnership that is the subject of the proposed roll-up transaction:
3. Name of person relying on exemption:
4. Address of person relying on exemption:
5. Ownership interest of security holder in partnership that is the subject of the proposed roll-up transaction:

(a) Definitions. Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in § 240.14a-1 thereunder and, with respect to information statements, as in § 240.14c-1 thereunder. In addition, as used in this section, the term "registrant" means:

NOTE: To the extent that the holder owns securities in any other entities involved in this roll-up transaction, disclosure of these interests also should be made.

(1) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(2) An investment company registered under the Investment Company Act of 1940.

- 6. Describe any and all relations of the holder to the parties to the transaction or to the transaction itself:
a. The holder is engaged in the business of buying and selling limited partnership interests in the secondary market would be adversely affected if the roll-up transaction were completed.

(b) Dissemination and beneficial owner information requirements. A broker or dealer registered under Section 15 of the Act shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants.

- b. The holder would suffer direct (or indirect) material financial injury if the roll-up transaction were completed since it is a service provider to an affected limited partnership.

(1) The broker or dealer shall respond, by first class mail or other equally prompt means, directly to the registrant no later than seven business days after the date it receives an inquiry made in accordance with § 240.14a-13(a) or § 240.14c-7(a) by indicting, by means of a search card or otherwise:

- c. The holder is engaged in another transaction that may be competitive with the pending roll-up transaction.

(i) The approximate number of customers of the broker or dealer who are beneficial owners of the registrant's securities that are held of record by the broker, dealer, or its nominee;

- d. Any other relations to the parties involved in the transaction or to the transaction itself, or any benefits enjoyed by the holder not shared on a pro rata basis by all other holders of the same class of

(ii) The number of customers of the broker or dealer who are beneficial owners of the registrant's securities who have objected to disclosure of their names, addresses, and securities positions if the registrant has indicated, pursuant to § 240.14a-13(a)(1)(ii)(A) or § 240.14c-7(a)(1)(ii)(A),

that it will distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to paragraph (b)(3) of this section; and

(iii) The identity of the designated agent of the broker or dealer, if any, acting on its behalf in fulfilling its obligations under paragraph (b)(3) of this section; *Provided, however*, that if the broker or dealer has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, receipt for purposes of paragraph (b)(1) of this section shall mean receipt by such designated office(s) or department(s).

(2) The broker or dealer shall, upon receipt of the proxy, other proxy soliciting material, information statement, and/or annual report to security holders from the registrant or other soliciting person, forward such materials to its customers who are beneficial owners of the registrant's securities no later than five business days after receipt of the proxy material, information statement or annual report to security holders.

NOTE TO PARAGRAPH (b)(2): At the request of a registrant, or on its own initiative so long as the registrant does not object, a broker or dealer may, but is not required to, deliver one annual report to security holders, proxy statement, information statement, or Notice of Internet Availability of Proxy Materials to more than one beneficial owner sharing an address if the requirements set forth in § 240.14a-3(e)(1) (with respect to annual reports to security holders, proxy statements, and Notices of Internet Availability of Proxy Materials) and § 240.14c-3(c) (with respect to annual reports to security holders, information statements, and Notices of Internet Availability of Proxy Materials) applicable to registrants, with the exception of § 240.14a-3(e)(1)(i)(E), are satisfied instead by the broker or dealer.

(3) The broker or dealer shall, through its agent or directly:

(i) Provide the registrant, upon the registrant's request, with the names, addresses, and securities positions, compiled as of a date specified in the registrant's request which is no earlier than five business days after the date the registrant's request is received, of its customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of

such information; *Provided, however*, that if the broker or dealer has informed the registrant that a designated office(s) or department(s) is to receive such requests, receipt shall mean receipt by such designated office(s) or department(s); and

(ii) Transmit the data specified in paragraph (b)(3)(i) of this section to the registrant no later than five business days after the record date or other date specified by the registrant.

NOTE 1: Where a broker or dealer employs a designated agent to act on its behalf in performing the obligations imposed on the broker or dealer by paragraph (b)(3) of this section, the five business day time period for determining the date as of which the beneficial owner information is to be compiled is calculated from the date the designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraph (b)(3) of this section, a broker or dealer need only supply the registrant with the names, addresses, and securities positions of non-objecting beneficial owners.

NOTE 2: If a broker or dealer receives a registrant's request less than five business days before the requested compilation date, it must provide a list compiled as of a date that is no more than five business days after receipt and transmit the list within five business days after the compilation date.

(c) *Exceptions to dissemination and beneficial owner information requirements.* A broker or dealer registered under section 15 of the Act shall be subject to the following with respect to its dissemination and beneficial owner information requirements.

(1) With regard to beneficial owners of exempt employee benefit plan securities, the broker or dealer shall:

(i) Not include information in its response pursuant to paragraph (b)(1) of this section or forward proxies (or in lieu thereof requests for voting instructions), proxy soliciting material, information statements, or annual reports to security holders pursuant to paragraph (b)(2) of this section to such beneficial owners; and

(ii) Not include in its response, pursuant to paragraph (b)(3) of this section, data concerning such beneficial owners.

(2) A broker or dealer need not satisfy:

(i) Its obligations under paragraphs (b)(2), (b)(3) and (d) of this section if

the registrant or other soliciting person, as applicable, does not provide assurance of reimbursement of the broker's or dealer's reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2), (b)(3) and (d) of this section; or

(ii) Its obligation under paragraph (b)(2) of this section to forward annual reports to security holders to non-objecting beneficial owners identified by the broker or dealer, through its agent or directly, pursuant to paragraph (b)(3) of this section if the registrant notifies the broker or dealer pursuant to § 240.14a-13(c) or § 240.14c-7(c) that the registrant will send the annual report to security holders to such non-objecting beneficial owners identified by the broker or dealer and delivered in a list to the registrant pursuant to paragraph (b)(3) of this section.

