

the requirements of Rules 14a-3 (b) and (c) or 14c-3 (a) and (b) under the Securities Exchange Act of 1934 (§§ 240.14a-3(b) and (c) or 240.14c-3(a) and (b) of this chapter) and that 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,” Item 5 of Form 20-F (§249.220(f) of this chapter), “Operating and Financial Review and Prospects,” Item 302 of Regulation S-K (§229.302 of this chapter), “Supplementary Financial Information,” or Rule 3-20(c) of Regulation S-X (§210.3-20(c) of this chapter); 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 FASB ASC paragraphs 932-235-50-29 through 932-235-50-36 (Extractive Activities—Oil and Gas Topic) 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 Item 9 of Form 20-F; or Item 5 of Form 20-F.

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraphs (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 Securities Act of 1933 or the rules or regulations promulgated thereunder.

[46 FR 13990, Feb. 25, 1981, as amended at 46 FR 19457, Mar. 31, 1981; 47 FR 54770, Dec. 6, 1982; 48 FR 19875, May 3, 1983; 56 FR 30054, July 1, 1991; 57 FR 36468, Aug. 13, 1992; 64 FR 53909, Oct. 5, 1999; 73 FR 967, Jan. 4, 2008; 76 FR 50121, Aug. 12, 2011]

§ 230.176 Circumstances affecting the determination of what constitutes reasonable investigation and reasonable grounds for belief under section 11 of the Securities Act.

In determining whether or not the conduct of a person constitutes a reasonable investigation or a reasonable ground for belief meeting the standard set forth in section 11(c), relevant circumstances include, with respect to a person other than the issuer.

(a) The type of issuer;

(b) The type of security;

(c) The type of person;

(d) The office held when the person is an officer;

(e) The presence or absence of another relationship to the issuer when the person is a director or proposed director;

(f) Reasonable reliance on officers, employees, and others whose duties should have given them knowledge of the particular facts (in the light of the functions and responsibilities of the particular person with respect to the issuer and the filing);

(g) When the person is an underwriter, the type of underwriting arrangement, the role of the particular person as an underwriter and the availability of information with respect to the registrant; and

(h) Whether, with respect to a fact or document incorporated by reference, the particular person had any responsibility for the fact or document at the time of the filing from which it was incorporated.

[47 FR 11433, Mar. 16, 1982, as amended at 76 FR 71876, Nov. 21, 2011]