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Title 17 – Commodity and Securities Exchanges

Chapter II – Securities and Exchange Commission

Part 240 – General Rules and Regulations, Securities Exchange Act of 1934

Subpart A – Rules and Regulations Under the Securities Exchange Act of 1934

Regulation 13D-G

EDITORIAL NOTE ON PART 240

Editorial Note: Nomenclature changes to part 240 appear at 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

§ 240.13e-1 Purchase of securities by the issuer during a third-party tender offer.

An issuer that has received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Act (15 U.S.C. 78n), that has commenced under § 240.14d-2 must not purchase any of its equity securities during the tender offer unless the issuer first:

- (a) Files a statement with the Commission containing the following information:
- (1) The title and number of securities to be purchased;
 - (2) The names of the persons or classes of persons from whom the issuer will purchase the securities;
 - (3) The name of any exchange, inter-dealer quotation system or any other market on or through which the securities will be purchased;
 - (4) The purpose of the purchase;
 - (5) Whether the issuer will retire the securities, hold the securities in its treasury, or dispose of the securities. If the issuer intends to dispose of the securities, describe how it intends to do so;
 - (6) The source and amount of funds or other consideration to be used to make the purchase. If the issuer borrows any funds or other consideration to make the purchase or enters any agreement for the purpose of acquiring, holding, or trading the securities, describe the transaction and agreement and identify the parties; and
 - (7) An exhibit to the statement that sets forth the transaction valuation, fee rate, amount of filing fee and, as applicable, information relating to reliance on § 240.0-11(a)(2) in the tabular form indicated in Tables 1 and 2 to this paragraph (a)(7) and as further specified in this paragraph (a)(7).

TABLE 1 TO PARAGRAPH (a)(7)

	Transaction valuation	Fee rate	Amount of filing fee
Fees to Be Paid	X	X	X
Fees Previously Paid	X		X
Total Transaction Valuation	X		
Total Fees Due for Filing			X
Total Fees Previously Paid			X

	Transaction valuation	Fee rate	Amount of filing fee
Total Fee Offsets			X
Net Fee Due			X

TABLE 2 TO PARAGRAPH (a)(7)

	Registrant or filer name	Form or filing type	File number	Initial filing date	Filing date	Fee offset claimed	Fee paid with fee offset source
Fee Offset Claims		X	X	X		X	
Fee Offset Sources	X	X	X		X		X

(i) **General requirements** –

- (A) **Applicable table requirements.** The “X” designation indicates the information required to be disclosed, as applicable, in tabular format. Add as many rows of each table as necessary.
- (B) **Fee rate.** For the current fee rate, see <https://www.sec.gov/ofm/Article/feeamt.html>.
- (C) **Explanations.** If not otherwise explained in response to this paragraph (a)(7), disclose specific details relating to the fee calculation as necessary to clarify the information presented in each table, including references to the applicable provisions of § 240.0-11 (Rule 0-11). All disclosure this paragraph (a)(7) requires that is not specifically required to be presented in tabular format must appear in narrative format immediately after the table(s) to which it corresponds.

(ii) **Table 1 to this paragraph (a)(7)** –

(A) **Fees to be paid and fees previously paid** –

- (1) **Fees to be paid.** Provide the information Table 1 to this paragraph (a)(7) requires for the line item “Fees to Be Paid” as follows:
- (i) **Initial filings.** For an initial filing on the statement, provide the required information for the total transaction valuation.
- (ii) **Amendments with then-current total transaction valuation higher than highest total transaction valuation previously reported.** For amendments to the statement that reflect a then-current total transaction valuation higher than the highest total transaction valuation previously reported, provide the required information for the incremental increase.
- (2) **Fees previously paid.** Provide the information Table 1 to this paragraph (a)(7) requires for the line item “Fees Previously Paid” for the prior initial filing or amendment to the statement that reflected a then-current total transaction valuation that was the highest total transaction valuation previously reported.

(B) **Other tabular information.** Provide the following information in Table 1 to this paragraph (a)(7) for the line items “Fees to be Paid” and “Fees Previously Paid”, as applicable:

- (1) The transaction valuation computed pursuant to Rule 0-11;
- (2) The fee rate; and
- (3) The filing fee due without regard to any previous payments or offsets.

(C) **Totals –**

- (1) **Total transaction valuation.** Provide the sum of the transaction valuations for the line items “Fees to be Paid” and “Fees Previously Paid”.
- (2) **Total fees due for filing.** Provide the sum of the fees due without regard to any previous payments or offsets for the line items “Fees to be Paid” and “Fees Previously Paid.”
- (3) **Total fees previously paid.** Provide the aggregate of filing fees previously paid with this filing.
- (4) **Total fee offsets.** Provide the aggregate of the fee offsets that are claimed in Table 2 to this paragraph (a)(7) pursuant to paragraph (a)(7)(iii) of this section.
- (5) **Net fee due.** Provide the difference between:
 - (i) The total fees due for the statement from the “Total Fees Due for Filing” row; and
 - (ii) The sum of the aggregate of filing fees previously paid from the “Total Fees Previously Paid” row; and the aggregate fee offsets claimed from the “Total Fee Offsets” row.

(D) **Narrative disclosure.** Explain how the transaction valuation was determined.(iii) **Table 2 to this paragraph (a)(7) –**(A) **Terminology.** For purposes of this paragraph (a)(7)(iii) and Table 2 to this paragraph (a)(7):

- (1) The term *submission* means any:
 - (i) Initial filing of, or amendment (pre-effective or post-effective), to a fee-bearing document; or
 - (ii) Fee-bearing form of prospectus filed under § 230.424 of this chapter (Rule 424 under the Securities Act), in all cases that was accompanied by a contemporaneous fee payment.

Note 1 to paragraph (a)(7)(iii)(A). For purposes of this paragraph (a)(7)(iii), a contemporaneous fee payment is the payment of a required fee that is satisfied through the actual transfer of funds, and does not include any amount of a required fee satisfied through a claimed fee offset. Paragraph (a)(7)(iii)(B)(2) of this section requires a filer that claims a fee offset under Rule 0-11(a)(2) to identify previous submissions with contemporaneous fee payments that are the original source to which the fee offsets claimed on this filing can be traced. See Instruction 3.C to the Calculation of Filing Fee Tables in Item 16(b) of § 240.13e-100 (Schedule 13E-3) for an example.

(B) **Rule 0-11(a)(2).** If relying on Rule 0-11(a)(2) to offset some or all of the filing fee due on the statement by amounts paid in connection with earlier filings (other than the statement) relating to the same transaction, provide the following information:

- (1) **Fee offset claims.** For each earlier filed Securities Act registration statement or Exchange Act document relating to the same transaction from which a fee offset is being claimed, provide the information that Table 2 to this paragraph (a)(7) requires for the line item “Fee Offset Claims”. The “Fee Offset Claimed” column requires the dollar amount of the previously paid filing fee to be offset against the currently due fee.

Note 2 to paragraph (a)(7)(iii)(B)(1). If claiming an offset from a Securities Act registration statement, provide a detailed explanation of the basis for the claimed offset.

- (2) **Fee offset sources.** With respect to amounts claimed as an offset under Rule 0-11(a)(2), identify those submissions with contemporaneous fee payments that are the original source to which those amounts can be traced. For each submission identified, provide the information that Table 2 to this paragraph (a)(7) requires for the line item “Fee Offset Sources”. The “Fee Paid with Fee Offset Source” column requires the dollar amount of the contemporaneous fee payment made with respect to each identified submission that is the source of the fee offset claimed pursuant to Rule 0-11(a)(2).

- (b) Pays the fee required by § 240.0-11 when it files the initial statement and any amendment with respect to which an additional fee is due.
- (c) Submits to the Commission the exhibit required by paragraph (a)(7) of this section as required by § 232.408 of this chapter (Rule 408 of Regulation S-T).

- (d) This section does not apply to periodic repurchases in connection with an employee benefit plan or other similar plan of the issuer so long as the purchases are made in the ordinary course and not in response to the tender offer.

Instruction to § 240.13e-1: File eight copies if paper filing is permitted.

[64 FR 61452, Nov. 10, 1999, as amended at 86 FR 70251, Dec. 9, 2021]