(3) In its response pursuant to paragraph (b)(1) of this section, a broker or dealer shall not include information about annual reports to security holders, proxy statements or information statements that will not be delivered to security holders sharing an address because of the broker or dealer's reliance on the procedures referred to in the Note to paragraph (b)(2) of this section.

(d) Upon receipt from the soliciting person of all of the information listed in § 240.14a-16(d), the broker or dealer shall:

(1) Prepare and send a Notice of Internet Availability of Proxy Materials containing the information required in paragraph (e) of this section to beneficial owners no later than:

(i) With respect to a registrant, 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; and

(ii) With respect to a soliciting person other than the registrant, the later of:

(A) 40 calendar days prior to the security holder meeting date or, if no meeting is to be held, 40 calendar days prior to the date the votes, consents, or authorizations may be used to effect the corporate action; or

(B) 10 calendar days after the date that the registrant first sends its proxy statement or Notice of Internet Availability of Proxy Materials to security holders.

(2) Establish a Web site at which beneficial owners are able to access the broker or dealer's request for voting instructions and, at the broker or dealer's option, establish a Web site at which beneficial owners are able to access the proxy statement and other soliciting materials, provided that such Web sites are maintained in a manner consistent with paragraphs (b), (c), and (k) of § 240.14a-16;

(3) Upon receipt of a request from the registrant or other soliciting person, send to security holders specified by the registrant or other soliciting person a copy of the request for voting instructions accompanied by a copy of the intermediary's Notice of Internet Availability of Proxy Materials 10 calendar days or more after the broker or dealer sends its Notice of Internet Availability of Proxy Materials pursuant to paragraph (d)(1); and

(4) Upon receipt of a request for a copy of the materials from a beneficial owner:

(i) Request a copy of the soliciting materials from the registrant or other soliciting person, in the form requested by the beneficial owner, within three business days after receiving the beneficial owner's request;

(ii) Forward a copy of the soliciting materials to the beneficial owner, in the form requested by the beneficial owner, within three business days after receiving the materials from the registrant or other soliciting person; and

(iii) Maintain records of security holder requests to receive a paper or e-mail copy of the proxy materials in connection with future proxy solicitations and provide copies of the proxy materials to a security holder who has made such a request for all securities held in the account of that security holder until the security holder revokes such request.

(5) Notwithstanding any other provisions in this paragraph (d), if the broker or dealer receives copies of the proxy statement and annual report to security holders (if applicable) from the soliciting person with instructions

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to forward such materials to beneficial owners, the broker or dealer:

(i) Shall either:

(A) Prepare a Notice of Internet Availability of Proxy Materials and forward it with the proxy statement and annual report to security holders (if applicable); or

(B) Incorporate any information required in the Notice of Internet Availability of Proxy Materials that does not appear in the proxy statement into the broker or dealer's request for voting instructions to be sent with the proxy statement and annual report (if applicable);

(ii) Need not comply with the following provisions:

(A) The timing provisions of paragraph (d)(1)(ii) of this section; and

(B) Paragraph (d)(4) of this section; and

(iii) Need not include in its Notice of Internet Availability of Proxy Materials or request for voting instructions the following disclosures:

(A) Legends 1 and 3 in §240.14a-16(d)(1); and

(B) Instructions on how to request a copy of the proxy materials.

(e) *Content of Notice of Internet Availability of Proxy Materials.* The broker or dealer's Notice of Internet Availability of Proxy Materials shall:

(1) Include all information, as it relates to beneficial owners, required in a registrant's Notice of Internet Availability of Proxy Materials under §240.14a-16(d), provided that the broker or dealer shall provide its own, or its agent's, toll-free telephone number, an e-mail address, and an Internet Web site to service requests for copies from beneficial owners;

(2) Include a brief description, if applicable, of the rules that permit the broker or dealer to vote the securities if the beneficial owner does not return his or her voting instructions; and

(3) Otherwise be prepared and sent in a manner consistent with paragraphs (e), (f), and (g) of §240.14a-16.

[57 FR 1099, Jan. 10, 1992, as amended at 65 FR 65751, Nov. 2, 2000; 72 FR 4170, Jan. 29, 2007; 72 FR 42238, Aug. 1, 2007; 73 FR 17814, Apr. 1, 2008]

**§ 240.14b-2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.**

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in §240.14a-1 thereunder and, with respect to information statements, as in §240.14c-1 thereunder. In addition, as used in this section, the following terms shall apply:

(1) The term *bank* means a bank, association, or other entity that exercises fiduciary powers.

(2) The term *beneficial owner* includes any person who has or shares, pursuant to an instrument, agreement, or otherwise, the power to vote, or to direct the voting of a security.

NOTE 1: If more than one person shares voting power, the provisions of the instrument creating that voting power shall govern with respect to whether consent to disclosure of beneficial owner information has been given.

NOTE 2: If more than one person shares voting power or if the instrument creating that voting power provides that such power shall be exercised by different persons depending on the nature of the corporate action involved, all persons entitled to exercise such power shall be deemed beneficial owners; *Provided, however,* that only one such beneficial owner need be designated among the beneficial owners to receive proxies or requests for voting instructions, other proxy soliciting material, information statements, and/or annual reports to security holders, if the person so designated assumes the obligation to disseminate, in a timely manner, such materials to the other beneficial owners.

(3) The term *registrant* means:

(i) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(ii) An investment company registered under the Investment Company Act of 1940.

(b) *Dissemination and beneficial owner information requirements.* A bank shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants.

(1) The bank shall: